

# Queensland Rail's Draft Access Undertaking 2

14 August 2018



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## Preamble

Queensland Rail ~~was incorporated on 11 July 2008 and is a wholly owned by the subsidiary of the statutory authority established by the Queensland Government under the Rail Authority Queensland Act.~~

~~The Rail was originally named QR Passenger Pty Ltd and was a subsidiary of Aurizon Operations Limited (formerly QR Limited) responsible for the Above Rail passenger Train Services.~~

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

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

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

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

- ~~• management of railways;~~
- ~~• provision of rail transport services, including passenger services; and~~
- ~~• construction and maintenance of railway infrastructure.~~

~~Queensland Rail's major businesses include passenger Trains (including inner-city commuter and long distance trains), rail holidays, travel Network extends more than 6600 kilometres across the State. The regional network spans more than 5,700 kilometres of Track and comprises seven rail systems that convey passenger and freight services across Queensland to support the State economy in the tourism, mining, agriculture, construction, wholesale and retail sectors.~~

~~Queensland Rail operates passenger services connecting regional communities across Queensland with other regional centres and managing the South East Queensland corner, and provides rail access to its rail network for a wide variety of Trains including for agricultural products, passengers, Rolling Stock Operators and other supply chain customers, to enable the transport of resources and general freight, bulk minerals and coal. – across the State. Queensland Rail is not a rail freight operator (i.e. it does not participate in the above rail freight market).~~

The needs of ~~Trains~~Rolling Stock Operators on Queensland Rail's network vary greatly due to their different supply chain dynamics, geographic locations, rail corridor characteristics and interactions with other rail traffics.

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

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

~~Queensland Rail competes with road~~Road transport provides a viable alternative mode of transport for most non-coal ~~Train Services~~commodities, as well as coastal shipping, air transport, slurry pipelines and other transport options. ~~In this sense, a large part of Queensland Rail's network business is not truly monopolistic as it is actively competing with other transport modes.~~

~~As part of Aurizon Operations Limited's restructure associated with the formation and privatisation of Aurizon, the 2008 Undertaking, with various modifications, was made to apply to Queensland Rail under the Infrastructure Investment (Asset Restructuring and Disposal) Act 2009 (Qld).~~

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

- ~~• the process for seeking Access in relation to the Network;~~
- ~~• the pricing rules for Access Charges;~~
- ~~• Network Management Principles for the scheduling and prioritisation of Train Services;~~
- ~~• reporting obligations and dispute resolution; and~~
- ~~• a Standard Access Agreement.~~

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

Queensland Rail Limited  
Commercial and Strategy

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# Part 1 Application and scope

## 1.1 Duration

This Undertaking is effective during the Term.

## 1.2 Scope

### 1.2.1 Application of this Undertaking

- (a) Subject to **clause 1.2.1(b)**, this Undertaking applies to negotiations between Queensland Rail and Access Seekers in relation to Access Rights.
- (b) Despite any other provision in this Undertaking:
  - (i) this Undertaking does not apply:
    - (A) to the negotiation or provision of services other than Access; or
    - (B) to any matter involving an Access Holder or an Access Agreement, to the extent that compliance with this Undertaking is inconsistent with the relevant Access Agreement. and
  - (ii) ~~subject to schedule F,~~ Queensland Rail is not obliged to comply with this Undertaking to the extent that it is inconsistent with Queensland Rail's compliance with its Passenger Priority Obligations and Preserved Train Path Obligations.
- (c) Nothing in this Undertaking requires Queensland Rail or any other party to an Access Agreement executed before the Approval Date to vary a term or provision of that Access Agreement.
- (d) Nothing in this Undertaking affects, and this Undertaking is subject to, Queensland Rail's and an Access Seeker's rights under the QCA Act.

### 1.2.2 Procurement of services other than Access

- (a) Unless Queensland Rail otherwise agrees, Access Seekers are responsible for procuring any services other than Access and Below Rail Services (which Queensland Rail will provide), including Above Rail Services, required for the operation of Train Services.

### 1.2.3 Line diagrams

Queensland Rail will:

- (a) publish on its website line diagrams showing its rail network including:
  - (i) the parts of that rail network comprising the Network;

- (ii) existing Private Infrastructure connection points to the Network; and
- (iii) a description of the amendments made to the line diagrams (if any) since the last version of those line diagrams;
- (b) use reasonable endeavours to keep those line diagrams up to date and accurate in all material respects;
- (c) review and, if applicable, amend the line diagrams during the Term:
  - (i) at intervals of no more than six months; and
  - (ii) if requested by the QCA or an Access Holder or Access Seeker (acting reasonably) from time to time;
- (d) notify the QCA at intervals of no more than six months during the Term of any amendments to the line diagrams during that time interval;
- (e) notify all Access Seekers and Access Holders in relation to any proposed amendments to the line diagrams;
- (f) in the event that an Access Holder or Access Seeker raises a dispute about the accuracy of the line diagrams, follow the dispute resolution process in **Part 6**; and
- (g) subject to the outcome of any dispute resolution process, promptly update the line diagrams and notify all Access Holders and Access Seekers as soon as the line diagrams have been updated.

### 1.3 Consistency and differentiation

- (a) Queensland Rail will consistently apply this Undertaking to all Access Seekers and requests and negotiations for Access.
- (b) Queensland Rail acknowledges its obligations and permissions (in some cases conditional permissions) under sections 100, 104, 125 and 168C of the QCA Act, in particular:
  - (i) in relation to not unfairly differentiating between Access Seekers as required by and subject to section 100 of the QCA Act, including in respect of:
    - (A) the levels of service provided to Access Seekers in relation to the application of the Undertaking (including the negotiation of Access Rights); and
    - (B) the opportunities given to Access Seekers to obtain Access Rights;
  - (ii) in relation to not unfairly differentiating between Access Holders as required by and subject to section 168C of the QCA Act; and

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

## 1.4 Extensions – Capacity investment framework

### 1.4.1 Application

- (a) This **clause 1.4** applies when an Access Seeker notifies Queensland Rail, in accordance with **clause 2.7.2(d)** that it is willing to fund an Extension (or an Extension Stage).
- (b) Queensland Rail is obliged to complete the relevant Extension Stage (as applicable) (unless otherwise agreed by Queensland Rail and the relevant Access Funder) to provide the Additional Capacity required by the Access Funder if:
  - (i) the proposed Extension satisfies those Extension Conditions in **clause 1.4.2(d)** which are relevant to the applicable Extension Stage; and
  - (ii) the Access Funder provides a bank guarantee in support of its commitments under the Funding Agreement as agreed by Queensland Rail (acting reasonably) and the Access Funder unless this requirement is waived, or another form of security is accepted, by Queensland Rail.
- (c) Nothing in this **clause 1.4**:
  - (i) restricts or otherwise limits Queensland Rail’s ability:
    - (A) to Extend the Network;
    - (B) to fund any Extension Stage, or part thereof, or otherwise invest in the Network;
    - (C) to enter into arrangements with other persons (other than Access Funders) in relation to Extending the Network; or
    - (D) to, at its cost, prepare plans and strategies and undertake studies and investigations in relation to Extending the Network (including Concept Studies, Pre-feasibility Studies and Feasibility Studies); or
  - (ii) obliges Queensland Rail to bear some or all of any costs related to an Extension or to incur any Extension Costs in advance of funding being provided by the Access Funder.

## 1.4.2 Extending the Network

- (a) If Queensland Rail is notified under **clause 2.7.2(d)**, then Queensland Rail will promptly:
- (i) in addition to the information provided pursuant to **clause 2.7.2(b)(ii)**, provide the Access Funder with all available information on the Extension required, in accordance with sections 101(1) and 101(2) of the QCA Act, to provide the Additional Capacity required to grant the Access Rights in the Access Application. Without limiting the foregoing, this includes information on:
    - (A) necessary Authorisations that are reasonably required for the Extension;
    - (B) rights and interests in land that are reasonably required for the Extension;
    - (C) rail safety requirements reasonably appropriate to the Extension; and
    - (D) engineering, operational and other requirements that are reasonably required for the Extension;
  - (ii) discuss with the relevant Access Funder the options to proceed by completing the required Extension Stage (or Stages)
  - (iii) discuss, with the relevant Access Funder, options for that Access Funder to provide funding for each applicable Extension Stage (or Stages); and
  - (iv) negotiate and enter into arrangements in accordance with the Extension Access Principles set out in **schedule I**, and **clause 1.4.3**, with the Access Funder in relation to the funding of the relevant stage of the Extension (**Funding Agreement**).

For clarity separate Funding Agreements may be entered into for each Extension Stage. The Access Funder is then free to make a decision on whether to proceed with each subsequent Extension Stage at the completion of each preceding Extension Stage.

- (b) If either Queensland Rail or an Access Funder considers that an Extension Stage should be discontinued, then the parties (acting reasonably) will seek to agree whether the study process should continue but if the parties cannot agree then the relevant Extension Stage will continue subject to that Extension Stage being funded.
- (c) There is no requirement to complete all Extension Stages if both parties agree (each acting reasonably) that a particular Extension Stage is unnecessary.

- (d) The Extension must satisfy the following conditions (**Extension Conditions**):
- (i) the Access Funder or Queensland Rail has obtained, or is reasonably likely to obtain, all necessary Authorisations reasonably required to Extend the Network;
  - (ii) the Access Funder or Queensland Rail has acquired or procured, or is reasonably likely to acquire or procure, all of the rights and interests in land that, in Queensland Rail's opinion (acting reasonably), are required to construct, own, operate and manage the Extension, (on terms satisfactory to Queensland Rail (acting reasonably)) including, for example, the inclusion of additional land into Queensland Rail's land tenure arrangements with the State relating to the Network;
  - (iii) in Queensland Rail's opinion (acting reasonably), the Extension (including constructing the Extension):
    - (A) is technically feasible;
    - (B) is consistent with the safe and reliable provision of Access and operation of the Network;
    - (C) does not adversely impact on the safety of any person maintaining, operating or using the Network;
    - (D) does not adversely affect existing Access Rights; and
    - (E) complies with the engineering, operational and other requirements of Queensland Rail (acting reasonably);
  - (iv) relevant Access Agreement negotiations are continuing in accordance with **Part 2** of this Undertaking; or
  - (v) those Access Agreements are or have become unconditional in all material respects except for conditions relating to Extending the Network which cannot be satisfied until the Network has been Extended;
  - (vi) the Access Funder and Queensland Rail have executed a Funding Agreement for the relevant Extension Stage(s) in accordance with **clause 1.4.3**; and
  - (vii) the Access Funder and Queensland Rail have executed construction, operational, and other material arrangements reasonably required for the relevant Extension Stage(s) (including the matters referred to above) which are unconditional in all material respects except for conditions relating to the Extension which cannot be satisfied until the Network has been Extended.

- (e) Queensland Rail and an Access Funder must use reasonable endeavours and act promptly to assist each other such that the Extension complies with the Extension Conditions.
- (f) Queensland Rail will not unreasonably delay the negotiation, and execution of, a Funding Agreement.
- (g) For clarity, unless Queensland Rail agrees otherwise, Queensland Rail has no obligation to assist in satisfying the requirements set out in **clause 1.4.2** if it is required to incur or pay any costs in order to do so.

### 1.4.3 Funding Agreements

- (a) The intent of a Funding Agreement is to have a workable, bankable and credible mechanism for Access Funders to fund each relevant Extension Stage where Queensland Rail elects not to do so.
- (b) Without limitation to **clause 1.4.2**, a Funding Agreement must, unless otherwise agreed by Queensland Rail and the relevant Access Funder:
  - (i) be consistent with this Undertaking including the Extension Access Principles in **schedule I** (provided however that if there is any conflict between the terms of **clause 1.4** and the terms of **schedule I**, the terms of this **clause 1.4** will be paramount);
  - (ii) result in the transaction being structured in a reasonable way for all parties;
  - (iii) not result in Queensland Rail bearing some or all of the relevant Extension Costs;
  - (iv) require that, in accordance with **clause 6 of schedule I**, Queensland Rail transfer to the Access Funder the full economic benefit that Queensland Rail derives from the Extension over the economic life of the Extension; and
  - (v) require Queensland Rail to provide that an Extension Stage is (as applicable):
    - (A) scoped and studied in accordance with Prudent Practices;
    - (B) constructed efficiently and is consistent with Queensland Rail's obligations outlined in the prudency assessment provisions in **schedule E**; and
    - (C) operated and managed by Queensland Rail in a manner that is consistent with Queensland Rail's obligations in relation to the operation and management of the Network under this Undertaking.

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

Unless otherwise agreed by Queensland Rail, an Extension which is funded by an Access Funder must only be designed, constructed, owned, operated and managed by Queensland Rail in accordance with this Undertaking and the relevant Funding Agreement and Access Agreement.

#### 1.4.5 Funding Agreement Register

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

#### 1.4.6 Extension Pre-approval for inclusion in a Regulatory Asset Base

- (a) Where:
  - (i) an Extension has been progressed through each Extension Stage except the construction and commissioning stage, and there is a completed Feasibility Study; and
  - (ii) the Access Funder who is proposing to enter into a Funding Agreement for the Extension (acting reasonably) requests Queensland Rail to do so,

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

- (b) **Clause 1.4.6(a)** does not restrict or otherwise limit Queensland Rail's ability to seek pre-approval of the cost of a proposed Extension in accordance with **schedule E**.

#### 1.4.7 Disputes

- (a) If:
  - (i) no Funding Agreement has been executed, any dispute between an Access Funder and Queensland Rail in relation to this **clause 1.4** (including in relation to **schedule E** or to the negotiation of a Funding Agreement) may be referred to the QCA under **clause 6.1.4**; or
  - (ii) a Funding Agreement has been executed, any dispute between an Access Funder and Queensland Rail in relation to the Extension will be subject to the dispute resolution process contained in that Funding Agreement.

#### 1.4.8 Building Queensland Act

- (a) If the Building Queensland Act applies to an Extension or any Extension Stage (and without limiting **clauses 1.4.8(b)** and **(c)** below):
  - (i) the Access Funder and Queensland Rail will comply with the Building Queensland Act and continue to adhere to this Undertaking to the extent that that adherence would not cause either party to be in breach of the Building Queensland Act; and
  - (ii) Queensland Rail will keep the relevant Access Seeker or Access Holder fully informed of the material details of all communications which Queensland Rail has with Building Queensland.
- (b) Either Queensland Rail or an Access Funder may request that the relevant Minister exercises any relevant discretion to direct Building Queensland to not exercise its functions in relation to that Extension or Extension Stage(s).
- (c) If, despite **clause 1.4.8(b)**, Building Queensland becomes involved in an Extension or Extension Stage, either Queensland Rail or the Access Funder may request that the relevant Minister exercises any relevant discretion to direct Building Queensland to exercise its functions consistently with this Undertaking.

#### 1.5 Master planning and extension coordination

- (a) This **clause 1.5** ~~does not apply~~ only applies in relation to the ~~Metropolitan Network~~ Mt Isa Line System and West Moreton System.
- (b) ~~Subject to clause 1.5(c),~~ Within 2 months of the date that Queensland Rail ~~will receives a request to~~ prepare a Regional Network Master Plan for each, Queensland Rail will convene the relevant Regional Network ~~in the Planning Group and provide an opportunity for the~~ Regional Network Planning Group to:
  - (i) ~~identify their demand expectations; being at~~
  - (ii) ~~discuss the Approval Date~~ scope of the West Moreton Regional Network, the Mt Isa Master Plan and potential infrastructure enhancement options to meet demand expectations; and
  - (iii) ~~raise any other issues or concerns they want addressed in the Regional Network and the North Coast Master Plan.~~
- (b) ~~Within 3 months of the date that Queensland Rail receives a request to prepare a Regional Network, within 12 months of the Approval Date.~~



- (c) ~~Within 2 months of the Approval Date Master Plan~~, Queensland Rail will negotiate in good faith with ~~each separate~~ the relevant Regional Network Planning Group in relation to funding the relevant Regional Network Master Plan. If:
- (i) the relevant parties agree (acting reasonably) to fund a Regional Network Master Plan then Queensland Rail will commence the Regional Network Master Planning process for the relevant Regional Network in accordance with this **clause 1.5**;
  - (ii) the relevant parties cannot agree (acting reasonably) to fund a Regional Network Master Plan then Queensland Rail is under no obligation to continue or commence the Regional Network Master Planning process for that Regional Network.
- (d) At a minimum, a Regional Network Master Plan should include information similar to that listed in section 101(2) of the QCA Act which would be relevant to, and assist with, an assessment of Queensland Rail's Network expansion or capital expenditure plans within the Term.
- ~~(e) Queensland Rail's process Where the Regional Network Planning Group has agreed to develop each~~ the relevant Regional Network Master Plan ~~will comprise the following steps:~~
- ~~(e) within 3 months of the Approval Date~~, Queensland Rail will ~~convene the Regional Network Planning Groups and provide an opportunity for each Regional Network Planning Group:~~
- ~~(i) within 9 months of receiving a request to~~
    - ~~(A) prepare a~~ identify their demand expectations; and
    - ~~(B) raise any issues or concerns they want addressed in the~~ Regional Network Master Plan;
  - ~~(ii) within 9 months of the Approval Date, Queensland Rail will:~~
    - (A) publish a draft Regional Network Master Plan for each the relevant Regional Network on Queensland Rail's website and invite all stakeholders to comment on the draft Regional Network Master Plan; and
    - (B) provide an opportunity for the Regional Network Planning Group to raise any issues or concerns with the draft Regional Network Master Plan;
  - ~~(iii)~~ (ii) consider the views submitted by stakeholders and the Regional Network Planning Group in good faith and take those views into account in finalising each the Regional Network Master Plan;

(iv)(iii) within 12 months of the ~~Approval Date~~ date that Queensland Rail receives a request to prepare a Regional Network Master Plan, release the Regional Network Master Plans and include a public link to each final Regional Network Master Plan on Queensland Rail's website.

- (f) If the relevant Regional Network Planning Group or an individual Access Holder or Access Seeker (each acting reasonably) considers there has been a relevant and material change in circumstances in relation to a Regional Network they may require, and Queensland Rail must complete, an updated Regional Network Master Plan within 6 months of the notice from the Regional Network Planning Group or Access Seeker or Access Holder (as the case may be).
- (g) Queensland Rail may require the Regional Network Planning Group or the Access Holder or Access Seeker seeking an update to a Regional Network Master Plan to fund Queensland Rail's Efficient Costs incurred in updating the Regional Network Master Plan.

## Part 2 Negotiation process

### 2.1 Preparing and submitting an Access Application

#### 2.1.1 Access Applications

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

#### 2.1.2 Preliminary steps

- (a) A prospective Access Seeker may request initial meetings with Queensland Rail, prior to submitting an Access Application, to discuss the proposed Access Application and to clarify any matters relating to the negotiation process including any application requirements under **schedule B**. Neither party will be bound by anything discussed or any information provided at an initial meeting.
- (b) A prospective Access Seeker may give a written request to Queensland Rail for relevant Capacity Information and Queensland Rail will make available that Capacity Information within 10 Business Days after receiving that request. Capacity Information provided in accordance with this clause 2.1.2(b) is provided for information purposes only, and neither party will be bound by anything contained in that Capacity Information.
- (c) Queensland Rail will:
  - (i) make the Preliminary Information available to Access Seekers on its website; and
  - ~~(ii)~~ (ii) keep the Preliminary Information to be made available to Access Seekers current and accurate.
  - ~~(ii)~~

## 2.2 Confidentiality

### 2.2.1 Obligation to keep Confidential Information confidential

- (a) Subject to **clause 2.2.1(b)**, Queensland Rail and each Access Seeker (by submitting an Access Application) acknowledge, as a Recipient, that Confidential Information disclosed to it must:
  - (i) be treated as and kept confidential;
  - (ii) only be used for the purpose for which it was disclosed;
  - (iii) be treated as the property of the Disclosing Party; and
  - (iv) subject to **clause 2.2.2(a)**, only be disclosed in accordance with this Undertaking.
- (b) A Recipient of Confidential Information is not required to comply with **clause 2.2.1(a)** in relation to a disclosure or use of Confidential Information to the extent that:
  - (i) the Disclosing Party has given its written consent (which must not be unreasonably withheld) to that disclosure or use; or
  - (ii) another Confidentiality Exception applies to that disclosure or use.

### 2.2.2 Requirement for confidentiality agreement

- (a) Queensland Rail or the relevant Access Seeker may require the other to enter into a confidentiality agreement and, if so, the parties must act reasonably and promptly to negotiate and execute such an agreement which shall govern the confidentiality obligations as between those parties.
- (b) Neither Queensland Rail nor an Access Seeker is obliged to disclose Confidential Information to the other unless a confidentiality agreement on terms satisfactory to it (acting reasonably) has been executed (for clarity this provision does not apply where Queensland Rail or an Access Seeker is required to disclose information under the QCA Act).
- (c) Queensland Rail may not seek to impose any provision within any agreement with an Access Seeker (or enforce any provision in any agreement with an Access Holder) which restricts an Access Seeker, Access Holder or their (respective) Customers from:
  - (i) raising disputes with the QCA;
  - (ii) disclosing any terms of an Access Agreement to the QCA; or
  - (iii) disclosing any changes to the number of contracted coal carrying Train Services operating either solely on the Metropolitan NetworkSystem or on both the West Moreton

~~NetworkSystem~~ and the Metropolitan ~~NetworkSystem~~ to the QCA.

(d) Any confidentiality agreement between Queensland Rail and an Access Seeker must permit disclosure of Confidential Information:

(i) as required by Law;

(ii) to the QCA;

(iii) in the case of Queensland Rail, as necessary to:

(A) the Rail Authority;

(B) the Rail Authority's board members; and

(C) the Rail Authority's:

(1) chief executive officer, chief finance officer and other senior executives (as those terms are defined under the Rail Authority Act); and

~~(1)~~(2) other officers and employees.

### **2.2.3 Ring fencing arrangements**

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

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

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

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

### **2.3.2 Acknowledging Access Applications**

Within five Business Days after the later of the receipt of:

- (a) an Access Application; or
- (b) the additional or clarified information required under **clause 2.3.1** in respect of that Access Application,

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

## 2.4 Provision of an Indicative Access Proposal

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

Subject to **clause 2.8** and **clause 2.5.3**, Queensland Rail will use reasonable endeavours to provide an Indicative Access Proposal to the Access Seeker within 20 Business Days after giving the acknowledgment under **clause 2.3.2**.

### 2.4.2 Inclusions in Indicative Access Proposal

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

- (a) subject to **clause 2.7.2(f)(ii)**, the relevant Rolling Stock, Train Configuration and operating characteristics;
- (b) the results of an indicative Capacity Analysis including (if applicable) a notice advising that insufficient Capacity exists to accommodate the Access Application without an Extension;
- (c) whether any other Access Seekers have requested Access Rights which, if provided, would limit Queensland Rail's ability to grant Access Rights in accordance with the Indicative Access Proposal (and whether a queue has formed); and
- (d) provide an initial estimate of the Access Charges for the requested Access Rights (including a methodology for calculating Access Charges) including where **clause 3.3(ba)** applies details of how that clause has been applied in calculating the initial estimate; and
- (e) if a Reference Tariff does not apply to the requested Access Rights:
  - (i) the cost of providing the Access, including the capital, operating and maintenance costs, consistent with s101(2)(b) of the QCA Act; and
  - (ii) asset value including the valuation methodology, consistent with s101(2)(c) of the QCA Act.

### 2.4.3 Indicative nature

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

## 2.5 Notification of intent to negotiate

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

(a) If an Access Seeker intends to proceed with its Access Application on the basis of the relevant Indicative Access Proposal, it must, subject to **clause 2.5.2**, give Queensland Rail written notice of its intention to

do so as soon as reasonably practicable after receiving the Indicative Access Proposal.

(b) If an Access Seeker does not intend to proceed with its Access Application on the basis of the relevant Indicative Access Proposal, it must give Queensland Rail written notice of that intention as soon as reasonably practicable after receiving the Indicative Access Proposal.

### 2.5.2 Consequence of late notification of intent

- (a) If an Access Seeker gives the notice referred to in **clause 2.5.1** to Queensland Rail more than 20 Business Days after being given the Indicative Access Proposal, Queensland Rail may review the Indicative Access Proposal and either:
  - (i) give the Access Seeker a revised Indicative Access Proposal; or
  - (ii) proceed on the basis of the existing Indicative Access Proposal.
- (b) If Queensland Rail gives a revised Indicative Access Proposal to an Access Seeker under **clause 2.5.2(a)**, then:
  - (i) the process in this **Part 2** recommences as though the revised Indicative Access Proposal was given to the Access Seeker under **clause 2.4**; and
  - (ii) the Access Seeker must comply with this **clause 2.5** in relation to that revised Indicative Access Proposal.
- (c) Subject to **clause 2.5.3**, if an Access Seeker has not given the notice referred to in **clause 2.5.1** within three months after it was given an Indicative Access Proposal, then the Access Seeker is taken to have withdrawn its Access Application.

### 2.5.3 Extension of time – IAP and ITN

Queensland Rail may extend the time for providing an Indicative Access Proposal under **clause 2.4.1** and an Access Seeker may extend the time for giving a notice of intention to proceed under **clause 2.5.2** respectively if:

- (a) the party seeking the extension gives reasonable grounds for the extension to the other party prior to the date otherwise required under **clause 2.4.1** or **2.5.2** (as the case may be); and
- (b) the other party agrees to the extension, such agreement not to be unreasonably withheld.

## 2.6 Competing Access Applications

- (a) If there are Competing Access Seekers and:
  - (i) one of those Competing Access Seekers is a Customer Access Seeker, then:

- (A) this Undertaking and Queensland Rail will treat that Customer Access Seeker as the sole Access Seeker as between those Competing Access Seekers; and
  - (B) Queensland Rail must negotiate solely with that Customer Access Seeker as between those Competing Access Seekers; or
- (ii) if a Competing Access Seeker is nominated in writing by the Customer as the Customer's preferred Access Seeker, then:
  - (A) this Undertaking and Queensland Rail will treat the Competing Access Seeker nominated in writing by the Customer to Queensland Rail as the sole Access Seeker as between those Competing Access Seekers; and
  - (B) Queensland Rail must negotiate solely with that nominated Access Seeker as between those Competing Access Seekers.
- (b) Where there are Competing Access Seekers, Queensland Rail will disclose to the Customer the identity of the Competing Access Seekers.
- (c) Where:
  - (i) the Customer does not nominate a Competing Access Seeker under **clause 2.6(a)(ii)**;
  - (ii) each Competing Access Seeker has given a notice of intention under **clause 2.5**; and
  - (iii) each Competing Access Seeker is either:
    - (A) currently engaged in negotiations with a Customer regarding a potential haulage agreement in respect of the Access Rights sought; or
    - (B) a party to an existing haulage agreement with the Customer in respect of the Access Rights being sought; then

Queensland Rail will commence negotiations with each Competing Access Seeker in accordance with **Part 2** of this Undertaking and progress those negotiations to a stage where Queensland Rail has provided each Competing Access Seeker with an Access Charge for the Access Rights sought based on the operational information provided by the relevant Competing Access Seeker and both parties have accepted an Access Agreement consistent with this Undertaking and the terms of the Standard Access Agreement. However, an Access Agreement will be negotiated and executed with the Competing Access Seeker who demonstrates to Queensland Rail's



reasonable satisfaction that it does, or will in the immediate future, hold the contractual rights to provide the Train Service/s for the Customer for which Access Rights are sought, and that the Customer is agreeable to the execution of an Access Agreement with that Competing Access Seeker.

## 2.7 Negotiation of an Access Agreement

### 2.7.1 The negotiation period

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

## 2.7.2 Issues to be addressed in negotiations

- (a) During the Negotiation Period, Queensland Rail and the Access Seeker will negotiate, and endeavour to agree, the terms of an Access Agreement. In order to facilitate the negotiation process:
  - (i) Queensland Rail will provide to the Access Seeker:
    - (A) information that is reasonably required by the Access Seeker in accordance with section 101(1) of the QCA Act, provided such information is reasonably able to be provided by Queensland Rail and cannot be reasonably obtained from a source other than Queensland Rail at no cost and without restriction; and
    - (B) information in accordance with Queensland Rail's obligation under section 101(2) of the QCA Act to the extent that it has not already been provided;
  - (ii) if requested in writing by the Access Seeker, Queensland Rail will make available to the Access Seeker Capacity Information relevant to the Access Seeker's Access Application;
  - (iii) subject to **clause 2.7.2(f)**, the Access Seeker must, in order for the impacts and requirements of the operations proposed by the Access Seeker to be analysed:
    - (A) prepare, and submit to Queensland Rail, a draft Operating Plan<sup>1</sup> prior to the parties undertaking the Interface Risk Assessment; and
    - (B) finalise the Operating Plan while the Interface Risk Assessment is being undertaken and prior to the development of an IRMP;

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<sup>1</sup> Queensland Rail will use the Operating Plan to refine and finalise the Train Service Entitlement, the methodology, rates and other inputs for calculating Access Charges and other terms and conditions of the Access Agreement. The Operating Plan will also be used as a basis for any further or refined Capacity Analysis prepared by Queensland Rail.

- (iv) the parties (for the purposes of this **clause 2.7.2(a)(iv)**, if the Access Seeker is an End User Access Seeker the relevant Nominated Rolling Stock Operator will be the relevant Access Seeker party) must jointly:
- (A) undertake an Interface Risk Assessment<sup>2</sup>; and
  - (B) after the Interface Risk Assessment is completed, develop an IRMP,
- unless the parties agree (or if the Access Seeker is an End User Access Seeker, the End User Access Seeker and Queensland Rail agree) that those matters will be completed after the relevant Access Agreement has been executed in accordance with that Access Agreement;
- (v) the Access Seeker must (unless the Access Seeker is an End User Access Seeker and the obligations under this **clause 2.7.2(a)(v)** have or will be satisfied by the relevant Nominated Rolling Stock Operator) commission a suitably qualified person, acceptable to Queensland Rail (acting reasonably), to prepare an environmental investigation and risk management assessment for the purposes of the Interface Risk Assessment and development of an IRMP;
- (vi) Queensland Rail will provide the Access Charge for the requested Access Rights including a methodology for calculating the Access Charges based on the pricing rules set out in **Part 3** of this Undertaking including details of how **Part 3** has been applied in calculating the Access Charge;
- (vii) Queensland Rail will provide a Capacity Analysis to the Access Seeker;
- (viii) Queensland Rail will provide a detailed description of the relevant Train Service Entitlement and the initial timetable;
- (ix) Subject to **clause 2.7.2(f)**, the Access Seeker must demonstrate that the Rolling Stock and Train Configurations for which the Access Rights are applicable are consistent with the agreed Interface Standards incorporated in the IRMP; and

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<sup>2</sup> Queensland Rail will publish on its website indicative information, standards and requirements for the Interface Risk Assessment and IRMP. For example, Queensland Rail will make available a sample IRMP which specifies a list of safety and Rolling Stock issues that should, at a minimum, be addressed by the parties during the Interface Risk Assessment, along with suggested controls for the identified safety and Rolling Stock issues. However, the IRMP developed and agreed by the parties may cover additional safety and/or Rolling Stock issues and associated controls depending on the circumstances of the particular operation.

- (x) Queensland Rail will provide the other terms comprising the Access Agreement.
- (b) During the Negotiation Period, if Queensland Rail has given the Access Seeker a notice that there is insufficient Capacity pursuant to **clause 2.4.2(b)** Queensland Rail will make available, as soon as reasonably practicable, to the Access Seeker:
  - (i) Capacity Information and Capacity Analysis relevant to the Access Seeker's Access Application;
  - (ii) all information, in addition to the Capacity Analysis and Capacity Information, that would be reasonably required by the Access Seeker, in accordance with sections 101(1) and 101(2) of the QCA Act, to make an informed decision on whether to proceed with the Access Application and the Funding Agreement;
  - (iii) written notice of whether Queensland Rail is willing to fund the Extension (or any Extension Stages) required to provide the Additional Capacity to accommodate the Access Application;
- (c) If Queensland Rail advises the Access Seeker, in accordance with **clause 2.7.2(b)(iii)**, that it is willing to fund the required Extension the Access Application negotiations will continue in accordance with this **Part 2**.
- (d) If Queensland Rail advises the Access Seeker, in accordance with **clause 2.7.2(b)(iii)** that it is not willing to fund the required Extension and the Access Seeker subsequently advises Queensland Rail that the Access Seeker is willing to fund the required Extension (or an Extension Stage), Queensland Rail and the Access Seeker will commence, concurrently with Access Application negotiations, negotiations on the terms of the Funding Agreement that is required to proceed with the Access Application in accordance with **clause 1.4**.
- (e) If the Access Seeker is a Renewal Access Seeker then the terms of the Access Agreement are to be negotiated generally in accordance with **clause 2.7.2** except that:
  - (i) **clauses 2.4.2(b), 2.7.2(a)(vii) and 2.7.2(b)** will not apply; and
  - (ii) if the Access Rights sought by a Renewal Access Seeker are for Access Rights for which no Reference Tariff applies then the relevant Access Charges are to be consistent with the renewal pricing rules as set out in **Part 3**.
- (f) In negotiating an Access Agreement for the purposes of this **Part 2** (including for the purposes of determining a Train Service Entitlement during those negotiations) where the Access Seeker is an End User Access Seeker:

- (i) Queensland Rail and an End User Access Seeker will seek to agree an assumed Operating Plan (which the End User Access Seeker may involve any relevant Accredited rail transport operator (as defined in the [TRSA/ARNSL](#)) in the preparation of); and
- (ii) if the End User Access Seeker does not provide the required information regarding Rolling Stock and Rolling Stock Configuration for the End User Access Seeker's Train Services, Queensland Rail will assume a Reference Train Service in respect of the Rolling Stock and Rolling Stock Configurations for the End User Access Seeker's Train Services and such other above rail operational matters as are reasonably necessary (having regard to any existing standard manner of conducting Above Rail Services on the relevant parts of the Network).

## 2.8 Cessation of negotiation process

### 2.8.1 Negotiation Cessation Notice

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

- (A) Queensland Rail has given the Access Seeker notice that it intends to cease negotiations because of the existence of Duplicate Requests and the reasons for this; and
  - (B) the Access Seeker has not responded to the notice within ten Business Days (or such later date as agreed by Queensland Rail (such agreement not to be unreasonably withheld)) either:
    - (1) with information which demonstrates to Queensland Rail's reasonable satisfaction that the requests are not Duplicate Requests; or
    - (2) advising which of the Duplicate Requests the Access Seeker (acting reasonably) wants to proceed with (if any); or
  - (v) the Access Seeker fails to comply with the dispute resolution process under **clause 6.1** (including any outcome of that dispute resolution process) in relation to the relevant Access Application.
- (b) Without limitation to **clause 2.8.1(a)(ii)(A)**, it will be reasonable for Queensland Rail to form the opinion that the circumstance in **clause 2.8.1(a)(ii)(A)** exists where, at any time, the Access Seeker does not comply with the requirements under **clause 2.8.3**.
- (c) In forming an opinion referred to in **clause 2.8.1(a)(ii)(B)**, Queensland Rail may, without limitation, consider any one or more of the following factors:
- (i) whether the Access Seeker has secured, or is reasonably likely to secure:
    - (A) the rights required to enter and leave the Network (for example, rights to unload at its destination); and
    - (B) if applicable, a rail haulage agreement for the operation of Train Services referred to in its Access Application except that if the Access Seeker is a Competing Access Seeker for the purposes of **clause 2.6**, in which case this **clause 2.8.1(c)(i)(B)** is subject to the process under **clause 2.6(c)(iii)** being completed; and
  - (ii) the promptness of the Access Seeker in conducting its negotiations.
- (d) For clarity, if an Access Seeker responds to Queensland Rail's notice given pursuant to **clause 2.8.1(a)(iv)(A)**, and informs Queensland

Rail that it wants to proceed with one of the Duplicate Requests, Queensland Rail can only give a Negotiation Cessation Notice in respect of the unwanted Duplicate Request.

## 2.8.2 Safety considerations

If:

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

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

## 2.8.3 Access Seekers must satisfy prudential requirements

- (a) An Access Seeker must at all times satisfy the following prudential requirements, namely:
  - (i) the Access Seeker must not be Insolvent;
  - (ii) the Access Seeker (and any Related Party of the Access Seeker) must not be, or have been at any time in the previous two years, in Material Default of:
    - (A) this Undertaking (or, if applicable, [AU1](#), or the 2008 Undertaking);
    - (B) any agreement with Queensland Rail; or
    - (C) any agreement under which access to Private Infrastructure has been provided to the Access Seeker or a Related Party of the Access Seeker; and
  - (iii) the Access Seeker must be able to demonstrate to Queensland Rail (acting reasonably) that it has the financial capacity to perform its obligations, and satisfy its liabilities, under an Access Agreement (including timely payment of

Access Charges or other amounts and of insurance premiums and deductibles under any required policies of insurance).

- (b) Queensland Rail may, at any time, require an Access Seeker to (and, if so required, the Access Seeker must) demonstrate to Queensland Rail (acting reasonably), within a reasonable period of no more than ten Business Days, that the Access Seeker satisfies the prudential requirements set out in **clause 2.8.3(a)**.
- (c) Queensland Rail and an Access Seeker may agree a different time frame within which an Access Seeker must satisfy the prudential requirements set out in **clause 2.8.3** if:
  - (i) the Access Seeker seeking the extension provides Queensland Rail with reasonable grounds for the proposed time frame prior to the time frame in **clause 2.8.3(b)** expiring; and
  - (ii) Queensland Rail agrees to the proposed time frame (such agreement not to be unreasonably withheld).

## 2.9 Access Agreement

### 2.9.1 Access Rights granted under an Access Agreement

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

### 2.9.2 Mutually Exclusive Access Applications

- (a) Subject to **clause 2.9.2(b)**, this **clause 2.9.2** applies to the extent that:
  - (i) two or more Access Seekers have submitted Access Applications for Access Rights relating to Available Capacity; and
  - (ii) it is not reasonably possible for Queensland Rail to fulfil, in whole, the request for Access Rights made under those Access Applications,  
  
(each a **Mutually Exclusive Access Application**).
- (b) Where the application of **clause 2.9.2(a)** involves Queensland Rail taking into account Competing Access Seekers for a traffic task and:
  - (i) one of those Competing Access Seekers is a Customer Access Seeker:
    - (A) the Customer Access Seeker's Access Application will be used for the purpose of applying **clause 2.9.2(a)**; and



- (B) the other Competing Access Seekers will not have a position in any queue established under this **clause 2.9.2**;
- (ii) the relevant Customer has nominated one of the Competing Access Seekers under **clause 2.6(a)(ii)**:
  - (A) the nominated Competing Access Seeker's Access Application will be used for the purpose of applying **clause 2.9.2(a)**; and
  - (B) the other Competing Access Seekers will not have a position in any queue established under this **clause 2.9.2**; or
- (iii) the relevant Customer has not nominated one of the Competing Access Seekers under **clause 2.6(a)(ii)**:
  - (A) Queensland Rail will form a queue with the Competing Access Seekers as would normally be the case under this **clause 2.9.2** except that the queue, insofar as it relates to those Competing Access Seekers, will be subject (in addition to **clause 2.9.2(i)**) to **clause 2.6(c)**; and
  - (B) the Competing Access Seekers will collectively have the same position in any queue established under this **clause 2.9.2** pending a relevant nomination under **clause 2.6(a)(ii)** (if any).
- (c) An Access Application may become a Mutually Exclusive Access Application at any time before an Access Agreement is executed in relation to that Access Application.
- (d) An Access Seeker will be notified as soon as reasonably practicable after Queensland Rail identifies that its Access Application has become a Mutually Exclusive Access Application and the extent to which it is a Mutually Exclusive Access Application.
- (e) Queensland Rail will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it ceases to be a Mutually Exclusive Access Application.
- (f) Where Queensland Rail has identified that there are Mutually Exclusive Access Applications, Queensland Rail will form a queue and will notify each Access Seeker in the queue of their position in that queue.
- (g) The order of a queue established under **clause 2.9.2(f)** will initially be based on the date on which Queensland Rail received each of the Mutually Exclusive Access Applications, so that the Access Application first received by Queensland Rail is first in the queue, and

the Access Application received next by Queensland Rail is second in the queue, and so on.

- (h) Subject to **clauses 2.9.2(i)** and **2.6(c)**, Access Rights relating to Available Capacity will be allocated to the first Access Seeker with whom Queensland Rail can negotiate and execute an acceptable Access Agreement. However, Queensland Rail will not allocate Access Rights relating to Available Capacity to an Access Seeker who is later in the queue unless each earlier Access Seeker's Access Application has ended in accordance with **clause 2.7.1(b)**. Queensland Rail will provide all Access Seekers with a consistent level of service and opportunity to obtain Access Rights subject to the express provisions of this Undertaking.
- (i) Queensland Rail may change the order of a queue where:
  - (i) the Negotiation Period for an Access Application in the queue has ended in accordance with **clause 2.7.1(b)**;
  - (ii) a Negotiation Cessation Notice has been given under **clause 2.8.1** relating to an Access Application in the queue;
  - (iii) an Access Application is added to the queue;
  - (iv) in Queensland Rail's opinion (acting reasonably), allocating Access in respect of an Access Application in the queue but not first in the queue is more favourable to Queensland Rail's legitimate business interests as a Below Rail Services provider as described in **clauses 2.9.2(j)** (for Train Services other than coal-carrying Train Services using the West Moreton ~~NetworkSystem~~) or **2.9.2(k)** (for coal-carrying Train Services using the West Moreton ~~NetworkSystem~~) (as the case may be); or
  - (v) the change is required to comply with this Undertaking – for example, where **clause 2.9.2(b)(iii)** applies and the relevant Customer subsequently nominates one of the Competing Access Seekers under **clause 2.6(a)(ii)**.
- (j) For the purpose of **clause 2.9.2(i)(iv)**, Queensland Rail will make such a decision based on the present value of contribution to Common Costs after reasonably considering the following factors:
  - (i) the ability of the Access Seeker to satisfy, and to continue (after execution of an Access Agreement) to satisfy, the prudential requirements set out in **clause 2.8.3(a)**; and
  - (ii) any other effects that entering into the Access Agreement may have on contribution to Common Costs including any contribution from other sources of revenue that would reasonably be expected to reduce or be eliminated as a consequence of Queensland Rail not providing Access for that Train Service (for example, Access Charges from

another Train Service or combination of Train Services, or Transport Service Contract Payments).

- (k) For the purposes of **clause 2.9.2(i)(iv)**, where a queue contains Mutually Exclusive Access Applications for coal carrying Train Services from different mines within the West Moreton Network System, as between those Access Applications, Queensland Rail will place a later Access Application seeking an Access Agreement of at least ten years in the queue ahead of an earlier Access Application seeking a term less than ten years if the Access Seeker for the later Access Application is ready and willing to execute an Access Agreement that is consistent with this Undertaking and the Standard Access Agreement.
- (l) If Queensland Rail changes the order of a queue, it will notify each Access Seeker in the queue of any change to their position in the queue and the reason for that change.
- (m) An Access Seeker may only assign its position in a queue to another person where:
  - (i) both of the following are satisfied:
    - (A) that other person is either:
      - (1) that Access Seeker's Customer; or
      - (2) a Rolling Stock Operator; and
    - (B) the Access Seeker has entered into an agreement with that other person in relation to the provision of rail haulage services where those parties have agreed that the other person is to hold the relevant Access Rights; or
  - (ii) that other person has acquired the whole of, or control over, the relevant assets of the Access Seeker for which the Access Rights are needed.
- (n) Where a dispute arises in respect of a change of a position in a queue, Queensland Rail will not:
  - (i) implement that change; or
  - (ii) execute an Access Agreement in relation to that queue (unless the resolution of the dispute would not alter the relevant Access Seeker's position in the queue),until after, and in accordance with, the resolution of that dispute (including, if relevant, where the dispute is resolved by being withdrawn).
- (o) This **clause 2.9.2** (including the creation and application of any queue) is subject to **clause 2.9.3(b)** in relation to Renewal Access Seekers.

- (p) Where an Access Seeker's Access Application requires an Extension pursuant to **clause 1.4**, the queuing provisions (**clause 2.9.2**) will not apply to that Access Application insofar as it relates to the Capacity created by that Extension.
- (q) Queensland Rail will expand the Capacity of the Network in order to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker where Queensland Rail is required to do so under **clause 1.4**.

### 2.9.3 Renewals

- (a) Where an Access Seeker (who is not a Renewal Access Seeker) submits an Access Application for Access Rights concerning the Available Capacity that will arise when an existing Access Agreement expires, Queensland Rail will notify:
  - (i) the Access Holder for ~~that~~the expiring Access Agreement;
  - (ii) that Access Holder's Customer (if any); and
  - (iii) the relevant Renewal Access Seeker (if any),
 of Queensland Rail's receipt of that Access Application, as soon as reasonably practicable after receiving it.
- (b) Despite any other provision in this Undertaking to the contrary and subject to **clause 2.9.3(c)**, Queensland Rail will not execute an Access Agreement with the Access Seeker referred to in **clause 2.9.3(a)** until the earlier of:the
  - (i) a Renewal Access Seeker fails to, or cannot, submit a relevant Renewal Application to Queensland Rail in respect of the relevant Renewal within the Renewal Timeframe; or
  - ~~(ii)~~ where a Renewal Application has been submitted within the Renewal Timeframe;
  - ~~(A)(ii)~~ (ii) the negotiations with the Renewal Access Seeker have ended in accordance with **clause 2.7.1(b)** (subject to any extension of time agreed in accordance with **clause 2.7.1(b)(ii)(C)** (which will apply)).
- (c) **Clause 2.9.3(b)** only applies where:
  - (i) the relevant existing Access Agreement concerns coal carrying Train Services or other bulk mineral carrying Train Services; ~~\_\_\_\_\_~~
  - ~~(ii)~~ (ii) the term of the relevant existing Access Agreement is no less than five years and no more than ten years;
  - ~~(ii)(iii)~~ (iii) the relevant Renewal Application is for a term of:
    - (A) at least ~~the lesser of~~ the period for which the Access Seeker referred to in **clause 2.9.3(a)** is

seeking Access Rights and ~~teno more than five~~ years; or

- (B) the lesser of five years or the remaining life of the relevant mine as notified in writing to Queensland Rail by the Renewal Access Seeker (where it has no Customer) or otherwise the relevant Customer; and

~~(iii)~~(iv) neither clause 2.9.3(c)(ii)(B) of AU1, or clause 2.9.3(c)(~~iii~~)(B) ~~has no~~ have previously applied for any past Renewal Application in connection with the relevant Access Rights for the relevant mine, unless Queensland Rail agrees otherwise.<sup>3</sup>

- (d) Nothing in this **clause 2.9.3** obliges Queensland Rail to enter into an Access Agreement with a Renewal Access Seeker or to do so on the same terms as the relevant existing Access Agreement for the relevant existing Access Rights.
- (e) For the avoidance of doubt, when a Renewal Application is submitted the queuing provision (**clause 2.9.2**) does not apply.

#### 2.9.4 Development of Standard Agreements

- (a) Subject to **clause 2.7.2(e)**, unless otherwise agreed between Queensland Rail and the Access Seeker, an Access Agreement must be consistent with:
- (i) this Undertaking; and
  - (ii) the terms of the Standard Access Agreement.
- (b) If an Access Seeker proposes variations to the terms of the Standard Access Agreement which the Access Seeker can demonstrate would promote, or are required to accommodate, productivity or efficiency improvements to the Access Seeker's proposed Above Rail Services and Queensland Rail rejects those proposed variations, Queensland Rail will provide written reasons for that rejection.

#### 2.9.5 Execution of Access Agreements

- (a) If:
- (i) Queensland Rail offers an Access Agreement; and
  - (ii) Queensland Rail and the Access Seeker are ready and willing to execute the Access Agreement,

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<sup>3</sup> Unless Queensland Rail agrees otherwise, **clause 2.9.3(b)** is only intended to operate once where a Renewal Application is for the remaining life of a mine in respect of any Access Rights, regardless of whether the Renewal Access Seeker is the same as the Access Holder for the relevant existing Access Agreement or a previous Renewal Application. Any subsequent Renewal Application concerning the relevant Access Rights does not have the benefit of **clause 2.9.3(b)**. In those instances, the Renewal Access Seeker will be treated on the same basis as any other Access Seeker.

|

then:

- (iii) both Queensland Rail and the Access Seeker must use reasonable endeavours to execute the Access Agreement as soon as reasonably practicable provided that Queensland Rail is not required to execute the Access Agreement before the Access Seeker; and
  - (iv) the Access Seeker must execute (and return to Queensland Rail) that Access Agreement within 20 Business Days after receiving Queensland Rail's offer (or such longer period as agreed by Queensland Rail and the Access Seeker (each acting reasonably)).
- (b) If an Access Seeker and Queensland Rail execute an Access Agreement that is unconditional in all material respects except for the conditions relating to a Funding Agreement and which cannot be satisfied until the Funding Agreement has been executed and the Network has been Extended, then Queensland Rail and the Access Seeker must use reasonable endeavours to execute the Funding Agreement as soon as reasonably practicable.
  - (c) If an Access Seeker does not execute (and return to Queensland Rail) the offered Access Agreement within the timeframe set out in **clause 2.9.5(a)(iv)**, then Queensland Rail's offer automatically lapses.
  - (d) Despite any other provision in this Undertaking, Queensland Rail may, but is not obliged to, grant Access Rights by agreeing to amend an existing Access Agreement.

## **2.9.6 Transfer of Access Rights**

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

## Part 3 Pricing rules

### 3.0 Application of Part

- (a) The Access Charge for a Train Service, the description of which accords with the Reference Train Service, will be consistent with the Reference Tariff.
- (b) The Access Charge for a coal carrying Train Service operating either solely on the Metropolitan NetworkSystem or on both the West Moreton NetworkSystem and the Metropolitan NetworkSystem, the description of which otherwise differs from the Reference Train Service, will be consistent with the Reference Tariff, subject to **clause 3.3(b)(i)**.
- (c) In respect of Train Services referred to in paragraphs (a) and (b) above:
  - (i) **clauses 3.1, 3.2 and 3.4** will not apply to the setting of Access Charges for those Train Services; and
  - (ii) otherwise this **Part** will apply to the setting of Access Charges for those Train Services; and.
  - ~~(iii) nothing in this **Part** will preclude the Access Charges, that would otherwise be payable for those Train Services from being the subject of an adjustment as referred to in **clause 7.1 of schedule D**.~~
- (d) The Access Charges for Train Services not referred to in paragraphs (a) and (b) above will be determined in accordance with this **Part**, including **clauses 3.1, 3.2 and 3.4** (for the avoidance of doubt, Train Services referred to in this **clause 3.0(d)** are Train Services to which no Reference Tariff applies).

### 3.1 Pricing objectives – non-coal carrying Train Services

#### 3.1.1 Revenue adequacy

Access Charges and Transport Service Payments (if applicable) should:

- (a) generate expected revenue for Access that is at least enough to meet the efficient costs of providing Access; and
- (b) include a return on investment commensurate with the regulatory and commercial risks involved.

Where Queensland Rail is expected to earn excess revenue, then Queensland Rail may seek to reduce Transport Service Payments rather than Access Charges.

### 3.1.2 Network utilisation

- (a) Queensland Rail may establish different Access Charges for Train Services serving different markets to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs.
  - (b) If the Available Capacity is demonstrably insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers, then:
    - (i) Queensland Rail may (consistent with the rules set out in **clauses 3.0 to 3.3**) determine the highest Access Charge for a Train Service that it is likely to achieve from the current or likely Access Seekers (**Maximum Access Charge**);
    - (ii) the Maximum Access Charge may be quoted to all Access Seekers in respect of the Available Capacity (including any Additional Capacity that Queensland Rail has agreed to provide), irrespective of:
      - (A) any Access Seeker's ability to contribute to the Common Costs; or
      - (B) the Access Charges payable under existing Access Agreements for similar Train Services; and
    - (iii) if Queensland Rail:
      - (A) chooses to allocate Available Capacity to an Access Seeker for an Access Charge less than the Maximum Access Charge; and
      - (B) another Access Seeker is willing to pay an Access Charge equal to the Maximum Access Charge,
- then when determining a Ceiling Revenue Limit in accordance with **clause 3.2.3** for Train Services using that constrained section of the Network, the Access Charge for the Access Seeker is assumed to be the Maximum Access Charge.

## 3.2 Pricing limits – non-coal carrying Train Services

### 3.2.1 Applying a Ceiling Revenue Limit

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



### 3.2.2 Applying a Floor Revenue Limit

Unless otherwise approved by the QCA, in ~~setting the methodology, rates and other inputs for calculating~~ formulating Access Charges for an Access Seeker's proposed Train Services Queensland Rail must do so such that, over the Evaluation Period, the Expected Access Revenue from any one of those Train Services or any combination of those Train Services does not fall below the Floor Revenue Limit for that Train Service or combination of Train Services, as applicable, after taking into account the level of contribution provided by Transport Service Payments towards the maintenance and operation of the rail transport infrastructure (as defined in the TIA) for which Queensland Rail is the Railway Manager.

### 3.2.3 Determination of Ceiling Revenue Limit

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

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

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

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

where:

- AV<sub>0</sub>** is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with **clause 3.2.3(c)**, at the commencement of the Evaluation Period;
- n** is the number of years in the Evaluation Period;
- t** is each year within the Evaluation Period from one to n;
- CRL<sub>t</sub>** is the Ceiling Revenue Limit for the Train Service(s) expressed as revenue that may be earned in each year of the Evaluation Period;

- C<sub>t</sub>** is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;
- M<sub>t</sub>** is the Efficient Costs for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;
- T** is the tax expense assessed through the application of the statutory tax rate for corporations to the taxable income reasonably expected to be earned through the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period, where such tax expense is reduced in each year by the application of the gamma factor, reflecting the market value of dividend imputation, as agreed by Queensland Rail and the QCA or, failing such agreement, as determined by the QCA;
- AV<sub>n</sub>** is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with **clause 3.2.3(c)**, at the end of the Evaluation Period;

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

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

### 3.3 Limits on price differentiation

- ~~(a) In formulating Access Charges, Queensland Rail will only differentiate have regard to a range of factors which impact on its business, including the methodology, rates and other inputs following:~~
- ~~(i) the initial estimate of the Access Charges for calculating Access Charges between Access Seekers or between the requested Access Seekers Rights as included in an Indicative Access Proposal;~~
- ~~(a) the particular characteristics of the relevant Train Service which, without limitation, include axle load, speed, wheel diameter, Train length, origin and destination (including number and Access Holders in accordance with this clause 3.3.~~

- (ii) ~~The methodology, rates length of intermediate stops, departure and other inputs for calculating arrival times and days of the week;~~
- (iii) ~~the commercial impact on Queensland Rail's business, which includes factors such as:~~
  - (A) ~~the terms of the Access Charges formulated by Agreement;~~
  - (B) ~~the potential for growth of the business;~~
  - (C) ~~the opportunity costs to Queensland Rail for an;~~
  - (D) ~~the consumption of Queensland Rail's resources, including Capacity;~~
  - (E) ~~the credit risk associated with the business;~~
  - (F) ~~the market value of the Train Path sought;~~
  - (G) ~~the part of the Network relevant to the Access Seeker's being sought; and~~
  - (H) ~~previously negotiated Access Charges, where relevant;~~
- (iv) ~~logistical impacts on Queensland Rail's business, including:~~
  - ~~(A) the impact on other Train Services may vary from; and risk of failure of the relevant Rolling Stock Operator to perform; and~~
  - ~~(B) for reduced Capacity and system flexibility;~~
- (v) ~~capital or other contributions by the Access Seeker to Queensland Rail's costs; and~~
- (vi) ~~the cost of any Additional Capacity.~~
- (b) ~~Subject to clause 3.3(a) and Queensland Rail's Passenger Priority Obligations, in formulating Access Charges Queensland Rail will not have regard to the identity of the Access Seeker.~~
- ~~(c)~~ (c) ~~For~~ a coal carrying Train Service operating either solely on the Metropolitan ~~Network System~~ or on both the West Moreton ~~Network System~~ and the Metropolitan ~~Network System~~, the description of which otherwise differs from the Reference Train Service, ~~Queensland Rail may impose Access Charges that vary from~~ the Reference Tariff that would otherwise apply, to reasonably reflect differences in the cost or risk to Queensland Rail of providing Access for that Train Service compared to the Reference Train Service; or
- (d) ~~if~~ In formulating Access Charges for a Train Service for which ~~If~~ there is no applicable Reference Tariff, ~~the methodology, rates and other inputs for calculating Access Charges for other~~ Queensland Rail will

~~not differentiate between~~ Access Seekers ~~or Access Holders in~~  
~~respect in~~ circumstances where:

(i) ~~the characteristics of the~~ Train Services ~~for~~ are alike; and

(ii) the ~~same commodity~~ Access Seekers are operating in the same geographical area, ~~on a unit rate basis to reasonably reflect, over time:~~ end market.

(e) ~~differences or changes in~~ For the ~~cost or risk to purposes of clause 3.3(d),~~ Queensland Rail ~~of providing Access to that Access Seeker for that Train Service compared to~~ will determine whether the ~~relevant characteristics of the~~ Train Services ~~for those other Access Seekers or Access Holders;~~ are alike having regard to matters including:

(i) ~~location;~~

~~(A)~~(ii) ~~duration and quality of the Train Path;~~

~~(B)~~ ~~material limitations on Available Capacity in accordance with clause 3.1.2(b);~~

(iii) ~~nature of the Train consist;~~

(iv) ~~longevity of Access; and~~

(v) ~~arrival and departure times of the day and week.~~

~~(e)~~(f) In addition to any rate review provision that may be incorporated in an Access Agreement in accordance with **clause 3.6** where Queensland Rail enters into an Access Agreement with an Access Holder for a Train Service and that Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this **clause 3.3** which Access Charge cannot be altered to be compliant with this clause, Queensland Rail will notify all other Access Holders with Access Agreements for a Train Service that transports the same specified commodity in the same specified geographic area that it has done so.

~~(e)~~(g) Where the QCA becomes aware that Queensland Rail has entered into an Access Agreement with an Access Holder for a Train Service and that Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this **clause 3.3** which Access Charge cannot be altered to be compliant with this clause, the QCA may direct Queensland Rail to notify all other Access Holders with Access Agreements for a Train Service that transports the same specified commodity in the same specified geographic area that it has done so.

~~(e)~~(h) Subject to **clauses 3.3(fj)** and **(gk)**, if in respect of a Renewal Application:

- ~~(i) there has not already been a the relevant existing Access Agreement concerns coal carrying Train Services or other bulk mineral carrying Train Services;~~
- ~~(ii) the term of the relevant existing Access Agreement is no less than five years and no more than ten years;~~
- ~~(iii) the relevant Renewal Application submitted in relation is for a term of:
 
  - ~~(A) at least the period for which the Access Seeker referred to the proposed in clause 2.9.3(a) is seeking Access Rights and no more than five years; or~~
  - ~~(B) the lesser of five years or the remaining life of the relevant mine as notified in writing to Queensland Rail by the Renewal after the Approval Date of this Undertaking Access Seeker (where it has no Customer) or otherwise the relevant Customer; and~~~~
- ~~(iv) neither clause 2.9.3(c)(ii)(B) of AU1, or clause 2.9.3(c)(iii)(B) have previously applied for any past Renewal Application in connection with the Access Rights for the relevant mine, unless Queensland Rail agrees otherwise. <sup>4</sup>~~
- ~~(v) no Reference Tariff applies to the setting of Access Charges for the proposed Train Services under the Renewal Application,~~

then the methodology, rates and other inputs for calculating Access Charges for the proposed Train Services in the renewed Access Agreement (**renewed inputs**) will be the same as the methodology, rates and other inputs for calculating Access Charges in the expiring Access Agreement (**existing inputs**) other than to reasonably reflect, on a unit rate basis, over the term of the renewed Access Agreement, differences in the nature of, or actual changes in, the cost or risk to Queensland Rail of providing Access to the proposed Train Service under the renewed Access Agreement compared to the expiring Access Agreement.

- ~~(i) For the avoidance of doubt, if a Reference Tariff applies to the setting of Access Charges for the proposed Train Services under the Renewal Application, then, subject to clause 3.3(c), the Access Charges will be set by the Reference Tariff.~~

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

~~(f)~~(j) If the proposed Renewal Application would be for a Renewal except for a variation due to operational or supply chain improvements, **clause 3.3(eh)** will be applied in relation to setting the Access Charges in relation to the proposed Train Services under the Renewal Application but a contribution to Common Costs as a renewed input to reflect those operational or supply chain improvements will also be provided such that it does not result in Queensland Rail being any financially worse off relative to the contribution to Common Costs from the existing inputs.

~~(g)~~(k) **Clauses 3.3(e)** and **(f)** do not apply to the extent that the expiring Access Agreement is inconsistent with those clauses.

### 3.4 Conflict between pricing rules – non-coal carrying Train Services

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

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

### 3.5 Reference Tariffs

#### **3.5.1 Application of Reference Tariffs**

- (a) In relation to a Train Service, the description of which accords with the Reference Train Service, a Reference Tariff is an acceptable means by which Queensland Rail provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the QCA Act.
- (b) In relation to a coal carrying Train Service operating either solely on the Metropolitan **NetworkSystem** or on both the West Moreton **NetworkSystem** and the Metropolitan **NetworkSystem**, the description of which otherwise differs from the Reference Train Service, a Reference Tariff is an acceptable means by which Queensland Rail provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the QCA Act if Queensland Rail also complies with clause 2.7.2(a)(vi) (read in light of clause 3.3(b)(i)).
- (c) Reference Tariffs for nominated Reference Train Services, and the description of the Reference Train Services for the Reference Tariffs, are set out in **schedule D**.

### 3.6 Rate review provisions

- (a) Queensland Rail or an Access Seeker may require reasonable and balanced rate review provisions in an Access Agreement that is being negotiated to enable the methodology, rates and other inputs for calculating Access Charges to be adjusted to be consistent with changes over time in:
  - (i) if a Reference Tariff applies to the Train Service type, the applicable Reference Tariff (including any matters under **schedule D**);
  - (ii) if no Reference Tariff applies to the Train Service type:
    - (A) the methodology, rates and other inputs for calculating Access Charges agreed with other Access Seekers in respect of a Train Service transporting the same commodity within the same geographical area as the Access Seeker's proposed Train Service the subject of the Access Agreement; and
    - (B) the cost or risk to Queensland Rail of providing Access.
- (b) The rate review provisions referred to in **clause 3.6(a)**, if included in an Access Agreement, must be drafted so as to provide that, if Queensland Rail adjusts Access Charges to be consistent with changes to those matters listed in **clause 3.6(a)(i)** to **3.6(a)(ii)(B)**, then Queensland Rail must also provide details of how the provisions were applied and how the adjusted Access Charges were calculated.

### 3.7 QCA Levy

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

### 3.8 Maintenance of Regulatory Asset Bases

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

### 3.9 Consequences of contravention

- (a) If an Access Holder (**Aggrieved Access Holder**) can demonstrate to the QCA's reasonable satisfaction that, after entering into an Access Agreement with the Aggrieved Access Holder, Queensland Rail 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 that subsequent Access Agreement contains an Access Charge in contravention of **Part 3** of this Undertaking, then:

- (i) the QCA may direct Queensland Rail to offer the Aggrieved Access Holder either:
    - (A) the same Access Charge as the like Train Service; or
    - (B) if the QCA considers it appropriate, a particular Access Charge that in the QCA's view, neutralises the effect of the identified contravention; and
  - (ii) Queensland Rail must immediately make a legally binding offer to the Aggrieved Access Holder to give effect to the QCA's decision.
- (b) Queensland Rail agrees to promptly provide the QCA with all information requested by the QCA to enable the QCA to determine whether any contravention of this **Part 3** has occurred.



## Part 4 Operating requirements

### 4.1 Network Management Principles

- (a) All Access Agreements must include obligations for the Access Holder and Queensland Rail to comply with the Network Management Principles.<sup>5</sup>
- (b) Without limitation to **clause 4.1(a)**, Queensland Rail acknowledges its obligations under each Access Agreement to:
  - (i) perform scheduling, Network Control and associated services; and
  - (ii) provide Capacity related information to Access Holders, in accordance with the Network Management Principles and subject to the terms of that Access Agreement.
- (c) Each Train Service Entitlement will:
  - (i) include specified scheduling constraints (which will vary between different types of Train Services); and
  - (ii) be expressed in terms so that it can be used in the development of any MTP and DTP.
- (d) The Network Management Principles must relate to all Train Services (including passenger services provided by Queensland Rail) and must be applied reasonably and fairly subject to specific requirements of the TIA.

### 4.2 Consultation for Through-Running Trains

Queensland Rail will consult with other relevant Railway Managers, in relation to:

- (a) the coordination of maintenance activities;
  - (b) the development of MTPs; and
  - (c) proposed amendments to the Operating Requirements Manual,
- and if any of Queensland Rail's proposed changes or activities might affect other Railway Managers, Queensland Rail will use reasonable endeavours to minimise adverse effects in relation to Through-Running Trains.

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<sup>5</sup> For clarity, the Network Management Principles are set out in **schedule F**.

## 4.3 Operating Requirements Manual

- ~~(a) — The Operating Requirements Manual is set out in **schedule G**.~~
- ~~(b) — Queensland Rail must maintain and make available the Operating Requirements Manual ~~available (including keeping it available)~~ to Access Seekers and Access Holders.~~
- ~~(c) — Queensland Rail may amend must consult with Access Holders and Nominated Rolling Stock Operators before making any amendments to the Operating Requirements Manual ~~from time to time in accordance with the QCA Act.~~~~

## Part 5 Reporting

### 5.1 Quarterly network ~~train~~ performance ~~reports~~report

#### 5.1.1 Obligation to publish quarterly report

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

#### 5.1.2 Content of quarterly report

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

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

- (iii) the average Above Rail Delay, Below Rail Delay and Unallocated Delay, in minutes, per 100 train kilometres for the aggregate of the Train Services that operated in the subject Quarter;
- (iv) the number and percentage of Train Services scheduled in the DTPs relating to the subject Quarter that were cancelled in each of the following circumstances:
  - (A) where that cancellation can be solely attributed directly to Queensland Rail in its capacity as the Railway Manager;
  - (B) where that cancellation can be solely attributed directly to an Access Holder or a Nominated Rolling Stock Operator; and
  - (C) where that cancellation occurred for any other reason;
- (v) the number of category A notifiable occurrences (as defined under the ~~TRSA~~ ARNSL), as reported to the Rail Safety Regulator, for Train Services that operated in the subject Quarter;
- (vi) the average percentage, and the average number of kilometres, of Track under a temporary speed restriction for the subject Quarter (excluding Track in the Metropolitan ~~Network~~ System);
- (vii) the most recent measure of Track quality, in the subject Quarter, for the Network measured by a quality index with component measures including gauge, top, twist and versine;
- (viii) the number of written complaints by Access Holders that are verified by Queensland Rail (acting reasonably) as correct in connection with any of the following:
  - (A) the Operating Requirements Manual;
  - (B) an IRMP;
  - (C) any environmental investigation and/or risk management negotiation process or report created pursuant to **clause 2.7.2**;
  - (D) a Rolling Stock authorisation<sup>6</sup>; and

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<sup>6</sup> That is, an Authority to Travel (being an authorisation issued by Queensland Rail under an Access Agreement which authorises a Rolling Stock Operator to temporarily operate specified Train Services on the Network for a specified period and using specified Train Configurations) or a Train Route Acceptance (which has the same meaning as an Authority to Travel but rather than being temporary applies until the expiry or termination of the Access Rights for the relevant Train Services).

- (E) the application of the Network Management Principles;
  - (ix) an outline as to the cause or causes of any material change in the matters reported under **clauses 5.1.2(a)(ii) to (viii)** relating directly to Queensland Rail's operating performance by comparison to the preceding Quarter; and
  - (x) the number and percentage of Planned Possessions that did not start within 30 minutes of the schedule time, and the number and percentage of Planned Possessions that did not finish within 30 minutes of the scheduled time, within the time scheduled for the relevant Planned Possession in the MTP.
- (b) the information referred to in **clauses 5.1.2(a)(ii) to 5.1.2(a)(x)**, will be limited to, and aggregated by, Train Services operated ~~infor~~ the following parts~~purpose~~ of ~~the Network~~:
- (i) transporting coal;
  - (ii) transporting bulk minerals (other than coal);
  - (iii) transporting freight products; and
  - (iv) long distance passenger services,
- (c) in the following parts of the Network:
- (i) the West Moreton ~~Network~~System;
  - (ii) the Mt Isa ~~Network~~Line System;
  - (iii) the North Coast ~~Network~~Line System; and
  - (iv) the Metropolitan ~~Network~~System.

## 5.2 Annual network performance report ~~on negotiation process~~

### 5.2.1 Obligation to publish annual report

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

## 5.2.2 Content of annual report

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

- (a) the number of requests for Capacity Information received under **clause 2.1.2(b)** and the average time (in Business Days) taken by Queensland Rail to provide that information;
- (b) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in **clause 2.3.2**;
- (c) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in **clause 2.3.2**, the average delay (in Business Days) by Queensland Rail to acknowledge the Access Applications;
- (d) for all Indicative Access Proposals provided in accordance with this Undertaking, the number of Indicative Access Proposals provided by Queensland Rail in accordance with **clause 2.4.1** and the number of instances of a notice of intention to negotiate provided by an Access Seeker under **clause 2.5.1** broken down into periods of less than 10 Business Days, 10 to 20 Business Days, 21 to 40 business Days and more than 40 Business Days from the date provided;
- (e) the number of disputes that are:
  - (i) referred to the dispute resolution process under **clause 6.1**; and
  - (ii) referred to the dispute resolution process under **clause 6.1** and determined in favour of the Access Seeker.
- (f) the number and percentage of Access Applications in relation to which Queensland Rail has given a Negotiation Cessation Notice in accordance with **clause 2.8.1**;
- (g) the number of Access Agreements executed by Queensland Rail;
- (h) the number of Access Agreements (excluding agreements which extend or renew an Access Holder's Access Rights that existed immediately prior to execution of the agreement) executed by Queensland Rail for which the negotiation period was:
  - (i) three months or less;
  - (ii) more than three months but not more than six months;
  - (iii) more than six months but not more than 12 months; and
  - (iv) more than 12 months; and
- (i) for each Regional Network to which a Reference Tariff applies:

- (i) maintenance costs of each Regional Network and scope of any maintenance performed compared with the maintenance forecasts used to develop the relevant tariff with the information to be aggregated by the same categories as those on which the relevant forecast was based;<sup>7</sup>
- (ii) operating expenditure compared with the forecasts used to develop the relevant tariff with the information to be aggregated by the same categories as those on which the relevant forecast was based;<sup>8</sup>
- (iii) the capital investment in the relevant Year and the roll-forward of the relevant Regulatory Asset Base; and
- (iv) the aggregate gtk for Train Services of the type to which the Reference Tariff applies; and
- (v) volumes of:
  - (A) for non-passenger Train Services:
    - (1) the aggregate Train Paths used by those Train Services;
    - (2) the aggregate nt; and
    - (3) the aggregate gtk,
 broken down by commodity where appropriate; and
  - (vi) for passenger Train Services, the aggregate Train Paths used by those Train Services
- (j) for each Regional Network to which a Reference Tariff does not apply, in relation to that Regional Network (which, where a Regional Network includes multiple corridors will be categorised and aggregated according to each particular corridor):
  - (i) maintenance costs of the Regional Network and scope of maintenance performed;
  - (ii) operating costs of the Regional Network;
  - (iii) the capital investment in the previous financial Year and expected capital investments over the next one and four years; and
  - (iv) volumes of:
    - (A) for non-passenger Train Services:

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<sup>7</sup> The initial maintenance forecast categories are: track (excluding mechanised resleepering); mechanised resleepering; structures; trackside systems; and, other.

<sup>8</sup> The initial operating expenditure categories are: train control; corporate overhead; other; and, working capital.

- (1) the aggregate Train Paths used by those Train Services;
- (2) the aggregate nt; and
- (3) the aggregate gtk,  
broken down by commodity where appropriate; and
- (B) for passenger Train Services, the aggregate Train Paths used by those Train Services; and
- (k) a commentary by Queensland Rail which explains any material differences between actual expenditure and forecast expenditure identified by the information prepared pursuant to **clauses 5.2.2(i)(i)** and **5.2.2(i)(ii)**.

## 5.3 Financial Reporting

### 5.3.1 Annual Financial Report

- (a) Within six months after the end of each Year, Queensland Rail will publicly release Financial Statements in relation to the preceding Year.
- (b) The Financial Statement published pursuant to **clause 5.3.1(a)** must be accompanied by an audit certificate prepared by a suitable auditor.
- (c) The audit certificate referred to in **clause 5.3.1(b)** will specify whether or not the Financial Statement has been prepared, in all material respects, in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual.

## 5.4 General reporting obligations

### 5.4.1 Accuracy and contract volumes

- (a) Queensland Rail will use reasonable endeavours to ensure the reports referred to in **clauses 5.1** and **5.2** are accurate.
- (b) If an error in a report published or provided under **clauses 5.1** or **5.2** is identified, then Queensland Rail will, as soon as reasonably practicable, correct that error and publish an amended report containing the correct information.
- (c) Queensland Rail must notify QCA as soon as reasonably practicable after it has contracted coal carrying Train Services on the West Moreton NetworkSystem and or the Metropolitan NetworkSystem.

### 5.4.2 Information requested by the QCA

- (a) Subject to **clause 5.4.2(b)**, the QCA may, by written notice, request Queensland Rail to provide information or a document that the QCA



reasonably requires for the purpose of complying with this Undertaking.

- (b) A notice given by the QCA under **clause 5.4.2(a)** must include a description of the information or document required, the purpose for which it is required, and the day by which it is required, provided that the day stated in the notice must be reasonable.
- (c) Queensland Rail will comply with a request by the QCA under **clause 5.4.2(a)** by the day stated in the request unless it has a reasonable excuse for non-compliance.

### **5.4.3 Information about compliance with the Undertaking**

Without limitation to this Undertaking, Queensland Rail acknowledges:

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

### **5.4.4 Audit**

- (a) If the QCA believes, acting reasonably, that the information contained in a quarterly report or annual report released by Queensland Rail under **clause 5.1** or **5.2** is inaccurate in a material way or that Queensland Rail may have failed to comply with the Undertaking (including in relation to a specific instance of non-compliance), the QCA may instruct Queensland Rail to obtain an audit of the relevant quarterly report or annual report or an audit of compliance with the Undertaking.
- (b) Where the QCA has instructed Queensland Rail to obtain an audit under **clause 5.4.4(a)**, the QCA may require that the audit be conducted by a third party and, if it does, the following process will apply (unless otherwise agreed by the QCA and Queensland Rail):
  - (i) Queensland Rail will appoint an auditor subject to the QCA's prior approval of the auditor and, if the QCA does not approve a particular auditor, Queensland Rail must nominate an alternative auditor as soon as reasonably practicable;
  - (ii) the auditor will have a duty of care to the QCA in providing the audit and, in the event of a conflict between the auditor's obligations to Queensland Rail and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence;
  - (iii) prior to commencing the audit, the auditor must agree an audit plan with Queensland Rail, document that audit plan and obtain the QCA's approval of that audit plan;
  - (iv) the audit plan referred to under **clause 5.4.4(b)(iii)** will consist of a proposed work program for the execution of the

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audit and will include the establishment of an audit liaison group, comprising the auditor, Queensland Rail and the QCA, to provide a forum for the resolution of any audit issues that arise during the course of the audit;

- (v) Queensland Rail will be responsible for the costs of the auditor;
  - (vi) subject to **clause 5.4.4(b)(vii)**, Queensland Rail will provide any relevant information the auditor reasonably requires to conduct the audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with Queensland Rail;
  - (vii) the auditor must enter into a confidentiality deed with Queensland Rail in relation to any information provided by Queensland Rail, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the Audit Report detailed below;
  - (viii) the auditor must prepare:
    - (A) a statement (**Audit Statement**):
      - (1) specifying only whether, in the opinion of the auditor, the information contained in the quarterly report or annual report (as applicable) released by Queensland Rail under **clause 5.1** or **5.2** (as applicable) is materially inaccurate and, in the opinion of the auditor, whether Queensland Rail may have failed to comply with the Undertaking; and
      - (2) describing the process adopted for the conduct of the audit; and
    - (B) a report (**Audit Report**):
      - (1) explaining the information set out in the Audit Statement in greater detail; and
      - (2) in the event that the auditor identifies that the information contained in the quarterly report or annual report (as applicable) is inaccurate in a material way, providing information on the inaccuracy.
- (c) Within a reasonable period following Queensland Rail's receipt of a completed Audit Statement and Audit Report, Queensland Rail must provide the Audit Statement and Audit Report to the QCA.

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- (d) The QCA may publicly release an Audit Statement and the Audit Report.

## Part 6 Administrative provisions

### 6.1 Dispute and complaint resolution process

#### 6.1.1 Alternative dispute process

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

- (a) the different dispute resolution process or timeframe (as applicable) will be binding on them;
- (b) neither of them may seek to:
  - (i) change the dispute process (except with the agreement of the other); or
  - (ii) alter or challenge the outcome of the dispute process (except in the case of manifest error); and
- (c) in a case of manifest error, either of them may refer the matter to the QCA for arbitration in accordance with this **Part 6**.

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

- (a) If any dispute, complaint or question arises between Queensland Rail and an Access Seeker in relation to any provision of this Undertaking, a request for Access or the negotiation of an Access Agreement (**Dispute**), then:
  - (i) that Dispute will be resolved in accordance with this **clause 6.1**; and
  - (ii) either the Access Seeker or Queensland Rail may give the other a notice in writing (**Dispute Notice**) setting out details of the Dispute and that the Dispute is to be dealt with in the manner set out in this **clause 6.1**.

~~(b) Notwithstanding **clause 1.2.1(b)(i)(B)**, if any dispute arises between an Access Holder and Queensland Rail in relation to **clause 7** of **schedule D**, **clause 2.4** of **schedule F** or **clause 1.2.3** of this Undertaking then **clause 6.1.4(a)(ii)** will apply to that dispute (as if the reference to an Access Seeker were a reference to an Access Holder).~~

- ~~(c)(b)~~ Except for disputes referred to in **clause 6.1.2(b)(1)(a)**, disputes in relation to an Access Holder or an Access Agreement must be dealt with in accordance with the provisions of the relevant Access Agreement and must not be dealt with under this Undertaking.

### 6.1.3 Resolution by escalation

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

### 6.1.4 Resolution by QCA

- (a) If a Dispute is not resolved under **clause 6.1.3** within the last of the applicable time frames (or is referred directly to this **clause 6.1.4** by a provision of this Undertaking), then either the Access Seeker or Queensland Rail (or both of them) may refer the dispute to the QCA; and
  - (i) if the Dispute is a dispute for the purposes of Division 5 of Part 5 of the QCA Act, any determination of that Dispute must occur subject to, and in accordance with, Division 5, Part 5 of the QCA Act; and
  - (ii) if the Dispute does not constitute a dispute for the purposes of Division 5 of Part 5 of the QCA Act, the QCA may make a determination through any process that it considers appropriate, provided that:
    - (A) the QCA advises the affected parties of the process that it will use to make the determination; and
    - (B) the QCA must not make a determination that is inconsistent with this Undertaking (unless the parties agree otherwise and no party (whether a party to the Dispute or not) is adversely affected by the determination not being consistent with this Undertaking).
- (b) Subject to **clause 6.1.4(c)**, if a Dispute is referred to the QCA for arbitration in accordance with **clause 6.1.4(a)(i)**, the QCA must: seek

and have regard to the opinion of a rail safety expert approved by Queensland Rail and the party to the Dispute.

- ~~(i) ask the Rail Safety Regulator to make a decision on those aspects of the Dispute (if any) that relate to safety matters (as defined in the TRSA);~~
  - ~~(ii) provide to the Access Seeker and Queensland Rail a copy of any decision that it receives from the Rail Safety Regulator; and~~
  - ~~(iii) not make any access determination in respect of the Dispute relating to a safety matter that is inconsistent with any decision of the Rail Safety Regulator.~~
- ~~(c) If:~~
- ~~(i) the Rail Safety Regulator declines to make a decision referred to it under **clause 6.1.4(b)**; or~~
  - ~~(ii) the TRSA is repealed or amended such that the Rail Safety Regulator ceases to exist; then:~~
    - ~~(A) the QCA will continue to make a determination in relation to that Dispute pursuant to **clause 6.1.4(a)(i)** as if **clause 6.1.4(b)** did not apply, including in relation to any aspects of the Dispute (if any) that relate to safety matters which, but for this **clause 6.1.4(c)**, would have been the subject of **clause 6.1.4(b)**.~~

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

If:

- (a) a Dispute is referred to the dispute resolution process in this **clause 6.1**;
- (b) that Dispute is not resolved by the Access Seeker and Queensland Rail; and
- (c) neither the Access Seeker nor Queensland Rail gives an access dispute notice to the QCA in accordance with **clause 6.1.4(a)**,

then, within three months after the Dispute Notice Date, Queensland Rail will report that Dispute (including a brief description of the Dispute) to the QCA.

## **6.2 QCA Decision-making**

- (a) The QCA may not make a decision (**Decision**) under this Undertaking that may affect Queensland Rail or another person (including to require Queensland Rail or another person to do, give or submit anything to the QCA, to resolve a Dispute, to approve or consent to or

grant anything or to refuse to approve or consent to or grant anything), unless:

- (i) the QCA observed the rules of natural justice;
- (ii) the QCA observed any procedures that were required by any applicable Law (including this Undertaking);
- (iii) the QCA had jurisdiction to make the Decision under this Undertaking;
- (iv) the QCA was authorised to make the Decision under this Undertaking;
- (v) the QCA's Decision was a proper exercise of the power conferred by this Undertaking and, without limitation, it will not be a proper exercise of power if:
  - (A) the QCA takes an irrelevant consideration into account in the exercise of a power;
  - (B) the QCA fails to take a relevant consideration into account in the exercise of a power; or
  - (C) the QCA exercises:
    - (1) a power for a purpose other than a purpose for which the power is conferred;
    - (2) a discretionary power in bad faith;
    - (3) a personal discretionary power at the discretion or behest of another person;
    - (4) a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
    - (5) a power in a manner that is so unreasonable that no reasonable person could so exercise the power;
    - (6) a power in such a way that the result of the exercise of the power is uncertain; or
    - (7) a power in a way that is an abuse of the power;
- (vi) the QCA's Decision involves an error of law (whether or not the error appears on the record of the Decision);
- (vii) the QCA's Decision was induced or affected by fraud;
- (viii) to the extent that any matters were required to be established before the Decision could be made or taken, there was not some material or evidence from which the QCA could reasonably be satisfied the matter was

established to justify the Decision or, to the extent that the existence of a particular fact forms the basis on which the Decision is made, the fact did or does not exist; and

- (ix) the Decision was otherwise contrary to law or this Undertaking.

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

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

## 6.3 Notices

### 6.3.1 Form of Notices

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

### 6.3.2 Means of giving Notices

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

### 6.3.3 Effect and receipt of a Notice

- (a) Unless a later time is specified in it, any Notice takes effect and is given from the earlier of the time it is actually given or is taken to be given.
- (b) A Notice is taken to be given, in the case of a Notice given by:
  - (i) hand, at the time of delivery;
  - (ii) post, on the second day following the date of posting (other than a Notice acknowledging the receipt of an Access



Application which is taken to be given on the date of posting); and

- (iii) email, unless the sender receives an automated message that the email has not been delivered, when the sender receives an automated message confirming delivery to the recipient or the recipient's email server,

provided that, if a Notice is given:

- (iv) after 5:00pm in the place of receipt; or
- (v) on a day which is not a Business Day in the place of receipt, it is taken as having been given on the next Business Day.

#### **6.3.4 Process service is not affected**

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

### **6.4 Transitional provisions**

- (a) All acts, applications, approvals, approval processes, arrangements, circumstances, conduct, decisions, determinations, dispute resolution processes, events, Force Majeure Events, matters, negotiations, notices, omissions, requests, time periods, votes, warranties or any other process or thing whatsoever (**Matter**) done, agreed, arising, given, received, undertaken, commenced or established (**Done**) or deemed to be Done under ~~the 2008 UndertakingAU1~~ 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) Any access applications or renewal applications Done before the Approval Date and not subject to **clause 6.4(a)**, are deemed to be Done and, as applicable, continue under this Undertaking to the extent this Undertaking provides for equivalent matters to be Done (for example, Access Application queueing and negotiations).
- (c) Subject to **clause 6.4(f)**, if this Undertaking requires Queensland Rail to report to the QCA on a Quarter or a Year that began prior to the Approval Date, then:
  - (i) the relevant report will include information in respect of the period prior to the Approval Date; and
  - (ii) Queensland Rail is only obliged to provide information for the period prior to the Approval Date as would have been required to be provided under ~~the 2008 UndertakingAU1~~ in respect of that same type of report.

- (d) If the Approval Date is the first day of a Quarter, then Queensland Rail will report on the last Quarter prior to the Approval Date in accordance with the requirements of ~~the 2008 Undertaking~~AU1.
- (e) If the Approval Date is the first day of a Year, then Queensland Rail will report on the prior Year in accordance with the requirements of ~~the 2008 Undertaking~~AU1 subject to **clause 6.4(f)**.
- ~~(f) For any system for which a Reference Tariff applies and Queensland Rail is required to create a report pursuant to **clause 5.2.2(i)**, Queensland Rail must create a report or reports (as the case may be) in accordance with the requirements of this Undertaking which presents the required information in relation to the period from 1 July 2013 to the Approval Date. For clarity this report will include:
  - ~~(i) actual maintenance;~~
  - ~~(ii) changes to the regulatory asset base; and~~
  - ~~(iii) system volumes.~~~~

## Part 7 Definitions and interpretation

### 7.1 Definitions

In this Undertaking:

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

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

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

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

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

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

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

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

**Access Charge** means the charge or other amount payable by an Access Holder to Queensland Rail for the provision of Access under an Access Agreement and includes, except where the context requires otherwise, Take or Pay Charges and Adjustment Charges;

**Access Funder** means a reference to an Access Seeker, an Access Seeker's Customer or an End User Access Seeker depending on which party (or parties) elects to fund the Extension (or relevant Extension Stage);

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

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

**Access Seeker** means a person who is seeking new or additional Access Rights from Queensland Rail including, for clarity, a Renewal Access Seeker;

**Accredited** means accredited (including exempted from the requirement to be accredited and any conditions applying to that accreditation or exemption) in accordance with Part 53 Division 4 of the TRSA RNSL;

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

**Ad Hoc Planned Possession** means a Possession (other than an Urgent Possession, an Emergency Possession or a Planned Possession) that is not entered into the MTP because it is not a regularly scheduled Possession, and adversely affects the operation of Train Services.

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

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

~~**Adjustment Amount** has the meaning given to that term in **clause 7.1(b)** of **schedule D**;~~

**Adjustment Charge** has the meaning given to that term in **clause 6.1(a)** of **schedule D**;

**Adjustment Charge Amount** has the meaning given to that term in **clause 6.1(a)** of **schedule D**;

~~**Adjustment Train Services** means, for the purposes of **clause 7** of **schedule D**, those train services that operated between the loading facilities of Ebenezer, Jondaryan, Macalister or Columboola and the unloading facility of Fisherman Islands;~~

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

- (a) transporting coal, 30 minutes;
- (b) transporting bulk minerals (other than coal), 60 minutes; ~~and~~
- (c) transporting freight products, 60 minutes; ~~and~~
- (d) transporting passengers over long distances, 20 minutes

**Alternative Schedule Time** means a Train Service proposed by Queensland Rail, which is a Useable Schedule Time;

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

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

**Approved Ceiling Revenue Limit** means for Train Services, the description of which accords with the Reference Train Service, the amount set out in **clause 4(f)** of **schedule D**;

**AU1** means Queensland Rail's Access Undertaking approved by the QCA on 11 October 2016.

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

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

**Authority** means:

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

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

**Available Capacity** means Capacity excluding:

- (a) all Committed Capacity other than, in relation to an Access Application:
  - (i) Committed Capacity that will cease being Committed Capacity prior to the time period for which Capacity is being assessed for that Access Application; and
  - (ii) Capacity that is required to comply with any Passenger Priority Obligation or Preserved Train Path Obligation that can be allocated by Queensland Rail to that Access

Application in accordance with that Passenger Priority Obligation or Preserved Train Path Obligation and is not otherwise Committed Capacity;

- (b) Queensland Rail's reasonable requirements for the exclusive use of the Network for the purposes of:
  - (i) performing activities associated with the maintenance or repair of the Network, or undertaking Extensions, including the operation of work Trains; and
  - (ii) attending to and performing activities associated with safety matters or the management of safety risks; and
- (c) Capacity that is not available as a result of:
  - (i) an Operational Constraint from time to time; or
  - (ii) restrictions imposed or required from time to time in accordance with any Law;

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

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

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

- (a) the construction, maintenance and renewal of Network assets including to ensure that the Network is provided to the standard required to meet Queensland Rail's obligations to each Network Participant; and
- (b) the network management services required for the safe operation of Train Services on the Network including:
  - (i) Network Control; and
  - (ii) the implementation of procedures and systems, including supporting communications systems, for the safe operation of Train Services and protection of work sites on the Network,

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

**Building Queensland Act** means the *Building Queensland Act 2015 (Qld)*;

**Building Queensland** means the body corporate of that name established pursuant to the Building Queensland Act;

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

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

**Capacity Analysis** means an assessment of:

- (a) whether there is sufficient Available Capacity to accommodate an Access Seeker's requested Access Rights; and
- (b) if there is not sufficient Available Capacity to accommodate the requested Access Rights, the Additional Capacity required to grant the requested Access Rights including either:
  - (i) an indicative outline of the works which would be reasonably required to complete the Extensions and an indicative estimate of the cost, standard and scope of, and timing for, the required Extension; or
  - (ii) the scope, standard and cost of the required Extension,

which provides a basis for the negotiation of an Access Agreement and Funding Agreement (if applicable);

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

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

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

**Change in Law** means:

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

**Change to Credit** means:

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

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

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

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

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

- (a) the aggregate of the lengths (in metres) of each item of Rolling Stock comprising or to comprise the Train (including its locomotives) multiplied by 1.02; and
- (b) 125mm multiplied by the number of items of Rolling Stock comprising or to comprise the Train (including its locomotives);<sup>9</sup>
- (c) or such other allowance as can be reasonably substantiated as a prudent allowance;

**Competing Access Applications** means the Access Applications of two or more Access Seekers that are seeking Access Rights relating to the same traffic task<sup>10</sup>;

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<sup>9</sup> By way of explanation, the 2% and 125mm allowances are allowances for train handling accuracy and slack movement in drawgear (including free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

<sup>10</sup> This is a situation where if one of the Access Seekers is granted Access Rights, then the other Access Seekers will no longer need a grant of Access Rights – for example:



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

**Concept Study** means a study that:

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

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

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

excluding information that:

- (c) was in the Recipient's lawful possession prior to the disclosure; or

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

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

**Confidentiality Exception** means:

- (a) any disclosure or use of Confidential Information consented to by the Disclosing Party under **clause 2.2.1(b)(i)**;
- (b) any disclosure of Confidential Information to another person who is a party to the negotiations involving the Disclosing Party and Recipient, provided that the confidentiality obligations under this Undertaking continue to apply to that Confidential Information as if the disclosure was made directly by the Disclosing Party to that other person; or
- (c) any disclosure or use of Confidential Information:
  - (i) to the extent necessary to:
    - (A) the Recipient's directors, officers or employees; or
    - (B) without limiting **paragraph (c)(xii)** of this definition, the directors, officers or employees of a Related Party of the Recipient;
  - (ii) to the extent required or compelled by, or necessary to observe, administer or comply with, any Law;
  - (iii) to the extent consistent with a person's right to disclosure under any Law;
  - (iv) without limiting **paragraphs (c)(ii)** or **(iii)** of this definition, in accordance with this Undertaking (including the Network Management Principles) including:
    - (A) in publishing or providing MTPs and DTPs; and
    - (B) for the purpose of consultations or negotiations relating to a modification of a MTP or the scheduling of a DTP in variation from an MTP;
  - (v) to the extent necessary for the conduct of any legal proceedings (including any dispute resolution process under this Undertaking or the QCA Act);
  - (vi) to the extent required under any stock exchange listing requirement or rule;
  - (vii) to the Rail Safety Regulator or the QCA;

- (viii) to the Recipient's solicitors, barristers, or accountants under a duty of confidentiality (which is not waived by the Recipient without the prior written consent of the Disclosing Party);
- (ix) to the Recipient's engineering or other technical consultants and advisers to the extent necessary for the provision of advice to the Recipient (provided they are under a legal obligation not to disclose the Confidential Information to any third party);
- (x) to the Recipient's banker, financier or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Disclosing Party under which they are obliged to keep the Confidential Information confidential;
- (xi) if Queensland Rail is the Recipient, to any responsible Minister (as defined in the Rail Authority Act);
- (xii) if Queensland Rail is the Recipient, to the extent necessary to:
  - (A) the Rail Authority;
  - (B) the Rail Authority's board members; and
  - (C) the Rail Authority's:
    - (1) chief executive officer, chief finance officer and other senior executives (as those terms are defined under the Rail Authority Act); and
    - (2) other officers and employees;
- (xiii) for the purpose of facilitating Network Control Directions where the disclosure of information is by Queensland Rail in the usual course of undertaking Network Control;
- (xiv) to the extent necessary by any person involved in clearing an event or incident that is preventing or affecting the operation of Train Services on the Network; or
- (xv) to the extent necessary by Queensland Rail for the purpose of responding to, managing or clearing an event or incident that is preventing or affecting, or is likely to prevent or affect, the operation of Train services on the Network;

**Costing Manual** means a cost allocation manual prepared by Queensland Rail pursuant to section 159 of the QCA Act and approved or revised by the QCA from time to time;

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

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

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

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

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

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

**Dangerous Goods Code** means:

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

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

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

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

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

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

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

**Duplicate Requests** has the same meaning given to that term in **clause 2.8.1(a)(iv)**.

**Efficient Costs** means, for each Year during the Evaluation Period, the costs that would be reasonably expected to be incurred by a Railway Manager

adopting efficient work practices to, amongst other things, provide, operate and maintain the Network at the required service standard and meet its obligations under Access Agreements, having regard to the circumstances in which Queensland Rail operates its business (including any transitional arrangements agreed between Queensland Rail and the QCA) and including business and corporate overheads and QCA Levy;

**Emergency Possession** means a Possession:

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

**End User Access Seeker** means an Access Seeker who is, or will be, party to an Access Agreement with a Nominated Rolling Stock Operator, granting rights to that Nominated Rolling Stock Operator for the non-exclusive utilisation of a specified section of the Network for the purposes of operating Train Services;

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

- ~~(a) a Change in Law, excluding any Change in Law which has the effect of varying any of the Network Capacity Constraints, a Change to Credit or an Impost Change occurs, that either alone or in combination with all other Changes in Law, Changes to Credit or Impost Changes that have occurred since the Approval Date, would cause a change in the costs reflected in any input of the relevant Reference Tariff of greater than 2.5% excluding the impact of any Change in Law, Change to Credit or Impost Change that have previously resulted in a variation of the Reference Tariff; or~~
- ~~(b) the QCA Levy is reviewed (taking into account any over or under recovery of fees via the QCA Levy in the previous year) following the QCA's announcement of its fees for the provision of regulatory services for the rail industry; or~~
- ~~(c) contracted coal-carrying Train Services, for a single origin or in aggregate, on the West Moreton Network and the Metropolitan Network are, at the Approval Date or thereafter, greater than the forecasts of coal-carrying Train Services used to develop Reference Tariffs for the West Moreton Network and the Metropolitan Network;~~

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

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

**Evaluation Period** means:

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

**Expected Access Revenue** means:

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

**Extension** includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the Network (excluding Private Infrastructure) and “Extend” or “Extended” will have a comparable meaning;

**Extension Access Principles** means the principles outlined in **schedule I**;

**Extension Costs** means the costs that would be reasonably expected to be incurred in undertaking an Extension adopting efficient work practices to construct and commission the Extension to the required service standard and to meet the Railway Manager’s obligations under Access Agreements, including:

- (a) costs incurred by Queensland Rail and/or an Access Funder in connection with
  - (i) obtaining all Authorisations required for the purpose of the Extension, including the acquisition, lease, sublease or licence of any land;
  - (ii) designing, constructing and commissioning the Extension, including ;
    - (i) amounts paid to contractors and suppliers of materials;
    - (ii) legal costs;
    - (iii) statutory fees and charges;

- (iv) compliance costs;
- (v) insurance premiums; and
- (iii) internal administrative, travel, accommodation and overhead costs to the extent that the costs relate to the Extension;
- (b) capitalised interest incurred during the construction of an Extension that Queensland Rail and an Access Funder elect to add to the cost basis of the Extension in accordance with the Financial Accounting Standards Board's (FASB) *Statement of Financial Accounting Standards No. 34, Capitalization of Interest Cost*. Capitalised interest is to be calculated on daily resets and capitalised monthly, from the date the construction costs for an Extension are incurred by Queensland Rail and/or an Access Funder through to the date the Extension is either commissioned by Queensland Rail as a part of the Network or included in Queensland Rail's regulatory asset base;
- (c) but for the avoidance of doubt Extension Costs do not include:
  - (i) the GST component of any such costs, expenses or liabilities to the extent that Queensland Rail or an Access Funder is entitled to claim an input tax credit;
  - (ii) any costs, expenses or liabilities for which Queensland Rail has been otherwise reimbursed; or
  - (iii) any costs or expenses Queensland rail would routinely incur when assessing an Access Application;

**Extension Conditions** has the meaning given to that term in **clause 1.4.2(d)**;

**Extension Stage** means one of the following (as applicable):

- (a) Concept Study;
- (b) Pre-feasibility Study;
- (c) Feasibility Study; or
- (d) construction and commissioning of an Extension;

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

- (a) details the project objective for the preferred Extension solution;
- (b) provides a detailed assessment of technical and operating requirements of the preferred Extension solution;
- (c) includes survey and geotechnical investigations to support the level of design and cost accuracy;
- (d) provides a detailed design for the preferred Extension solution (including independent design verification against Queensland Rail's standards, where Queensland Rail has elected not to fund the Extension and the relevant Access Seekers require it); and

- (e) provides the following details of the preferred Extension solution's scope:
- (i) an optimised project configuration that would provide the targeted additional Capacity to be created by the preferred Extension solution;
  - (ii) a detailed cost estimate with a +/-10% level of accuracy (or such other accuracy where agreed with the funding Access Seekers (acting reasonably) – for example, for larger projects);
  - (iii) a detailed design and construction project schedule;
  - (iv) the basis on which the project contingency was determined;
  - (v) a financial evaluation, including (if applicable) the estimated impact on the relevant Reference Tariff;
  - (vi) a procurement methodology and report on any previous approaches to the construction market that are relevant to the preferred Extension solution; and
  - (vii) a project management plan comprised of:
    - (A) resource management plan;
    - (B) cost management plan;
    - (C) design management plan
    - (D) quality management plan;
    - (E) safety management plan;
    - (F) schedule management plan;
    - (G) risk management plan;
    - (H) project packaging and delivery strategy;
    - (I) procurement management plan;
    - (J) interface management plan;
    - (K) change management plan;
    - (L) environmental management plan;
    - (M) project phases, milestones and deliverables;
    - (N) project risk assessment report; and
    - (O) regulators notification, if needed,

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

**Financial Statement** means accounting records prepared annually by Queensland Rail in accordance with section 163 of the QCA Act;



**First Escalation Date** means 1 July ~~2017~~2021;

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

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

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

and includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected party;
- (d) a strike, lockout, boycott, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected party is a party to such industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) an act of God;
- (f) war, invasion, act of terrorists, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade, civil disturbance or public disorder;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Prudent Practices or accident or accidental damage to any thing;
- (h) malicious damage or sabotage;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste;
- (j) failure of electricity supply from the electricity grid;
- (k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (l) fire, flood, storm surge, cyclone, tornado, tsunami, earthquake, washaway, landslide, explosion, hail, lightning, severe weather conditions or other catastrophe or natural calamity;
- (m) any act or omission of any person other than the affected party or Queensland Rail (including the presence of any such person on or near the Network), without the express authorisation of Queensland Rail, that results in damage to the Network or the use or operation of the Network being prevented or impeded;

- (n) epidemic or quarantine restriction; and
- (o) delay of a supplier due to any of the foregoing whenever arising;

**Funding Agreement** has the meaning given to that term in **clause 1.4.2(a)(iv)**;

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

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

**Impost Change** means:

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

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

- (a) would not be incurred by Queensland Rail if the individual Train Service or combination of Train Services (as applicable) did not operate on the basis of the assets reasonably required for the provision of Access, including:
  - (i) capital (renewal and expansion) costs; and
  - (ii) the cost of bringing expenditure forward in time; and
- (b) are assessed as Efficient Costs;

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

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

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

- (a) the Access Seeker has not been able to pay all its debts from the Access Seeker's own money as and when they become due or has stated that it is unable to do so;
- (b) the Access Seeker has been presumed to be insolvent or unable to pay its debts under any applicable legislation;

- (c) a resolution is passed that the Access Seeker be wound up or placed in liquidation voluntarily or that an administrator be appointed;
- (d) an application or order has been made for the winding up or dissolution of the Access Seeker (other than an application which is dismissed or withdrawn within ten Business Days after such proceedings were commenced);
- (e) a controller, administrator, receiver, liquidator or provisional liquidator has been appointed to the Access Seeker or in respect of any of its property;
- (f) the Access Seeker has entered into or taken any action to enter into (whether formally or informally) an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (g) a mortgagee has entered into possession of any of the Access Seeker's assets or undertakings; or
- (h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction has occurred in respect of the Access Seeker,

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

**Interface Risk** means a risk to the safety of persons or property or to the environment<sup>11</sup> arising from the interaction between the Access Seeker's proposed operations and any one or more of:

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

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

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

- (a) identify all reasonably foreseeable Interface Risks;

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<sup>11</sup> Environmental risks include:

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

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

**Interface Standards** has the meaning given to that term in the Operating Requirements Manual;

**Interim Take or Pay Notice** has the meaning given to that term in the Standard Access Agreement or similar meaning in an Access Agreement;

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

**Law** includes:

- (a) any statute, ordinance, code, law, by-law, proclamation, rule or regulation or any other subordinate legislation, whether State, Commonwealth or otherwise;
- (b) the terms of any Authorisation;
- (c) common law and equity;
- (d) this Undertaking; and

- (e) any order, circular, requirement, condition, notice, decree, decision, direction or guidelines of any Authority with which Queensland Rail, an Access Seeker, an Access Holder or other relevant person (as the case may be) is legally required to comply including any requirement to pay fees and charges,

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

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

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

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

**Material Change** means:

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

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

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

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

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

**Monthly Difference** has the meaning given to that term in **clause 71.1 of schedule D**;

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

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

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

**Network** means the rail transport infrastructure (as defined in the TIA) the use of which is taken, pursuant to section 250(1)(b) of the QCA Act, to be a service declared under Part 5, Division 2 of the QCA Act (but excluding any rail transport infrastructure (as defined in the TIA) the use of which is referred to in section 249(2) of the QCA Act);<sup>12</sup>

**Network Capacity Constraint** has the meaning given to that term in **clause 3.1(f) of schedule D**;

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

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

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

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

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

**Network Participant** means:

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

including:

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

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<sup>12</sup> Examples of rail transport infrastructure include, without limitation, railway tracks and works built for the railway (e.g. cuttings, drainage works, track support earthworks etc.); and other things associated with a railway's operation (e.g. bridges, marshalling yards, stations, overhead electrical power supply systems, tunnels, train operation control facilities etc.)

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

**Nominated Loading Facility** means a loading facility specified for a nominated Reference Train Service in **clause 2.2(a) of schedule D**;

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

**Nominated Unloading Facility** means an unloading facility specified for a nominated Reference Train Service in **clause 2.2(b) of schedule D**;

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

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

**Notional Reference Tariff** has the meaning given to that term in **clause 3.2 of schedule D**;

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

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

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

**Operating Requirements Manual** means the document ~~set out in schedule G~~ published by Queensland Rail in accordance with clause 4.3, as amended from time to time by Queensland Rail ~~in accordance with the QCA Act~~;

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

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

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

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

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

- (a) confirms the project objectives in relation to the creation of additional Capacity;
- (b) assesses each of the Possible Extensions in respect of:
  - (i) the technical and operating requirements for that Possible Extension;
  - (ii) an indicative assessment of the additional Capacity that might reasonably be expected by implementing that Possible Extension; and
  - (iii) a preliminary risk assessment for that Possible Extension;
- (c) includes preliminary survey and geotechnical investigation to support the level of design and cost accuracy required for the study;
- (d) identifies as the preferred Extension solution to be studied under a Feasibility Study, the Possible Extension that is fit-for-purpose and the most efficient and effective solution; and
- (e) provides:
  - (i) a high level engineering assessment of the preferred Extension solution in respect of the total cost of ownership, after allowing for risk, for the purpose of minimising that total cost of ownership;
  - (ii) analysis of the technical and economic feasibility of the preferred Extension solution and identifies why it is preferred;
  - (iii) a project budget, with a +/-20% level of accuracy (or such other accuracy where agreed with the funding Access Seekers (acting reasonably));
  - (iv) an indicative design and construct schedule for the preferred Extension solution that includes time tolerances; and
  - (v) potential benefits (including Capacity, maintenance and operating benefits) of the preferred Extension solution; and



- (f) includes a proposed scope, budget, duration and deliverables for a Feasibility Study,

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

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

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

**Private Infrastructure** means rail transport infrastructure (as defined in the TIA), including but not limited to the track, signalling and electrical overhead traction system (if applicable) for which neither Queensland Rail nor Queensland Rail's successor, assignor or subsidiary is the Railway Manager;

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

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

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

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

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

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

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

- (a) an Operational Constraint;
- (b) a Force Majeure Event (to the extent that the Force Majeure Event prevents Queensland Rail from providing Access to the Network);
- (c) the derailment of any Train caused primarily by an act or omission of Queensland Rail; or
- (d) any other action by Queensland Rail other than Queensland Rail complying with an obligation in accordance with any applicable Law or the relevant Access Agreement,

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

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

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

**Rail Infrastructure Operations** means:

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

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

**Rail Safety Regulator** means the ~~chief executive referred to in~~ [National Rail Safety Regulator](#) or the [TRSA Acting National Rail Safety Regulator appointed under Part 2 Division 2 of the RNSL](#);

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

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

**Reference Tariff** means an Access Charge, calculated in accordance with **schedule D**, applicable for a specified Reference Train Service;

**Reference Train Service** means a notional Train Service described in **clause 2.1 of schedule D** in respect of a Reference Tariff and conforming to certain criteria, including carrying a specified commodity type, operating between specified geographical areas and conforming to specified technical characteristics, operational characteristics and contract terms and conditions;

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

- (a) the Mt Isa [NetworkLine System](#);
- (b) the North Coast [NetworkLine System](#);

- (c) the West Moreton ~~NetworkSystem~~; or
- (d) the Metropolitan ~~NetworkSystem~~;

**Regional Network Planning Group** means a separate group in relation to each Regional Network established to assist Queensland Rail to develop each Regional Network Master Plan comprised of each Access Holder and Rail Transport Operator relevant to each Regional Network.

**Regional Network Master Plan** means a plan relating to Queensland Rail's proposed expansion projects containing the information referred to in **clause 1.5(d)** in relation to each Regional Network;

**Regulatory Asset Base** means the asset value accepted by the QCA for the purpose of developing a Reference Tariff, as maintained by Queensland Rail in accordance with **clause 3.8**,<sup>13</sup>

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

**Renewal** means, in relation to an Access Holder's Access Rights that are to expire, the Renewal Access Seeker entering into an Access Agreement to hold or continue to hold Access Rights for a further term commencing immediately after the expiry of the relevant Access Rights that have the same origin and destination, require the same or less Train Path requirements and otherwise are substantially equivalent to the relevant Access Holder's Access Rights immediately prior to their expiry, subject to any variation referred to in **clause 3.3(f)**;

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

- (a) the Access Holder;<sup>14</sup>
- (b) an Access Holder's Rolling Stock Operator; or
- (c) another Rolling Stock Operator competing for the relevant Access Rights

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

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

- (a) no later than 20 Business Days after the later of:
  - (i) the date on which Queensland Rail gave the relevant notice under **clause 2.9.3(a)**; and

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<sup>13</sup> Separate Regulatory Asset Bases may be maintained for different Reference Tariff inputs in respect of the same Reference Tariff – with the consequence that each of those Regulatory Asset Bases is relevant to the development of that Reference Tariff.

<sup>14</sup> For example, the mine operator who uses the Access Rights to transport coal from its mine is the Access Holder.

- (ii) the date that is three years before the expiry of the relevant Access Agreement; or
- (b) no less than two years before the expiry of the relevant Access Agreement;

**Review Event** means:

- (a) a material change in circumstances, other than a change to a Network Capacity Constraint, that Queensland Rail can reasonably demonstrate may give rise to a need to vary the relevant Reference Tariff; and
- ~~(+)~~(b) in respect of which Queensland Rail has given written notice to the QCA of Queensland Rail's intention to propose a variation to that Reference Tariff under **clause 5 of schedule D**;
- ~~(b)~~(c) an Access Seeker or an Access Holder has presented to Queensland Rail a proposal which would require a variation to the Reference Tariff (including, if applicable, a variation to the Reference Train Service or new reference train service) to accommodate productivity or efficiency improvements to their Above Rail Services (or Queensland Rail devises a proposal in relation to improving the efficiency or productivity of its Below Rail Services);
- ~~(e)~~(d) Queensland Rail has foregone more than 2.5 per cent of contracted annual revenue from an origin due to a Force Majeure Event which resulted in a part of the Network being damaged or destroyed and Queensland Rail has repaired that part of the Network to the extent that the contracted Train Services that were utilising that part of the Network before the Force Majeure Event are able to operate according to the terms of their Access Agreements;

**Rolling Stock** means rolling stock (as defined under the [TRSA<sup>R</sup>NSL](#)) that operates on or uses Track;

**Rolling Stock Operator** means a rolling stock operator (as defined under the [TRSA<sup>R</sup>NSL](#)) who operates or will operate Rolling Stock on the Network;

**RSNL** means the *Rail Safety National Law (Queensland)* as defined in the *Rail Safety National Law (Queensland) Act 2017 (Qld)*;

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

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

where:

- A** is the maximum number of Train Services, the description of which accords with the Reference Train Service, at full utilisation; and
- B** is the maximum number of the proposed Train Services at full utilisation,

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

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

then rtp is deemed to be one;

**Safety Management System** means Queensland Rail's safety management system (as required under the ~~TR~~[SARNSL](#));

**Safety Standards** has the meaning given to that term in the Operating Requirements Manual;

**Safeworking Procedures** has the meaning given to that term in the Operating Requirements Manual;

**Special Event means:**

(c) New Year's Eve;

(d) Brisbane Exhibition;

(e) Riverfire;

(f) Australia Day;

(g) Anzac Day (includes School Commemoration Service);

(h) Toowoomba Carnival of Flowers;

(i) Major sporting events; and

(j) other events notified to Queensland Rail from time to time by the Chief Executive of the Department of Transport and Main Roads, and for which Queensland Rail is required to provide passenger services in addition to the then scheduled passenger timetable.

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

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

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

**Take or Pay Charge** means a charge or other amount payable by an Access Holder to Queensland Rail under an Access Agreement in relation to the Access Holder not fully using its Access Rights for a specified period (and for a Train Service, the description of which accords with the Reference Train Service, is calculated as set out in **clause 4 of schedule D**);

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

**Terminating Date** means the earlier of:

(a) 30 June 2020; and 2025;

~~(a)(b)~~ in respect of any part of the service to which this Undertaking relates, the date on which that part of the service ceases to be a declared service for the purposes of Part 5 of the QCA Act; and

~~(b)(c)~~ the date on which this Undertaking is withdrawn in accordance with the QCA Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Urgent Possession** means a Possession:

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

other than an Emergency Possession;

**Usable Schedule Time** means a proposed Train Service that considers an Operator's ability to utilise Rolling Stock and crew (as contemplated by the Operating Plan) to operate on that proposed Train Service, Queensland Rail must also consider as part of the development of the proposed Train Service, the Operator's ability to operate any connecting Train Services;

**WACC** means the weighted average cost of capital: which from 1 July 2020 until 30 June 2025 is 7.47% per annum nominal post-tax;

~~(c) — which from 1 July 2016, means a rate of 5.73% per annum nominal post-tax; and~~

~~(d) — which from 1 July 2013 until 30 June 2016 is 6.93% per annum nominal post-tax;~~

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

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

## 7.2 Interpretation

- (a) In this Undertaking, unless the context otherwise requires:
- (i) words in the singular include the plural and vice versa;
  - (ii) any gender includes the other genders;
  - (iii) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
  - (iv) “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
  - (v) a reference to a person includes a partnership, joint venture, unincorporated association, corporation, government or statutory body or authority and any other entity recognised by law;
  - (vi) where:
    - (A) a group of persons are in a partnership, an unincorporated joint venture, an unincorporated association or other similar arrangement; and
    - (B) that group of persons together execute or seek to execute an agreement (including an Access Agreement or a rail haulage agreement) or such an agreement is executed or is sought to be executed for or on behalf of that group of persons,then that group of persons is deemed to constitute a single person, Customer, Access Seeker or Access Holder (as applicable);
  - (vii) a reference to:
    - (A) “dollars” or “\$” is a reference to Australian currency;
    - (B) a person includes the person’s legal personal representatives, successors, permitted assignees and persons substituted by novation;
    - (C) employees includes secondees;
    - (D) constructing includes all associated activities such as designing, installing, procuring and commissioning;
    - (E) an Extension includes any part of that Extension;
    - (F) conduct includes:
      - (1) a benefit, remedy, discretion, authority or power; and



- (2) any omission and any representation, statement or undertaking, whether or not in writing;
- (G) time is to local time in Brisbane;
- (H) a month is a reference to a calendar month;
- (I) subject to **clause 7.2(a)(vii)(J)**, a “Part”, “clause” or “schedule” is a reference to the corresponding Part or clause found in **Part 1 to Part 7** of this Undertaking or “schedule” to this Undertaking as amended or replaced from time to time;
- (J) in a schedule to this Undertaking:
  - (1) a “Part” or “clause”, is a reference to a Part or clause of that schedule unless otherwise stated; and
  - (2) a “Part” or “clause” of this Undertaking, is a reference to a Part or clause found in **Part 1 to Part 7** of this Undertaking;
- (K) this or any other document or agreement includes the document or agreement as varied, amended or replaced and despite any change in the identity of the parties to that document or agreement;
- (L) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
- (M) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
- (viii) if the date on or by which any act must be done under this Undertaking is not a Business Day, the act must be done on or by the next Business Day;
- (ix) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (x) if a term used in this agreement has the meaning given, or as defined, under any legislation, then that term has the meaning:
  - (A) given, or as defined, under that legislation from time to time; and
  - (B) where that legislation ceases to define that term, last given, or as last defined, under that legislation; and

- (xi) if there is any inconsistency between matters contained in a Schedule or the Preamble and **Part 1 to Part 7** of this Undertaking, the provisions in **Part 1 to Part 7** of this Undertaking prevail.
- (b) Headings do not affect the interpretation of this Undertaking.
- (c) To the extent that Queensland Rail's obligations under this Undertaking are or become inconsistent with Queensland Rail's obligations under any other Law, this Undertaking does not apply to the extent of that inconsistency.
- (d) If this Undertaking obliges Queensland Rail to provide any information, reports, documents or other material (in whatever form) (**Information**) to the QCA or any other person then, despite any other provision in this Undertaking, Queensland Rail is not required to comply with that obligation if Queensland Rail claims:
  - (i) on the ground of self incrimination, a privilege Queensland Rail would be entitled to claim against providing the Information were Queensland Rail a witness in a prosecution for an offence in the Supreme Court; or
  - (ii) that legal professional privilege applies in respect of that Information.

If Queensland Rail does not comply with an obligation on that basis, Queensland Rail must notify the QCA of this and Queensland Rail or the QCA may apply to the Supreme Court of Queensland for a determination of the validity of such a claim of privilege.

- (e) Despite any other provision in this Undertaking, this Undertaking does not expressly or impliedly waive any claim that Queensland Rail may have to legal professional privilege in respect of any information, reports, documents or other material (in whatever form).
- (f) The preamble to this Undertaking does not affect the interpretation of this Undertaking and no reference may be made to that preamble to interpret this Undertaking.
- (g) A reference in this Undertaking to a Train Service, the description of which accords with the Reference Train Service, is a reference to a Train Service operating to and from a specified Nominated Loading Facility and a specified Nominated Unloading Facility and which is otherwise consistent with **clause 2.1 of schedule D**.
- (h) A reference in this Undertaking to a Train Service, the description of which differs from the Reference Train Service, is a reference to a Train Service that is not consistent with **clause 2.1 of schedule D** in one or more respects.

# Schedule A – Preliminary Information and Capacity Information

## 1 Preliminary Information

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

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

## 2 Capacity Information

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

- (a) Master Train Plan;

- (b) the relevant current Daily Train Plan (being the current Daily Train Plan for the relevant day (or days) of the week) for the relevant part of the Network<sup>15</sup> which, for clarity, will be complete and will not be redacted in any way; and
- (c) the Network Control diagrams, indicating actual running of Train Services against the relevant Daily Train Plan, for those days for which the Daily Train Plan has been provided under **clause 2(b)**.

### 3 Capacity Information for an Extension

- (a) For the purpose of **clause 2.7.2(b)** of this Undertaking, the Capacity Information must identify if an Extension is required to the Network to provide the access rights sought in the Access Application,
- (b) If an Extension is required then Queensland Rail must provide detailed information on the required Extension, including:
  - (i) the capacity analysis, capacity modelling assumptions, and the modelling simulation outputs that underpin Queensland Rail's decision to require an Extension
  - (ii) either
    - (A) an outline of the investigations and works in relation to identifying and undertaking the Extension and indicative estimate of the cost of, and timing for, such investigations and works; or
    - (B) the proposed scope, standard and cost of the rail transport infrastructure (as defined in the TIA) works that will comprise the required Extension;
  - (iii) any information on the Extension that Queensland Rail relied on in developing its response to **3(b)(ii)** above; and
  - (iv) reasons why Queensland Rail has identified the proposed rail transport infrastructure works as comprising an Extension
- (c) Queensland Rail to provide ancillary information for the Access Seeker, including the:
  - (i) operational integrity of the relevant corridor that is to be extended;
  - (ii) minimum technical, engineering and Safety Standards required for the required Extension;
  - (iii) design specifications, infrastructure standards for the Network near to or adjoining the required Extension;

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<sup>15</sup> The relevant current Daily Train Plan provided will not show the whole Network. However, Queensland Rail will provide sufficient information about all Train Services that potentially impact on Existing Capacity.

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- (iv) planning procedures developed and maintained by Queensland Rail which need to be taken into account in considering whether to proceed with an Extension;
  - (v) all necessary authorisations reasonably required by Queensland Rail to proceed with the Extension;
  - (vi) all rights and interests in land that, in Queensland Rail's opinion are reasonably required and the acquisition terms that would be satisfactory to Queensland Rail, acting reasonably; and
  - (vii) subject to the Access Seeker having entered into an applicable confidentiality agreement in accordance with **clause 2.2.2(b)** of the Undertaking with Queensland Rail, the protocols, standards and procedures an Access Seeker is required to comply with under the terms of the Standard Access Agreement.
- (d) Queensland Rail to also provide:
- (i) the indicative funding requirements for it to assist the Access Seeker to develop the required Extension through the relevant stage of the Access Seeker's investment process; and
  - (ii) a first draft funding agreement that is consistent with the Extension Access Principles in **schedule I** of this Undertaking.

# Schedule B – Access Application information requirements

## 1 Application

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

## 2 Access Seeker and Customer details

Relevant identity and contact details including:

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

## 3 Ability to use Access Rights

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

- (a) where the Access Seeker seeks Access Rights that will be used for a person who is the Access Seeker's Customer, information evidencing that the Access Seeker is reasonably likely to have such a Customer at the commencement date of the Access Agreement.
- (b) whether the Access Seeker has secured, or is reasonably likely to secure:

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

## 4 Form of Access Agreement

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

## 5 Coal and freight Train Services

### 5.1 General Train Service details

Information describing the requested Train Services, including:

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

### 5.2 Timetable requirements

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service or a variation to an existing Train Service for the Access Seeker;

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

### **5.3 Rolling Stock and above rail operational details**

For all Access Seekers other than an End User Access Seeker, information describing the Rolling Stock and Train Configurations, including:

- (a) the proposed number of locomotives per Train;
- (b) the proposed number of wagons per Train;
- (c) the type and class of locomotive;
- (d) the mass of each locomotive (includes full sand and fuel load);
- (e) the type and class of wagons;
- (f) the nominal gross mass of wagon;
- (g) the tare mass of each wagon;
- (h) if carrying containers:
  - (i) the tare mass per container; and
  - (ii) the average number of containers per wagon;
- (i) the average proposed load (of product) per wagon;
- (j) the maximum proposed gross tonnes per wagon;
- (k) the maximum axle load of locomotives and wagons;
- (l) the gross tonnes and the nominal payload per Train Service, separately for forward and return journeys;
- (m) the Comparison Train Length for the proposed Train;
- (n) the proposed sectional run times;
- (o) the proposed maximum dwell times, time at loading facility, time at unloading facility and time at depot; and
- (p) the proposed requirements (if any) for the short-term storage of Trains (excluding individual items of Rolling Stock) on the Network at locations

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



specified by Queensland Rail during Possessions or during the operation of a Train Service.

#### **5.4 Infrastructure requirements**

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

## **6 Passenger Train Services**

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

Information describing the Train Services, including:

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

### **6.2 Timetable requirements**

Information setting out the timetabling requirements, including:

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

### **6.3 Rolling Stock details**

Information describing the Rolling Stock, including:

- (a) the total number of locomotives per Train;

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

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

#### 6.4 Infrastructure requirements

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

## 7 Transfers

Information relating to the Transfer including:

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

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

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

## 8 Renewals

Information relating to the Renewal including:

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

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

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

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

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## Schedule C – Operating Plan Template

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

### Operating Plan

for

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

**Document No:** ***(insert identification number for document)***

**Version:** ***(insert version number)***

**Date:** ***(insert date of issue)***

**Authorised by:** ***(insert name of person responsible for authorising operating plan)***

### Document Information

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

### Document Amendment History

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

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|

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

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

## 9 Introduction

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

eg:

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

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

## 10 Purpose

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

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

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

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

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



Insert any other applicable information.

## 11 Scope

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

The network map below indicates the route of the operation.

Insert map of corridors if required to clarify route.

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

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

## 12 Definitions

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

## 13 Associated documents

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

## 14 Service requirements

Provide details of the proposed train services including:

### 14.1 Area of operation

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

### 14.2 Business aspects

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

### 14.3 Operation

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

### 14.4 Train service levels / Scheduling

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

### 14.5 Alterations to Service Schedule

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

## 15 Rolling Stock information

### 15.1 Rolling Stock Data

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

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

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

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

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

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

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

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

## 15.2 Train Information

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

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

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

### 15.3 Rolling Stock Compliance Status

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

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

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

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

## 16 Safety systems

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

## 17 Communication systems

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

## 18 Interface arrangements

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

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

## 19 Contingency and recovery

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

## 20 Emergency management plans

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

## 21 Safety and environment risk assessment

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

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

## 22 Responsibilities and contact details

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

Responsibility	Organisation	Contact Person	Title	Contact Details

## 23 General comments

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

## 24 Appendices

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

# Schedule D – Reference Tariffs

## 1 Background and Term

### 1.1 Background

- (a) As coal carrying Train Services transporting coal to the Fisherman Islands coal loader at the Port of Brisbane need to travel over the Metropolitan NetworkSystem, the Reference Tariff has been structured so that it has specific Reference Tariff inputs relating to the Metropolitan NetworkSystem (that is,  $AT_{1(M)}$  and  $AT_{2(M)}$ ).
- (b) The Reference Tariff inputs have been separately identified for the Metropolitan NetworkSystem because some Train Services to which the Reference Tariff applies only use the Metropolitan NetworkSystem.

### 1.2 Term

The Reference Tariff calculated in accordance with this **schedule D** is effective during the Term.

## 2 Reference Train Service

### 2.1 Description of Reference Train Service

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

- (a) **(Commodity)** The Reference Train Service carries only bulk coal.<sup>20</sup>
- (b) **(Geographic scope)** The Reference Train Service operates:
  - (i) either solely on the Metropolitan NetworkSystem or on both the West Moreton NetworkSystem and the Metropolitan NetworkSystem; and
  - (ii) to and from a specified Nominated Loading Facility and a specified Nominated Unloading Facility.<sup>21</sup>
- (c) **(Characteristics)** Each Reference Train Service:
  - (i) has a maximum relative train length, including the locomotives, of 675 metres;<sup>22</sup>
  - (ii) has two locomotives and 41 wagons;

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

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

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



- (iii) has a maximum axle load of 15.75 tonne with loading in excess of this maximum axle load dealt with in accordance with the relevant load variation table;<sup>23</sup>
- (iv) utilises only diesel traction;
- (v) complies with the maximum speeds permitted on the Nominated Infrastructure as specified by Queensland Rail;
- (vi) complies with the Interface Standards applicable to the Nominated Infrastructure;
- (vii) is otherwise compatible with the Nominated Infrastructure and requires no additional expenditure by Queensland Rail to implement varied Below Rail controls identified in the IRMP;
- (viii) operates in accordance with nominated sectional running times specified by Queensland Rail for that Reference Train Service;
- (ix) has a Loading Time that does not exceed the relevant time specified in **clause 2.2(a)** provided that the Nominated Loading Facility is available for use by the Reference Train Service when that Reference Train Service arrives at the Nominated Loading Facility;
- (x) has an Unloading Time that does not exceed the relevant time specified in **clause 2.2(b)** provided that the Nominated Unloading Facility is available for use by the Reference Train Service when that Reference Train Service arrives at the Nominated Unloading Facility;
- (xi) operates with an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
- (xii) has the ability to operate on the configuration of the Nominated Infrastructure existing at the Approval Date without limiting the ability of existing Train Services to operate in accordance with their Train Service Entitlements and does not require an Extension;
- (xiii) utilises bottom dump wagons with the “KWIK DROP” door operating mechanism suitable for use on the West Moreton ~~NetworkSystem~~ or Metropolitan ~~NetworkSystem~~; and
- (xiv) utilises measures to minimise coal spillage and/or leakage en route that are reasonable, having regard to the practices existing at the Approval Date.

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

- (d) **(Dangerous Goods)** The Reference Train Service does not carry any Dangerous Goods.
- (e) **(Below Rail Services)** The Reference Train Service:
- (i) only requires services from Queensland Rail that are Below Rail Services; and
  - (ii) assumes Below Rail Services comprised in Access are provided in accordance with this Undertaking.
- (f) **(Conditions of Access)** The Reference Train Service will operate in accordance with the terms and conditions of the Standard Access Agreement.
- (g) **(Train Service Entitlement)** The Train Service Entitlement for the Reference Train Service will be:
- (i) based on its Trains being available for operation 24 hours per day and 365 days per year; and
  - (ii) specified in terms of Timetabled Service and will comply with the applicable corridor scheduling procedures.

## 2.2 Loading and unloading facilities

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

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

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

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

## 3 Reference Tariff

### 3.1 Calculation of the Reference Tariff

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

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

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


---

where:

**AT<sub>1(M)</sub>** and **AT<sub>1(W)</sub>** are the variable parts of the Reference Tariff specified as AT<sub>1(M)</sub> and AT<sub>1(W)</sub> in **clause 3.1(e)** (as varied, amended or replaced from time to time in accordance with this Undertaking or the QCA Act);

**AT<sub>2(M)</sub>** and **AT<sub>2(W)</sub>** are the fixed parts of the Reference Tariff specified as AT<sub>2(M)</sub> and AT<sub>2(W)</sub> in **clause 3.1(e)** (as varied, amended or replaced from time to time in accordance with this Undertaking or the QCA Act);

**gtk<sub>(W)</sub>** is the gtk for the relevant Train Service relating to the West Moreton **NetworkSystem**;

**gtk<sub>(M)</sub>** is the gtk for the relevant Train Service relating to the Metropolitan **NetworkSystem**;

**rtp<sub>(W)</sub>** is the rtp for the relevant Train Service relating to the West Moreton **NetworkSystem** – which will be zero if the Train Service does not use the West Moreton **NetworkSystem**;

**rtp<sub>(M)</sub>** is the rtp for the relevant Train Service relating to the Metropolitan **NetworkSystem**;

**AC** is any applicable Adjustment Charge (from time to time).

**TP** is any applicable Take or Pay Charge (from time to time).

- (b) For the purposes of the calculation under **clause 3.1(a)**, the amounts of AT<sub>1(M)</sub>, AT<sub>1(W)</sub>, AT<sub>2(M)</sub>, AT<sub>2(W)</sub>, the QCA Levy, any Adjustment Charge and any Take or Pay Charge are GST exclusive. An Access Charge calculated based on the Reference Tariff will have an amount for GST added to it.
- (c) For the purposes of this **schedule D**, a Train Service is a one way Train Service, that is, the journey from the Nominated Loading Facility to the Nominated Unloading Facility is one Train Service, and the return journey from the Nominated Unloading Facility to the Nominated Loading Facility is a second Train Service.
- (d) For the purposes of **clause 3.1(a)**, gtk will be assessed for the relevant Train Service over the billing period for the Access Charge which is based on the Reference Tariff being calculated.
- (e) Subject to **clauses 3.32** and **5**, the amounts of the Reference Tariff inputs are as follows:

Reference Tariff Input	\$	
	<del>A Train Service operating between Ebenezer and Fisherman Islands</del>	A Train Service operating between Jondaryan, Macalister or Columboola and Fisherman Islands <sup>24</sup>
	<del>1 July 2016</del>	1 July <del>2016</del> <u>2020</u>
AT <sub>1(M)</sub>	<del>16.66</del>	<u>8.339.07</u>
AT <sub>2(M)</sub>	<del>0</del>	<u>1,448.69250.51</u>
AT <sub>1(W)</sub>	<del>0</del>	<u>8.9611.20</u>
AT <sub>2(W)</sub>	<del>0</del>	<u>3,041.50676.06</u>
QCA Levy	<del>0.03684</del>	<u>0.03684</u> <u>[TBA]</u>

- (f) The amounts of the Reference Tariff inputs set out in **clause 3.1(e)** are calculated based on, amongst other things, the following Network capacity constraints (each a **Network Capacity Constraint**):
- ~~(i) 87 available round trip paths for contracting by coal carrying Trains per week on the Metropolitan Network;~~
  - ~~(i) 80~~
  - (ii) 97 available round trip paths for contracting by coal carrying Trains per week on the West Moreton NetworkSystem; and
  - (iii) a total capacity of 113 round trip Train Paths per week on the West Moreton NetworkSystem.

For the avoidance of doubt, any amendment to the amounts of the Reference Tariff inputs arising from an amendment to the Network Capacity Constraints must occur via a draft amending access undertaking pursuant to the QCA Act.

### ~~3.2~~ **Notional Reference Tariff**

- ~~(a) The Notional Reference Tariff for an Adjustment Train Service is calculated as follows:~~

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

~~where:~~

~~AT<sub>1(M)</sub> and AT<sub>1(W)</sub> are the variable parts of the Notional Reference Tariff specified as AT<sub>1(M)</sub> and AT<sub>1(W)</sub> in **clause 3.2(d)**;~~

<sup>24</sup> These figures are based on 9.1 million net tonnes of coal transport on the West Moreton System per annum.

<del><b>AT<sub>2(M)</sub></b></del> and <del><b>AT<sub>2(W)</sub></b></del>	<del>are the fixed parts of the Notional Reference Tariff specified as <math>AT_{2(M)}</math> and <math>AT_{2(W)}</math> in <b>clause 3.2(d)</b>;</del>
<del><b>gtk<sub>(W)</sub></b></del>	<del>is the gtk for the relevant Adjustment Train Service which used the loading facilities at Jondaryan, Macalister or Columboola to Rosewood;</del>
<del><b>gtk<sub>(M)</sub></b></del>	<del>is the gtk for the relevant Adjustment Train Service relating to the Metropolitan Network;</del>
<del><b>rtp<sub>(W)</sub></b></del>	<del>is (1) one where the relevant Adjustment Train Service used the loading facilities at Jondaryan, Macalister or Columboola; and, is (0) zero otherwise;</del>
<del><b>rtp<sub>(M)</sub></b></del>	<del>is (1) one;</del>
<del><b>AC</b></del>	<del>is any applicable adjustment charge paid pursuant to the relevant Access Agreement for the relevant Adjustment Train Service;</del>
<del><b>TP</b></del>	<del>is any applicable Take or Pay Charge calculated using the applicable take or pay charge calculation in the relevant Access Agreement for the relevant Adjustment Train Service;</del>
<del><b>QCA Levy</b></del>	<del>is the QCA levy paid pursuant to the relevant Access Agreement for the relevant Adjustment Train Service.</del>

- ~~(b) — For the purposes of the calculation under **clause 3.2(a)**, the amounts of  $AT_{1(M)}$ ,  $AT_{1(W)}$ ,  $AT_{2(M)}$ ,  $AT_{2(W)}$ , the QCA Levy, any AC and any TP are GST exclusive. For the purposes of calculating the Monthly Difference (as defined in **clause 7.1**), any GST paid in respect of an Adjustment Train Service is disregarded.~~
- ~~(c) — For the purposes of the calculation under **clause 3.2(a)**, an Adjustment Train Service is a one-way Train Service, that is, the journey from the relevant loading facility to the unloading facility at Fisherman Islands is one Train Service, and the return journey from the unloading facility at Fisherman Islands to the relevant loading facility is a second Train Service.~~
- ~~(d) — For the purposes of **clause 3.2(a)**, gtk will be assessed for the relevant Adjustment Train Service over the billing period for the Access Charge which was used in the relevant Access Agreement.~~
- ~~(e) — The amounts of the Notional Reference Tariff inputs for each year (or part thereof) until 30 June 2016 are as follows:~~

Notional Reference Tariff Input	\$					
	An Adjustment Train Service between Ebenezer and Fisherman Islands			An Adjustment Train Service between Jondaryan, Macalister or Columboola and Fisherman Islands		
	1 July 2013	1 July 2014	1 July 2015	1 July 2013	1 July 2014	1 July 2015
<del>AT<sub>1(M)</sub></del>	15.66	16.15	16.38	7.83	8.08	8.19
<del>AT<sub>2(M)</sub></del>	0	0	0	1,079.87	1,113.75	1,129.63
<del>AT<sub>1(W)</sub></del>	0	0	0	7.83	8.08	8.19
<del>AT<sub>2(W)</sub></del>	0	0	0	2,724.42	2,809.90	2,849.96

~~(f) For the period commencing 1 July 2016 until the Approval Date or 30 June 2017 (whichever is the sooner) the Notional Reference Tariff is calculated by using the formula in **clause 3.2(a)** with the relevant input amounts tabulated in **clause 3.1(e)** (except the QCA Levy which will be the QCA Levy in the relevant Access Agreement).~~

~~(g) If the Approval Date is on or after 1 July 2017, for the period commencing 1 July 2017 until the Approval Date or 30 June 2018 (whichever is the sooner) the Notional Reference Tariff is calculated by using the formula in **clause 3.2(a)** with the relevant input amounts tabulated in **clause 3.1(e)** (except the QCA Levy which will be the QCA Levy in the relevant Access Agreement) as escalated by applying **clause 3.3(a)** to those inputs.~~

### **3.33.2 Escalation of Reference Tariff inputs**

(a) Each Reference Tariff input specified in **clause 3.1(e)**, except the QCA Levy, will automatically escalate annually on each Escalation Date commencing on the First Escalation Date in accordance with the following formula:

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

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

where:

**AT<sub>n</sub>** means the value of the relevant Reference Tariff input to apply after escalation;

**AT<sub>n-1</sub>** means the escalated value of the relevant Reference Tariff input immediately prior to the relevant Escalation Date or, for

the First Escalation Date, means the relevant Reference Tariff input referred to in **clause 3.1(e)**;

**CPI<sub>n</sub>** means the CPI for the Quarter which commenced six months prior to the Escalation Date for which the variable AT<sub>n</sub> is being determined; and

**CPI<sub>n-1</sub>** means the CPI for the Quarter which commenced 18 months prior to the Escalation Date for which the variable AT<sub>n</sub> is being determined.

- (b) Queensland Rail will publish the escalated Reference Tariff inputs on its website within five Business Days after each Escalation Date commencing with the First Escalation Date.
- (c) Where an error has been made in the calculation of the escalated Reference Tariff inputs, Queensland Rail will correct the error so that the relevant Reference Tariff inputs are escalated in accordance with **clause 3.32(a)**.
- (d) For clarity, if:
  - (i) the basis of assessment of the CPI is altered in a material way; or
  - (ii) the CPI ceases (or is likely to cease) to be:
    - (A) published; or
    - (B) published at sufficiently regular intervals for the purpose of the calculation in **clause 3.32(a)**,

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

## 4 Take or pay

- (a) The charges or other amounts Queensland Rail is entitled to receive from Access Holders under Access Agreements in relation to Access Holders not fully utilising their Access Rights for a specified period for Train Services, the description of which accords with the Reference Train Service, are Take or Pay Charges in accordance with this **clause 4**.
- (b) Subject to **clause 4(c)**, Take or Pay Charges will be determined for:
  - (i) each Year during which the relevant Train Services are entitled to operate; or
  - (ii) the relevant part of a Year, if the relevant Train Services were only entitled to operate for part of the first or last Year during the term of the relevant Access Agreement because that entitlement commenced on a date other than 1 July or expired or terminated on a date other than 30 June,

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

- (c) Take or Pay Charges will only be determined and charged where the revenue (including Take or Pay Charges invoiced as an Interim Take or Pay Notice under an Access Agreement and relinquishment fees) that Queensland Rail earns in relation to all Train Services, the description of which accords with the Reference Train Service, in a Year is less than the Approved Ceiling Revenue Limit for that Year.
- (d) The amount of the Take or Pay Charges for a Take or Pay Period will be the amount which is 100% of the amount calculated for that Take or Pay Period as follows:

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

where:

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

provided always that the amount of Take or Pay Charges for a Take or Pay Period:

- (v) will not be less than zero;
- (vi) will not be such as to result in the revenue (including those amounts referred to in **clause 4(c)**) that Queensland Rail earns in relation to Train Services, the description of which accords with the Reference Train Service, in a Year being more than the Approved Ceiling Revenue Limit;
- (vii) where those charges would, but for **clause 4(d)(vi)**, result in the revenue that Queensland Rail earns in relation to Train Services, the description of which accords with the Reference Train Service, in a Year being more than the Approved Ceiling Revenue Limit, then that amount of excess revenue will be distributed equitably



across the relevant Train Services including, if applicable, adjusting the amounts to be invoiced to take into account Take or Pay Charges which have already been paid pursuant to an Interim Take or Pay Notice or refunding amounts already paid pursuant to an Interim Take or Pay Notice; and

provided further that no amount of Take or Pay Charges which have already been paid pursuant to an Interim Take or Pay Notice is re-invoiced.

- (e) When invoicing Take or Pay Charges, Queensland Rail will also include information on how the Take or Pay Charge was determined and evidence of compliance with **clause 4(c)** and the provisos to **clause 4(d)**.
- (f) The Approved Ceiling Revenue Limit for Train Services, the description of which accords with the Reference Train Service, are shown below in 2016-172020-21 dollars

Year	Approved Ceiling Revenue Limit for Train Services, the description of which accords with the Reference Train Service
<u>2016-17</u> <u>2020-21</u>	53,940,246.33[TBA]

- (g) The Approved Ceiling Revenue Limit in **clause 4(f)** will automatically escalate annually on each Escalation Date commencing on the First Escalation Date in accordance with the formula in **clause 3.3(a)** and Queensland Rail will publish the escalated Approved Ceiling Revenue Limit along with the information published pursuant to **clause 3.3(b)**.
- (h) For the avoidance of doubt, all revenue earned from Access Charges paid by an Access Holder for Train Services who would have paid the Reference Tariff but for the operation of **clause 3.3(b)(i)** of the Undertaking will be included in determining whether the Approved Ceiling Revenue Limit is reached (except for that portion of the Access Charges paid which exceeds the Reference Tariff that would otherwise have been payable due to the operation of **clause 3.3(b)(i)** (if applicable)).

## 5 Variation of Reference Tariffs

### 5.1 Obligation to submit a variation

- (a) Queensland Rail:
  - (i) except in relation to a change to a Network Capacity Constraint, may submit a variation of a Reference Tariff to the QCA, if Queensland Rail considers that the variation will promote efficient

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

- (ii) will submit a variation of a Reference Tariff to the QCA, subject to **clause 5.1(c)** within three months after:
  - (A) Queensland Rail becomes aware that an Endorsed Variation Event, or a Review Event, has occurred;
  - (B) the Approval Date, if an Endorsed Variation Event occurs on or before that Approval Date; or
  - (C) a written notice being given to Queensland Rail by the QCA in accordance with **clause 5.1(b)**.
- (b) The QCA may give Queensland Rail a written notice requiring it to submit a variation of a Reference Tariff if it has failed to submit a variation of a Reference Tariff under **clause 5.1(a)(ii)(A)** or **5.1(a)(ii)(B)** in respect of an Endorsed Variation Event.
- (c) The QCA may grant Queensland Rail an extension of the time for submitting, or resubmitting, a variation of the Reference Tariff if:
  - (i) Queensland Rail requests an extension of time; and
  - (ii) the extension of time is reasonable or necessary.
- (d) If the QCA grants Queensland Rail an extension of time under this **clause 5.1(c)**, Queensland Rail must submit or resubmit the variation of a Reference Tariff within the time specified by the QCA.

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

The QCA may develop a variation of a Reference Tariff that is consistent with the requirements under this **clause 5** for such a variation:

- (a) if Queensland Rail does not comply with a written notice given by the QCA under **clause 5.1(b)** or **5.4(c)(ii)** for it to submit, or resubmit, a variation of a Reference Tariff; or
- (b) if the QCA refuses to approve a variation of a Reference Tariff resubmitted by Queensland Rail in accordance with a notice given by the QCA under **clause 5.4(c)(ii)**.

## **5.3 Requirements for Reference Tariff variation**

- (a) A variation of a Reference Tariff submitted by Queensland Rail in accordance with **clause 5.1(a)** must:
  - (i) nominate the Reference Tariff to be varied;
  - (ii) include details of the methodology, data and assumptions used to vary the Reference Tariff;
  - (iii) if the variation is submitted under **clause 5.1(a)(i)**, include information on:

- (A) the matters set out in **clause 3.2** of **Part 3** of this Undertaking; and
  - (B) why Queensland Rail considers that the variation of the Reference Tariff will promote efficient investment in the coal transport supply chain in the West Moreton NetworkSystem or Metropolitan NetworkSystem; and
- (iv) if the variation is submitted under **clause 5.1(a)(ii)(A)** or **5.1(a)(ii)(B)**, include evidence that the Endorsed Variation Event or Review Event has occurred.
- (b) If the QCA considers it appropriate, the QCA may publish details of Queensland Rail's proposed variation of a Reference Tariff and invite and consider comments from stakeholders regarding that proposed variation (provided that Queensland Rail must be given a reasonable period in which to respond to the QCA in respect of any such comments).

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

- (a) The QCA may approve a variation of a Reference Tariff submitted by Queensland Rail in accordance with **clause 5.1(a)** if the QCA is satisfied:
- (i) for a variation submitted under **clause 5.1(a)(i)**, that the variation is consistent with the Undertaking and is appropriate after having regard to the QCA Act, including those factors listed in section 138(2) of the QCA Act;
  - (ii) for a variation submitted in respect of an Endorsed Variation Event or Review Event (**Event**), that:
    - (A) the Event has occurred; and
    - (B) the variation has been calculated as if all other Reference Tariffs were also being recalculated due to the occurrence that caused the Event; and
    - (C) the variation reflects the cost impact on Queensland Rail resulting from the relevant Event (including the impact on incremental maintenance, and incremental capital, costs) including, if applicable, the contracted coal-carrying Train Services on the West Moreton NetworkSystem and the Metropolitan NetworkSystem being greater than the forecasts of coal carrying Train Services used to develop Reference Tariffs for the West Moreton NetworkSystem and the Metropolitan NetworkSystem; and
  - (iii) for a variation submitted in respect of a Review Event, in addition to **clause 5.4(a)(ii)**, that:

- (A) the variation is appropriate after having regard to the QCA Act, including those factors listed in section 138(2) of the QCA Act; and
  - (B) for a Review Event of the type outlined in paragraph **(c)** of the definition of that term that the variation includes provision for Queensland Rail to recover no more than 50 per cent of the Access Charges which would have been payable to Queensland Rail but for the relevant Force Majeure Event.
- (b) If the QCA approves a variation to a Reference Tariff:
  - (i) it will give Queensland Rail a notice in writing stating the reasons for its decision;
  - (ii) the variation will apply:
    - (A) from the first day of the month immediately following the date of the occurrence of the Endorsed Variation Event or Review Event (as applicable); or
    - (B) where the date of the occurrence of the Endorsed Variation Event or Review Event is the first day of a month, from that date; and
  - (iii) Queensland Rail must:
    - (A) publish details of the variation on its website; and
    - (B) advise Access Holders and Access Seekers, in relation to the relevant Reference Train Service, of the variation.
- (c) If the QCA refuses to approve a variation to a Reference Tariff, it will give Queensland Rail a written notice:
  - (i) stating the reasons for its refusal and the way it considers that the variation should be amended; and
  - (ii) if that variation was required to be submitted by Queensland Rail in relation to an Endorsed Variation Event, requiring Queensland Rail to:
    - (A) vary the Reference Tariff in the way the QCA considers it appropriate; and
    - (B) resubmit the variation to the QCA,
 

within 20 Business Days after Queensland Rail receives the notice issued to Queensland Rail under this **clause 5.4(c)**.
- (d) Queensland Rail will comply with a notice given under **clause 5.4(c)(ii)**.
- (e) The QCA may approve a variation to a Reference Tariff that was:
  - (i) resubmitted under **clause 5.4(c)(ii)**; or

- (ii) developed by the QCA under **clause 5.2**,
- if the QCA is satisfied that the variation of the Reference Tariff:
- (iii) is consistent with the matters specified under **clause 5.4(a)** (provided that for the purposes of so applying **clause 5.4(a)** the relevant variation will be treated as though it was submitted by Queensland Rail under the relevant provision in **clause 5.1(a)**); and
  - (iv) if **clause 5.4(e)(i)** applies, is consistent with the relevant notice given by the QCA under **clause 5.4(c)**.
- (f) If the QCA refuses to approve a variation to a Reference Tariff that was resubmitted under **clause 5.4(c)(ii)**, the QCA will give Queensland Rail a notice in writing stating the reasons for its refusal.
  - (g) References in this clause to variation of a Reference Tariff include a reference to a variation to the Approved Ceiling Revenue Limit related to the variation of the Reference Tariff.

## 6 Adjustment Charges

### 6.1 Recovery or reimbursement of Adjustment Charges

- (a) If:
  - (i) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the QCA's approval of that Reference Tariff;<sup>25</sup> or
  - (ii) the QCA approves a variation of a Reference Tariff and that variation applies from or takes effect on a date prior to the QCA's approval of the variation,

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

- (iii) the aggregate of the differences, applicable to that Access Holder for each month (or part thereof) since the date on which the Reference Tariff or the variation of the Reference Tariff was to apply or take effect (Effective Date) until the date on which that Reference Tariff was approved by the QCA or the date on which the variation of the Reference Tariff was approved by the QCA, as applicable, between:
  - (A) the Access Charges paid or payable by that Access Holder in respect of the Train Services operated by

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<sup>25</sup> The Reference Tariff set out in this schedule, as at the Approval Date, only commences on the Approval Date – see **clause 1** of this schedule.

or for that Access Holder during that month (or part thereof); and

- (B) the Access Charges that would have been paid or payable by that Access Holder in respect of those Train Services if the Access Charges were calculated in accordance with the Reference Tariff or the variation of the Reference Tariff referred to in **clause 6.1(a)(i)** or **(ii)** on and from the Effective Date; and

- (iv) the aggregate of the interest calculated in accordance with **clause 6.1(b)** in respect of the amount of each difference comprising the amount calculated in accordance with **clause 6.1(a)(iii)**,

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

- (b) The interest referred to in **clause 6.1(a)(iv)** must be calculated:
  - (i) in respect of the amount of each difference comprising the amount calculated in accordance with **clause 6.1(a)(iii)**;
  - (ii) on the basis that the interest:
    - (A) accrues and is charged from day to day; and
    - (B) is capitalised at the end of each month and will thereafter itself bear interest;
  - (iii) at the rate equal to, for interest accruing in a month:
    - (A) the mid-point of the one month Bank Bill Swap Rate as published by the Australian Financial Markets Association (or its successor) for the Business Day immediately prior to the 21st day of the previous month; or
    - (B) if that rate is no longer published, the rate will be an appropriate equivalent rate determined by Queensland Rail (acting reasonably); and
  - (iv) for the period commencing on the date when the Access Charges paid or payable by the relevant Access Holder used to calculate the applicable difference in accordance with **clause 6.1(a)(iii)(A)** were due and payable and ending on the date when the Adjustment Charge is to be due and payable.

## 6.2 Obligation to submit Adjustment Charges

Queensland Rail:

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

submit proposed Adjustment Charges to the QCA.

## 6.3 Requirements for Adjustment Charge submission

- (a) Where Queensland Rail submits proposed Adjustment Charges to the QCA in accordance with **clause 6.2**, Queensland Rail's submission must, without limitation:
  - (i) identify, subject to **clause 6.3(b)**, the Access Holders to which the proposed Adjustment Charges will apply;
  - (ii) set out the proposed Adjustment Charges for each Access Holder including details of how those proposed Adjustment Charges were calculated; and
  - (iii) indicate the billing period(s) in respect of which the proposed Adjustment Charges are to be applied.
- (b) For the purposes of **clause 6.3(a)(i)**:
  - (i) an Adjustment Charge may only apply to an Access Holder (**New Access Holder**) that did not run the Train Services to which that Adjustment Charge relates (**Past Train Services**) if:
    - (A) the Access Holder who ran the Past Train Services no longer has (or, at the time when the Adjustment Charges are to be applied, will have ceased to have) a rail haulage agreement with the Customer for the Past Train Services in respect of Train Services with the same origin and destination as the Past Train Services;
    - (B) the New Access Holder has a rail haulage agreement with the Customer referred to in **clause 6.3(b)(i)(A)** (including that Customer's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services or the New Access Holder was that

Customer (or is that Customer's successor or assign); and

- (C) the New Access Holder has been granted Access Rights with the same origin and destination as the Past Train Services; and
- (ii) no Adjustment Charge will apply to an Access Holder who ran the Past Train Services if that Access Holder has, at the time when the Adjustment Charges are to be applied, ceased to have a rail haulage agreement with the Customer for the Past Train Services (including that person's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services provided that with the cessation of that rail haulage agreement, the applicable Access Rights were either relinquished or expired.
- (c) If the QCA considers it appropriate, the QCA may publish details of Queensland Rail's submission of proposed Adjustment Charges and invite and consider comments from stakeholders regarding the proposed Adjustment Charges (provided that, to the extent that stakeholders provide comments, Queensland Rail must be given a reasonable period in which to provide a response to those comments to the QCA).

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

- (a) Where Queensland Rail submits proposed Adjustment Charges to the QCA in accordance with **clause 6.2**, the QCA must approve:
  - (i) the Access Holders to which the Adjustment Charges will apply;
  - (ii) the Adjustment Charges that are to apply to each Access Holder;
  - (iii) the billing period(s) in respect of which the Adjustment Charges will be applied; and
  - (iv) if applicable, the interest rate selected by Queensland Rail under **clause 6.1(b)(iii)(B)** applies, if the QCA is satisfied that Queensland Rail has acted reasonably in selecting that rate.
- (b) If the QCA refuses to approve the proposed Adjustment Charges, the QCA must give Queensland Rail a notice in writing:
  - (i) stating the reasons for its refusal and the way in which the QCA considers the proposed Adjustment Charges should be amended so as to constitute (excluding any interest component) a reasonable recovery or reimbursement, as applicable to any under or over recovery of Access Charges by Queensland Rail that relate to each Access Holder; and
  - (ii) requiring Queensland Rail to vary the proposed Adjustment Charges in the way the QCA considers it appropriate and resubmit the amended proposal to the QCA within 20 Business Days after Queensland Rail receives the notice.



- (c) Queensland Rail must comply with a notice given under **clause 6.4(b)**.
- (d) The QCA must approve a resubmitted proposal for Adjustment Charges, if the resubmitted proposal has been amended or developed in accordance with the QCA's notice given under **clause 6.4(b)**.
- (e) Queensland Rail must comply with an approval of the QCA given in accordance with **clause 6.4(a)** or **(d)** including in applying the Adjustment Charge approved for each Access Holder to the calculation of Access Charges payable by that Access Holder.

## 6.5 Review of Access Charges to provide for Adjustment Charges

- (a) To the extent that Queensland Rail is lawfully able to do so, the calculation of Access Charges under an Access Agreement must be reviewed and varied to provide for the payment of Adjustment Charges approved by the QCA in accordance with **clause 6.4(a)** or **(d)** by the relevant Access Holder including that:
  - (b) the Access Charges payable by the Access Holder must include any applicable Adjustment Charge approved by the QCA from time to time in relation to or in connection with:
    - (i) any variation of a Reference Tariff approved by the QCA to apply or take effect on a date prior to the date on which the QCA approves the variation; or
    - (ii) any Reference Tariff that the Undertaking states is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; and
  - (c) an Adjustment Charge so determined by the QCA must be applied to the calculation of the amount of the invoice for charges payable by the Access Holder under the Access Agreement for the relevant billing period.

## ~~7 Adjustment Amounts~~

### ~~7.1 Adjustment~~

- ~~(a) Queensland Rail will allow a credit to each person who is or becomes an Access Holder in respect of coal carrying Train Services operating either solely on the Metropolitan Network or on both the West Moreton Network and the Metropolitan Network, in the amount of the Adjustment Amount.~~
- ~~(b) The "Adjustment Amount" is the sum of:~~
  - ~~(i) the aggregate of the differences, applicable to that Access Holder for each month (or part thereof) since 1 July 2013 until the Approval Date (Monthly Difference), between:~~
    - ~~(A) the Access Charges (which include, for the purposes of this clause 7, relinquishment fees, rebates and other payments paid pursuant to an Access~~

- Agreement (if applicable)) paid by that person in respect of the Adjustment Train Services operated by or for that person during that month (or part thereof); and
- (B) the Access Charges (including payments of the kind referred to in **clause 7.1(b)(i)(A)** (if applicable)) that would have been paid by that person in respect of the Adjustment Train Services if the Access Charges were calculated in accordance with the Notional Reference Tariff (as applicable); and
- (ii) the aggregate of the interest calculated in accordance with **clause 7.1(d)** in respect of the amount of each Monthly Difference comprising the amounts calculated in accordance with **clause 7.1(b)**;
- (c) Queensland Rail must apply the credit referred to in **clause 7.1(a)**:
- (i) on a day, being a day after the Approval Date, and in a manner to be agreed between Queensland Rail and the Access Holder; or
- (ii) failing agreement, by allowing a credit in the amount of the Adjustment Amount against the Access Charges payable by the Access Holder after the Approval Date in respect of coal carrying Train Services operating either solely on the Metropolitan Network or on both the West Moreton Network and the Metropolitan Network, until such credit has been exhausted.
- (d) The interest referred to in **clause 7.1(b)(ii)** must be calculated:
- (i) in respect of each Monthly Difference;
- (ii) on the basis that the interest:
- (A) accrues and is charged from day to day; and
- (B) is capitalised at the end of each month and will thereafter itself bear interest;
- (iii) at the rate equal to, for interest accruing in a month:
- (A) the mid-point of the one-month Bank Bill Swap Rate as published by the Australian Financial Markets Association (or its successor) for the Business Day immediately prior to the 21st day of the previous month; or
- (B) if that rate is no longer published, the rate will be an appropriate equivalent rate determined by Queensland Rail (acting reasonably); and
- (iv) for the period commencing on the date when the Access Charges payable by the relevant Access Holder used to calculate the applicable Monthly Difference in accordance with **clause**

~~7.1(b)(i)(A) were due and payable and ending on the date when the Adjustment Amount credit is applied.~~

## ~~7.2~~ **Adjustment Amount disputes**

~~Any dispute between Queensland Rail and an Access Holder in relation to **clause 7** of this **schedule D** can be referred to the QCA for determination in accordance with **clause 6.1.4** of this Undertaking.~~

## 87      Transitional

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

# Schedule E – Maintaining the Regulatory Asset Bases

## 1 Maintenance of Regulatory Asset Bases

### 1.1 Roll forward principles

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

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

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

- (a) The value of assets contained in a Regulatory Asset Base may be increased by Queensland Rail by including:
  - (i) at the end of the Term, the value of intangible assets that were not included in the initial valuation of assets contained in the Regulatory Asset Base; or
  - (ii) the value of additional sections of the Network incorporated into the West Moreton [NetworkSystem](#),provided that the increase in asset value must first be accepted by the QCA.
- (b) The QCA will not require the value of assets contained in the Regulatory Asset Base to be reduced unless:
  - (i) the QCA made its decision to accept the capital expenditure in the Regulatory Asset Base on the basis of information provided by Queensland Rail that Queensland Rail knew, or should have known, was false or misleading at the time it provided the information;
  - (ii) circumstances arise in the future where demand for Access has deteriorated to such an extent that regulated prices based on an unoptimised asset value would result in a further decline in demand for Access; or

- (iii) it becomes clear that there is a possibility of actual (not hypothetical) bypass.

### 1.3 Capital expenditure report

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

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

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

separately reported for Rosewood to Jondaryan, Jondaryan to Macalister and Macalister to Columboola.

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

## **1.5 Reasons for decisions**

- (a) A statement of reasons given by the QCA in accordance with this **Schedule E** must set out the basis and rationale for the decision or determination, including:
  - (i) any benchmarks considered or relied upon by the QCA;
  - (ii) details of the methods applied in any calculations or formulae made or used by the QCA;
  - (iii) the values adopted by the QCA for input variables in any calculations or formula;
  - (iv) details of any assumptions made by the QCA in undertaking any material qualitative or quantitative analysis; and
  - (v) reasons for the making of any decision or determination, such reasons being expressed by reference to the requirements relating to the decision as contained in this **Schedule E**.

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

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

- (a) The QCA will accept capital expenditure into a Regulatory Asset Base if that capital expenditure:
  - (i) is or has been accepted by the QCA as:
    - (A) prudent in scope in accordance with **clause 3**;
    - (B) prudent in the standard of works in accordance with **clause 4**; and
    - (C) prudent in cost in accordance with **clause 5**; and
  - (ii) has been incurred; and
  - (iii) either:
    - (A) the capital expenditure project has been commissioned; or
    - (B) formally discontinued.

- (b) The QCA must notify Queensland Rail in writing if it accepts capital expenditure into a Regulatory Asset Base.
- (c) If the QCA is considering refusing to accept all or part of any capital expenditure into a Regulatory Asset Base:
  - (i) the QCA must give Queensland Rail a draft of the QCA's decision (including a statement of reasons and the way it considers the capital expenditure should be adjusted);
  - (ii) Queensland Rail may revise the capital expenditure and/or provide additional information supporting its view that the capital expenditure should be included in the Regulatory Asset Base; and
  - (iii) the QCA must consider that revision and/or additional information when deciding whether to accept or refuse to accept the capital expenditure into the Regulatory Asset Base.
- (d) If the QCA refuses to accept all or part of any capital expenditure into a Regulatory Asset Base, the QCA must give Queensland Rail a notice of the QCA's decision (including a statement of reasons).
- (e) If Queensland Rail does not obtain the QCA's acceptance of any matters under **clauses 3 to 5** in relation to a capital expenditure project at any time, then this does not affect its right to seek any such acceptance under **clauses 3 to 5** at a later time.
- (f) For the avoidance of doubt, the Capital Indicator does not imply any acceptance by the QCA of that level of capital expenditure into a Regulatory Asset Base.

## 2.2 Assessing prudence of capital expenditure

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

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

determination is a refusal to accept anything (in whole or part), that notice must state the reasons for that refusal;

- (b) the QCA may request additional information from Queensland Rail that is reasonably required to make any determination under **clauses 3, 4 or 5** (as applicable) after receiving the request from Queensland Rail to make such a determination; and
- (c) Queensland Rail must respond to a request by the QCA under **clause 2.2(b)** as soon as reasonably practicable after receiving that request.

## 3 Prudency of scope

### 3.1 Assessment of prudency of scope

- (a) Assessing the prudency of scope of works for a capital expenditure project involves assessing whether the works are reasonably required.
- (b) The QCA's acceptance of the prudency of scope for a capital expenditure project may be requested at any time including prior to the capital expenditure being incurred.

### 3.2 Process for acceptance of prudency of scope

- (a) Queensland Rail may request the QCA to, and the QCA will, subject to **clause 3.2(c)**, accept the scope of a capital expenditure project as prudent if it is Customer or Access Holder specific capital expenditure (provided it is an Access Holder who has no Customer) for a branch line to a mine which is to be included as a loading point for a Reference Tariff, and the scope of the capital expenditure has been accepted by that Customer or Access Holder.
- (b) Before the QCA can accept capital expenditure referred to in **clause 3.2(a)**, Queensland Rail must demonstrate to the QCA that Queensland Rail has undertaken reasonable consultation with any Access Holder who may be adversely affected by that capital expenditure.
- (c) If **clause 3.2(a)** does not apply or acceptance is not sought or obtained under **clause 3.2(a)**, Queensland Rail or an Access Funder may request the QCA's acceptance of the scope of a capital expenditure project as prudent in accordance with **clause 3.2(d)**.
- (d) If a request is made under **clause 3.2(c)**, the QCA will accept the scope of a capital expenditure project as prudent if it is demonstrated to the QCA's reasonable satisfaction, having regard to the factors set out in **clause 3.2(e)**, that:
  - (i) Queensland Rail had reasonable grounds for proceeding with a project given the circumstances relevant at the time the investment decision was made; or
  - (ii) if **clause 3.2(d)(i)** does not apply, reasonable grounds exist for proceeding.



- (e) The factors that the QCA will have regard to for the purposes of **clause 3.2(d)** are, where relevant:
  - (i) the need to accommodate what is reasonably required to comply with Access Agreements;
  - (ii) the extent of Reasonable Demand, and the need for new capital expenditure projects to accommodate that demand;
  - (iii) the age and condition of existing assets and the need for replacement capital expenditure projects;
  - (iv) Queensland Rail's obligations under any Laws, including health, safety and environmental Laws;
  - (v) the appropriateness of Queensland Rail's processes to evaluate and select proposed capital expenditure projects, including which may include the extent to which alternatives are evaluated as part of the process;
  - (vi) the extent to which the capital expenditure project was subjected to Queensland Rail's processes to evaluate and select proposed capital expenditure projects; ~~and~~
  - (vii) the extent to which consultation has occurred with relevant stakeholders about the capital expenditure project; and
  - (viii) to the extent that any of the categories of information listed in this clause 3.2(e) are unavailable, any other information provided by Queensland Rail that is capable of demonstrating the matters of which the QCA is required to be satisfied under clause 3.2(d).
  - ~~(vii)~~

### 3.3 Excluded Capital Expenditure

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

then the QCA may also determine the element of the prudent costs of the capital expenditure project that was not needed to meet Reasonable Demand (**Excluded Capital Expenditure**).
- (b) If the QCA has determined Excluded Capital Expenditure in respect of a capital expenditure project, then:
  - (i) that Excluded Capital Expenditure will be set aside and escalated at the rate of the WACC from the date of commissioning of the capital expenditure project until the full scope of the capital

expenditure project is accepted by the QCA as required to meet Reasonable Demand (whether on one occasion or in parts over time); and

- (ii) when the QCA accepts that all or part of the excluded aspects of the capital expenditure project are required to meet Reasonable Demand:
  - (A) the QCA will accept all or the relevant part of the Excluded Capital Expenditure into the relevant Regulatory Asset Base at its escalated value; and
  - (B) if only part of the Excluded Capital Expenditure is included in a Regulatory Asset Base, **clause 3.3(b)(i)** will continue to apply to the remainder.

## 4 Prudency of standard of works

### 4.1 Assessment of prudency of standard of works

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

### 4.2 Process for acceptance of prudency of standard of works

- (a) Queensland Rail or an Access Funder may request the QCA's acceptance of the standard of works of a capital expenditure project as prudent in accordance with this **clause 4**.
- (b) If a request is made under **clause 4.2(a)**, the QCA will accept the standard of works of a capital expenditure project as prudent if:
  - (i) it is demonstrated to the QCA's reasonable satisfaction, having regard to the factors set out in **clause 4.2(c)**, that:
    - (A) Queensland Rail had reasonable grounds for its design of the relevant infrastructure given the circumstances relevant at the time that the design was prepared; or
    - (B) if Queensland Rail is yet to proceed with the project, reasonable grounds exist for the design of the relevant infrastructure; or
  - (ii) the proposed works are consistent in all material respects with the existing standard and configuration of adjacent infrastructure or existing infrastructure with similar usage levels, or its modern

engineering equivalent, to the extent that the standard of the adjacent or existing infrastructure has previously been accepted by the QCA as being reasonable.

- (c) The factors that the QCA will have regard to for the purposes of **clause 4.2(b)(i)** are, where relevant:
- (i) the requirements of Rolling Stock Operators and what is reasonably required to comply with Access Agreements;
  - (ii) current and likely future usage levels;
  - (iii) the requirements of the codes developed by the Rail Industry Safety And Standards Board (RISSB) Limited ACN 105 001 465 in relation to the standards required for rail infrastructure in Australia;
  - (iv) the requirements of other relevant Australian design and construction standards;
  - (v) Queensland Rail's design standards contained within the Safety Management System; ~~and~~
  - (vi) all relevant Law and the requirements of any Authority (including the Safety Regulator~~);~~; ~~and~~
  - (vii) to the extent that any of the categories of information listed in this **clause 4.2(c)** are unavailable, any other information provided by Queensland Rail that is capable of demonstrating the matters of which the QCA is required to be satisfied under **clause 4.2(b)**.

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## 5 Prudency of costs

### 5.1 Assessment of prudency of costs

- (a) Assessing the prudency of costs for a capital expenditure project involves assessing whether the costs are reasonable for the scope and standard of work done or to be done.
- (b) The QCA's acceptance of the prudency of costs for a capital expenditure project may be requested at any time (including, for the purposes of **clause 5.2**, prior to the capital expenditure being incurred).

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

- (a) If the QCA has approved a procurement strategy for a capital expenditure project under **clause 6.1(b)**, Queensland Rail or an Access Funder may request the QCA's acceptance of the costs of that capital expenditure project as prudent in accordance with this **clause 5.2**.
- (b) If a request is made under **clause 5.2(a)**, the QCA will accept as prudent:
  - (i) the value of a contract if the QCA is satisfied:

- (A) that contract provisions regarding contract variations and escalation accord with good commercial practice; and
  - (B) that, after taking into account any certification from an auditor engaged in accordance with **clause 6.2**, the tender for the contract has been conducted in accordance with the approved procurement strategy;
- (ii) where the value of a contract has been accepted as prudent in accordance with **clause 5.2(b)(i)**, the value of variations and/or escalations under that contract if:
- (A) the contract has been managed in accordance with the approved procurement strategy;
  - (B) the auditor engaged in accordance with **clause 6.2** has certified that the contract variations and/or escalations have been handled in a manner consistent with the relevant contract provisions; and
  - (C) the QCA is satisfied that the cost of contract variations and/or escalations is otherwise appropriate, having regard to whether:
    - (1) adequate consideration was given to properly managing the risk of contract variations and/or escalation or the allocation of potential risks during the awarding and management of the contract;
    - (2) the contract has been appropriately managed having regard to the matters in **clause 6.1(c)(iv)**; and
    - (3) the contract has been managed with regard to a prudent balance between costs, schedule and minimising disruption to Committed Capacity during construction; and
- (iii) all costs, paid for by or incurred by Queensland Rail, that Queensland Rail can demonstrate were prudently paid for or incurred and solely and directly related to complying with **clause 6**.

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

- (a) If **clause 5.2** does not apply or acceptance is not sought or obtained under **clause 5.2**, Queensland Rail or an Access Funder may request the QCA's acceptance of the costs of a capital expenditure project as prudent in accordance with this **clause 5.3**.
- (b) If a request is made under **clause 5.3(a)**, the QCA will accept the costs of a capital expenditure project as prudent if the costs are reasonable for the scope and standard of works undertaken having regard to the matters set out in **clause 5.3(c)** given the circumstances relevant at the

time when the costs were incurred or the capital expenditure project was undertaken (as applicable).

- (c) The factors that the QCA will have regard to for the purposes of **clause 5.3(b)** are where relevant:
- (i) the level of such costs relative to the scale, nature, cost and complexity of the project;
  - (ii) the circumstances prevailing in the markets for:
    - (A) engineering, equipment supply and construction;
    - (B) labour; and
    - (C) materials;
  - (iii) where the QCA has approved a procurement strategy for the capital expenditure project under **clause 6.1(b)**, the extent to which Queensland Rail has achieved compliance with that procurement strategy; and
  - (iv) the manner in which the capital expenditure project has been managed by Queensland Rail given the circumstances at the time when relevant management decisions and actions were made or undertaken, including Queensland Rail's balancing of:
    - (A) safety during construction and operation;
    - (B) compliance with environmental requirements during construction and operation;
    - (C) compliance with Laws and the requirements of Authorities;
    - (D) minimising disruption to the operation of Train Services during construction;
    - (E) accommodating reasonable requests of Access Holders (and, if applicable, their Customers) to amend the scope and sequence of works undertaken to suit their needs;
    - (F) minimising whole of asset life costs including future maintenance and operating costs;
    - (G) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
    - (H) aligning other elements in the supply chain; **and**
    - (I) meeting contractual timeframes and dealing with external factors; **and**
  - (v) to the extent that any of the categories of information listed in this **clause 5.3(c)** are unavailable, any other information provided by

Queensland Rail that is capable of demonstrating the matters of which the QCA is required to be satisfied under **clause 5.3(b)**.

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## 6 Approval of a procurement strategy

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

- (a) Where the QCA has approved the scope of a capital expenditure project as prudent in accordance with **clause 3**, Queensland Rail may request the QCA's approval of a procurement strategy for all or part of that capital expenditure project.
- (b) If a request is made under **clause 6.1(a)**, the QCA will approve Queensland Rail's procurement strategy if the QCA is satisfied that the procurement strategy:
  - (i) is in accordance with good industry practice;
  - (ii) will generate an efficient and competitive outcome;
  - (iii) will avoid conflict of interest or collusion amongst tenderers;
  - (iv) is prudent in the circumstances of the capital expenditure project including having regard to:
    - (A) the factors set out in **clause 6.1(c)**; and
    - (B) whether the procurement strategy tends to assist in achieving the requirements for prudence of costs set out in **clause 5.3**; and
  - (v) will avoid unreasonable exposure to contract variation claims.
- (c) The factors that the QCA will have regard to for the purposes of **clause 6.1(b)(iv)(A)** are whether, in the procurement strategy:
  - (i) there is a clear process for the calling of tenders, including having clear specifications for tenders, and processes for mitigating conflicts of interest (except when it is assessed that calling tenders is likely to be less advantageous than an alternative means of negotiating a contract);
  - (ii) there is a tender assessment process which contains clear and appropriate processes for determining the successful tender, with any decisions to approve a tender that is not the lowest tender being appropriately justified and documented;
  - (iii) the basis of payment for works is clearly specified and the basis for undertaking the works is in accordance with good commercial practice;
  - (iv) there is a process for managing contracts before and after award that accords with good commercial practice for a project of the type and scale of the capital expenditure project and provides

appropriate guidance on the criteria that Queensland Rail should apply to decisions regarding the management of the capital expenditure project, including:

- (A) safety during construction and operation;
  - (B) compliance with environmental requirements during construction and operation;
  - (C) minimising disruption to Committed Capacity during construction;
  - (D) accommodating the reasonable requests of Access Holders and, if applicable, their Customers to change the scope and sequence of construction to suit their needs;
  - (E) a prudent balance between:
    - (1) a higher price in return for more certainty as to final cost;
    - (2) a lower price accepting that final cost may be less certain; and
    - (3) costs, schedule and minimising disruption to Committed Capacity during construction;
  - (F) minimising whole of asset life costs including future maintenance and operating costs; and
  - (G) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
- (v) there is a process for managing contract variations and/or escalation that occurs post award of a contract, requiring that reasonable consideration be given to managing the risk of contract variations and/or escalation and the allocation of potential risks during the management of the contract and requiring the provision of clear documentary evidence regarding the nature and reasonableness of any variation and/or escalation; and
  - (vi) Queensland Rail has engaged an auditor in accordance with **clause 6.2** to monitor compliance with the procurement strategy.
- (d) The QCA will give Queensland Rail a notice in writing regarding:
    - (i) whether the procurement strategy is approved; and
    - (ii) if the QCA decides not to approve the procurement strategy (in whole or part) the reasons for its refusal and the way the processes under the procurement strategy may be amended to obtain the QCA's approval.

## 6.2 Implementation of approved procurement strategy

- (a) As part of the implementation of a procurement strategy approved by the QCA under **clause 6.1**, Queensland Rail will engage an independent external auditor to audit the compliance of Queensland Rail's tender and contract management processes with the approved procurement strategy approved in accordance with the following process:
- (i) Queensland Rail will appoint the auditor, after obtaining the QCA's approval of the auditor (including the terms of engagement);
  - (ii) the auditor will be required to acknowledge and accept that the auditor owes a separate duty of care to the QCA in the provision of the audit and, in the event of a conflict between the auditor's obligations to Queensland Rail and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence;
  - (iii) the auditor must agree the processes for conducting an audit with Queensland Rail and obtain the QCA's approval of the audit process (which will consist of a proposed work program, including audit costs, for the execution of the audit);
  - (iv) Queensland Rail will, within a reasonable time, provide any relevant information the auditor reasonably requires for the purpose of conducting the audit;
  - (v) if required by Queensland Rail, the auditor will enter into a confidentiality agreement with Queensland Rail in relation to any information provided by Queensland Rail to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report detailed in **clause 6.2(a)(vi)** below;
  - (vi) the auditor will compile an audit report:
    - (A) identifying whether Queensland Rail has complied in all material respects with the approved procurement strategy including in relation to contract variations and/or escalation; and
    - (B) if the auditor identifies that Queensland Rail has not complied in all material respects with the approved procurement strategy, detailing:
      - (1) the relevant non-compliance;
      - (2) any reasons stated by Queensland Rail for the relevant non-compliance; and
      - (3) whether the non-compliance was reasonable in the circumstances;
  - (vii) the auditor will provide to Queensland Rail and the QCA:



- (A) progress reports on the audit process every six months; and
  - (B) a copy of the audit report upon completion of the audit (which the QCA may publish if it considers it appropriate); and
- (viii) if the QCA considers that any of the auditor's reports (whether progress reports or a final report) are lacking in detail or otherwise deficient, the QCA may direct Queensland Rail to instruct the auditor to review the relevant report and, in doing so, to address the concerns of the QCA.
- (b) For the purpose of **clause 5**:
- (i) the costs incurred by Queensland Rail in relation to an external auditor engaged in accordance with this **clause 6.2** will form part of the capital expenditure for the relevant capital expenditure project and the QCA will accept those costs as prudent; and
  - (ii) the QCA will treat all other costs paid or incurred by Queensland Rail in implementing or otherwise complying with a procurement strategy approved by the QCA under **clause 6.1** as capital expenditure and will accept those costs for inclusion in the relevant Regulatory Asset Base if the QCA is satisfied that they were prudently incurred.

## 7 Capital Expenditure Carryover Account

- (a) Queensland Rail will maintain registers in which it will annually record all Approved Capital Expenditure (including identifying the relevant capital expenditure by project) in relation to the West Moreton NetworkSystem and the Metropolitan NetworkSystem.
- (b) If, at the end of each Year, the Approved Capital Expenditure differs from the relevant Capital Indicator for West Moreton NetworkSystem or the Metropolitan NetworkSystem<sup>26</sup> (as applicable), the difference will be entered in the Capital Expenditure Carryover Account. The balance recorded in the Capital Expenditure Carryover Account will be deemed as:
  - (i) an under recovery of revenue, where the Approved Capital Expenditure exceeds the relevant Capital Indicator; or
  - (ii) an over recovery of revenue, where the Approved Capital Expenditure is less than the relevant Capital Indicator.
- (c) The balance recorded in the Capital Expenditure Carryover Account will include:

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<sup>26</sup> For clarity, the Capital Indicator for the Metropolitan NetworkSystem for the Term is taken to be zero.

- (i) a return on capital component, calculated as the difference between the return on capital assumed for the relevant Capital Indicator and the return on capital that should have applied for the Approved Capital Expenditure, accrued at the WACC;
- (ii) a depreciation component, calculated as the difference between the depreciation assumed for the relevant Capital Indicator and the depreciation that should have applied for the Approved Capital Expenditure; and
- (iii) a tax depreciation component, calculated as the difference between the tax depreciation assumed for the relevant Capital Indicator and the tax depreciation that should have applied for the Approved Capital Expenditure,

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

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

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

# Schedule F – Network Management Principles

## 1 Application

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

## 2 Train Planning Principles

### 2.1 Master Train Plan Principles

- (a) A MTP will indicate the Capacity necessary to satisfy all relevant Train Service Entitlements, all of Queensland Rail's passenger Train Services, and time allocated for Planned Possessions.
- (b) Access Holders' Train Service Entitlements and Queensland Rail's passenger Train Services will be allocated particular Train Paths.
- (c) A MTP will be in a form that sets out the time/distance (location) relationship of the Train Services and other activities on the relevant part of the Network and is readily convertible to a DTP.
- (d) Queensland Rail will notify all Access Holders and any other parties whose activities may be affected (for example, parties that are affected by the availability of access to the Network including operators of rail and port facilities) by any modifications to a MTP, or the scheduling of an Ad Hoc Planned Possession, at least three months prior to the commencement of the modification (except in the case of an Urgent Possession or Emergency Possession).<sup>27</sup> However, despite the foregoing, Queensland Rail is only required to notify parties (other than Access Holders) who have notified Queensland Rail that they require to be notified in relation to changes.
- (e) Subject to **clause 2.1(f)**, an Access Holder must give Queensland Rail sufficient notice of any requested changes to a MTP to enable Queensland Rail to consider the requested changes and, if Queensland Rail agrees to the making of those modifications, to comply with **clause 2.1(d)**.
- (f) A notice given by an Access Holder under **clause 2.1(e)** must be given no less than:
  - (i) six months prior to the date to which the change relates, where the change relates to a passenger Train Service; or

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<sup>27</sup> Notification to parties other than Access Holders may be done by posting suitable information to Queensland Rail's website. The MTP will be complete and not be redacted in any way.

- (ii) three months prior to the date to which the change relates, where the change relates to a non-passenger Train Service.
- (g) Except as otherwise provided in an Access Agreement, the cancellation of a Train Service does not excuse either Queensland Rail or an Access Holder from any relevant obligations under that Access Agreement.
- (h) Queensland Rail will publish on its website the MTPs applicable as at the Approval Date and Ad Hoc Planned Possessions and will update the MTPs and Ad Hoc Planned Possessions published on its website, from time to time, so that the MTPs and Ad Hoc Planned Possessions published are those applicable as at the last semi-anniversary or anniversary of the Approval Date, as applicable.
- (i) Despite **clause 2.1(h)**, an Access Holder or their Customer may (acting reasonably) request a copy of the current MTP or Ad Hoc Planned Possessions from Queensland Rail, from time to time, and if Queensland Rail receives such a request Queensland Rail will provide a copy of the relevant MTP or Ad Hoc Planned Possession to that Access Holder or Customer as soon as reasonably practicable.
- (j) The MTPs and Ad Hoc Planned Possessions published under **clause 2.1(h)**, or provided under **clause 2.1(i)**, will be complete and will not be redacted in any way.
- (k) Nothing in this **schedule F** requires the preparation and publication of a single MTP or details of Ad Hoc Planned Possessions that ~~applies~~ apply to the Network as a whole. Queensland Rail may prepare separate MTPs (and, as a consequence, DTPs), and Ad Hoc Planned Possessions for different parts of the Network.

#### **Modifying a MTP/Ad Hoc Planned Possessions**

- (l) Subject to ~~clauses~~ **clause 2.1(m)**, ~~a MTP may be modified by~~ Queensland Rail may from time to time modify a MTP or schedule an Ad Hoc Planned Possession.
- (m) Queensland Rail will not modify the MTP, or schedule an Ad Hoc Planned Possession, where ~~the modification to do so~~ would result in an Access Holder's scheduled Train Services not being met, unless Queensland Rail:
  - (i) has consulted with that Access Holder and given the notice required under **clause 2.1(d)** of this **schedule F**; and
  - (ii) to the extent that the modification or Ad Hoc Planned Possession is not within the scope of that Access Holder's Train Service Entitlement and is not an Emergency Possession or an Urgent Possession, has agreed the modifications or scheduled Ad Hoc Planned Possession with that Access Holder (such agreement not to be unreasonably withheld).

## 2.2 Daily Train Plan Principles

- (a) A DTP will indicate all scheduled Train Services, Planned Possessions and Ad Hoc Planned Possessions in a form that indicates the time/distance (location) relationship of all activities,
- (b) A DTP represents an expected performance target that, subject to variations to the DTP permitted by this **schedule F**:
  - (i) Queensland Rail must comply with in making available Access to the Network for a particular day of operation; and
  - (ii) each Access Holder must comply with for its Train Services, for a particular day of operation for a specified part of the Network.
- ~~(c)~~ Queensland Rail will:
  - (i) no more than three months prior to the day (commencing at 0000 hours and ending at 2359 hours) to which the DTP relates (Day of Operation), prepare an indicative DTP:
  - ~~(c)(ii)~~ At least one Business Day prior to the ~~day~~Day of ~~operation~~Operation, Queensland Rail will schedule a DTP and provide all relevant Access Holders and Infrastructure Service Providers and any other parties whose activities are affected (including for example, relevant operators of rail and port facilities) with ~~a copy~~an extract of ~~that~~the DTP specifying the relevant Train Services. However, despite the foregoing, Queensland Rail is only required to notify parties (other than Access Holders) who have notified Queensland Rail that they require to be notified in relation to changes. For clarity, the DTP provided will be complete and will not be redacted in any way.
- (d) Except as otherwise provided in an Access Agreement, the cancellation of a Train Service does not excuse either Queensland Rail or an Access Holder from any relevant obligations under an Access Agreement.

### Scheduling a DTP in variation from a MTP

- (e) A DTP must be developed from, and except as provided in this **schedule F**, be consistent with, the applicable MTP. However, a DTP may be scheduled in variation to a MTP by Queensland Rail, without consultation, where, ~~at least two Business Days prior to the day of operation, and prior to the DTP being scheduled:~~
  - (i) it is necessary to accommodate an Ad Hoc Planned Possession scheduled in accordance with clauses 2.1(l) and (m); or
  - (ii) at least two Business Days prior to the Day of Operation, and prior to the DTP being scheduled:

~~(i)~~(A) any of the following apply:

~~(A)~~(1) an Access Holder requests a short-term change to the times at which any of its Train Services, as scheduled in the MTP, operate;

~~(B)~~(2) an Access Holder requests to run an Ad Hoc Train Service; or

~~(C)~~(3) Queensland Rail modifies the times at which any of its passenger Train Services, as scheduled in the MTP, operate; and

provided that the variation does not result in any other Access Holder's scheduled Train Services not being met; or

(f) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the ~~day~~Day of ~~operation~~Operation, and prior to the DTP being scheduled, Queensland Rail wishes to make a short-term change to the times at which one or more scheduled Train Services operate, provided that:

(i) the change is intended to accommodate:

(A) the modification of an existing Ad Hoc Planned Possession;

~~(A)~~(B) ~~the modification of an existing~~ Planned Possession;

~~(B)~~(C) the creation of an Urgent Possession or Emergency Possession; or

~~(C)~~(D) any other Operational Constraint affecting the DTP; ~~and~~or

(E) a Special Event; and

(ii) Queensland Rail has, for changes under **clause 2.2(f)(i)(A) and (C) and (D)**, consulted, and made reasonable endeavours to reach agreement in relation to the proposed modifications, with the affected Access Holders; and

(iii) for changes under **clause 2.2(f)(i)(B)**, Queensland Rail has used its reasonable endeavours to consult with the relevant Access Holders.

(g) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the ~~day~~Day of ~~operation~~Operation, and prior to the DTP being scheduled, Queensland Rail makes a short-term change to the times at which one or more scheduled Train Service/s operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlement, for the purpose of accommodating an Emergency Possession provided that where the variation would result in an Access Holder's scheduled Train Services not being met, Queensland Rail has consulted with that Access Holder.

- (h) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the ~~day~~Day of ~~operation~~Operation, and prior to the DTP being scheduled, Queensland Rail and all affected Access Holders agree to the modification provided that where Queensland Rail seeks such a modification, Queensland Rail:
  - (i) invites affected Access Holders to consider the variation in an appropriate forum;<sup>28</sup> at least 36 hours prior to the day of operation; and
  - (ii) gives each of those parties a copy of the proposed variation at least 12 hours prior to the scheduled consideration of the variation.
- (i) For clarity, Queensland Rail may schedule a DTP in variation from a MTP under any one of **clauses 2.2(e) to (h)** even if Queensland Rail cannot do so under, or does not comply with, any of the other of those clauses in respect of that modification.

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

- (j) Queensland Rail may make modifications to a scheduled DTP on a case by case basis:
  - (i) where:
    - (A) before the ~~day~~Day of ~~operation~~Operation, Queensland Rail receives a request from an Access Holder to run an Ad Hoc Train Service; or
    - (B) before a Train Service commences operation, the Access Holder requests a change to the time at which its Train Service will operate and that change is within the scope of the Access Holder's Train Service Entitlement,provided that the modification does not result in any other Access Holder's scheduled Train Services not being met; or
  - (ii) where, before the commencement of a relevant Train Service, Queensland Rail notifies the Access Holder that an Emergency Possession is required; and
  - (iii) Queensland Rail has used reasonable endeavours to notify and consult with any Access Holder whose Train Services may be affected by the modification or any other affected party.

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

- (a) To the extent that:
  - (i)        a MTP is to be modified under **clause 2.1**;

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<sup>28</sup> This could include a face-to-face meeting, a telephone conference or any other forum that provides the affected parties with the best opportunity to participate.

~~(i)(ii)~~ an Ad Hoc Planned Possession is to be scheduled under **clause 2.1**; or

~~(ii)(iii)~~ a DTP is to be scheduled in variation from a MTP under **clause 2.2**,

Queensland Rail will use its reasonable endeavours to minimise any material adverse effects on Train Services that will be caused by that modification or variation.

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

## **2.4 — Disputes**

~~Except in relation to Emergency Possessions and Urgent Possessions, if there is a bona fide dispute between an Access Holder and Queensland Rail in relation to any proposed changes or modifications to the MTP, the proposed change will not take effect until the dispute has been resolved using the dispute resolution provisions of the Undertaking.~~



### 3 Network Control Principles

#### Objective

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

#### Access Holders

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

#### Provision of Network Control information

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

#### Traffic Management Decision Making Matrix

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

(h) The Traffic Management Decision Making Matrix is as follows:

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

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

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

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

#### **Principles for managing deviations from a DTP**

(i) It is necessary for Network Controllers to have sufficient discretion to take into account the varying objectives of different traffic types, and the circumstances of a particular part of the Network, in assessing the priority to be given to Train Services and other activities on the Network. Network Controllers will apply the following principles in managing deviations from a DTP:

- (i) a Train Service may be given priority over other Train Services if it is reasonably necessary to do so:
  - (A) due to, or to avoid, an accident, emergency or incident relating to any part of the Network;
  - (B) to remedy, or to mitigate or avoid, the operation of Train Services on any part of the Network being congested, prevented or otherwise materially adversely affected;
  - (C) to remedy, or to mitigate or avoid, any Emergency Possession or Urgent Possession on any part of the

Network being prevented or otherwise materially adversely affected; or

- (D) to ensure the safe operation of any part of the Network;
- (ii) subject to **clause 3(i)(i)**, passenger Train Services may be given priority over other Train Services if the Network Controller reasonably believes that this is necessary to seek:
- (A) to bring a “Late” passenger Train Service back to being “On Time” or closer to being “On Time”;
  - (B) to prevent that “Late” passenger Train Service becoming “Later”; or
  - (C) to avoid an “On Time” or “Ahead” passenger Train Service that is operating, is scheduled to operate, or will be scheduled to operate in the Metropolitan NetworkSystem during any peak period<sup>29</sup> from becoming a “Late” passenger Train Service;
- (iii) subject to **clause 3(i)(i)**, livestock Train Services may be given priority over other Train Services if the Network Controller believes that this is desirable taking into consideration the livestock being transported (including, for example, the welfare of the livestock);
- (iv) subject to **clauses 3(i)(i) to (iii)**, a Train Service may be given priority over other Train Services if it is necessary to do so to remedy, or to mitigate or avoid, any Planned Possession on any part of the Network being prevented or otherwise materially adversely affected; and
- (v) subject to **clauses 3(i)(i) to (iv)**, where a Train Service is running “Late” due to a Below Rail Delay, it may be given preference over other Train Services if the Network Controller believes that this is consistent with the critical objectives of the Train Services in question, and that it will result in less aggregated consequential delays to other Train Services than otherwise would be the case.

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<sup>29</sup> The time periods: (a) from 6:00am to 9:00am; and (b) from 3:30pm to 6:30pm, on Business Days or as otherwise notified by Queensland Rail (acting reasonably) from time to time.

Schedule G – ~~Operating Requirements~~  
~~Manual~~ [NOT USED]

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## Schedule H – Standard Access Agreement



Queensland Rail Limited

[Insert name of Operator]

[Insert name of Access Holder]

# Access Agreement

[Note: This agreement is a standard access agreement and is based on the following assumptions, that:

- the grant of Access Rights only involves the allocation of Available Capacity;
- no provisions relating to the provision of Additional Capacity in respect of an Extension are required; and
- no conditions precedent are necessary.

Without limiting the ability of the parties to negotiate terms, if any of these assumptions are not true, then the Parties will need to seek to negotiate amendments.

This standard access agreement contains various notes in respect of alternative clauses (for example, in relation to Dangerous Goods) and in respect of adjustments that are needed where the Reference Tariff does not apply to the setting of the Access Charges or this agreement is in relation to a Subsequent Operator. For example, if this agreement relates to a Subsequent Operator it will be amended to incorporate a new Schedule 1 and Schedule 2 to reflect the Train Services to be operated by that Subsequent Operator.]

Version: 1

Date Approved: [insert date]

**Style Definition:** Heading 2,1.1,1.1.1 Ch,2,2m,Attribute Heading 2,B Sub/Bold,B Sub/Bold1,B Sub/Bold11,B Sub/Bold2,H-2,H2,Heading 2 Para2,Para2,Reset numbering,Section,Sub-heading,UNDERRUBRIK 1-2,body,delete style,h,h 2,h2,h2 main heading,h2.H2,heading 2body,p,sub-para,test: Indent: First line: 0 cm, Tab stops: 3.5 cm, List tab + Not at 1.5 cm

**Style Definition:** Heading 3,(Alt+3),(a),1st sub-clause,3,3m,Bold Head,C Sub-Sub/Italic,C Sub-Sub/Italic1,C Sub-Sub/Italic11,C Sub-Sub/Italic2,H3,H31,Head 3,Head 31,Head 311,Head 32,Head 321,Head 33,Level 1 - 1,Level 1 - 2,Tas,bh,d,h3,h3 sub heading,h3.H3,h31,h:3,head3,l3: Indent: Hanging: 2 cm, Tab stops: 3.5 cm, List tab + Not at 3.5 cm

**Style Definition:** Comment Text

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## Date

## Parties

**Queensland Rail Limited** ABN 71 132 181 090 of 14 Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Queensland Rail**)

and

The person set out in item 1 of schedule 1 (**Access Holder**)

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and

The person set out in item 3 of schedule 1 (**Operator**)

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## Background

- A Queensland Rail operates, and is the Railway Manager for, the Network.
- B The Access Holder is seeking, and Queensland Rail has agreed to grant non-exclusive Access Rights to the Access Holder for the operation of Train Services over the Network by an Accredited **RailwayRolling Stock Operator** (or Subsequent Operators).
- C This agreement sets out the terms agreed by the Parties in accordance with which the Access Holder is granted non-exclusive access to the Network for the operation of Train Services by an Accredited **RailwayRolling Stock Operator** (or Subsequent Operators).

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## Agreed terms

### 1 Term and renewal

#### 1.1 Term

This agreement:

- (a) commences on the Commencement Date; and
- (b) terminates on the Termination Date unless otherwise terminated in accordance with its terms (except to the extent that any provisions of this agreement are expressed or implied to survive the expiry or termination of this agreement).

## 1.2 Right to renewal

- (a) The Parties acknowledge that any rights which the Access Holder may have in relation to the renewal of this agreement will be as expressly provided in the Access Undertaking.
- (b) Where the Access Holder seeks a renewal of this agreement, each Party acknowledges that:
  - (i) negotiations in respect of renewal must occur in good faith as required by and subject to the QCA Act and the Access Undertaking;
  - (ii) the negotiations and any renewal are subject to compliance with all applicable Laws including section 266 and 266A of the TIA as they apply to Queensland Rail.
- (c) In this **clause 1.2** a reference to a renewal is a reference to the execution of a new access agreement that has the effect of continuing all or some of the Train Services under this agreement for a further term.

## 1.3 Productivity and efficiency variations

- (a) Where the Access Holder or the Operator, during the term of this agreement, seeks a variation to this agreement to promote, or accommodate, a demonstrable efficiency or productivity improvement for the supply chain, Queensland Rail must reasonably consider those proposed variations ~~and negotiate in respect~~ having regard to factors including the impact on the use of these variations in good faith the Network by Access Seekers or Access Holders, whether the proposed variation creates a capacity increase, demand for capacity and any other realisable gains to all Parties.
- (b) If, despite reasonable consideration, Queensland Rail rejects any variation proposed pursuant to **clause 1.3(a)**, Queensland Rail must provide written reasons for not accepting any such variations in whole or in part.

## 2 Access Rights

### 2.1 Grant of Access Rights

- (a) Queensland Rail [[grants] or [confirms that it is has granted]]<sup>1</sup> to the Access Holder the non-exclusive right to access the Network commencing on the Commitment Date for all of the Train Services until the End Date for each of those Train Services (unless this agreement terminates earlier in accordance with its provisions or any Law) subject to, and in accordance with, this agreement (**Access Rights**).

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<sup>1</sup> Wording dependent on whether this agreement is an initial Agreement or a Subsequent Agreement.

- (b) The Access Rights create a non-exclusive contractual right and do not give the Access Holder any right, title or interest of any proprietary nature in the Network.

## 2.2 **Exercise of Access Rights and Operator nomination**

- (a) The Parties acknowledge and agree that:
  - (i) the grant of the Access Rights does not entitle the Access Holder to operate Train Services itself on the Network (unless it is also an Accredited ~~Railway~~Rolling Stock Operator and is nominated to operate all or some of the Train Services in accordance with this agreement);
  - (ii) ~~The~~the Access Holder can only utilise the Access Rights by nominating an Accredited ~~Railway~~Rolling Stock Operator from time to time in accordance with this agreement;
  - (iii) ~~The~~the Access Holder may nominate more than one Accredited ~~Railway~~Rolling Stock Operator.

## 3 **Operational Rights**

### 3.1 **Grant of Operational Rights**

On and from the Commitment Date for each Train Service until the End Date for that Train Service, Queensland Rail grants, and must provide, to the Operator the right to operate that Train Service in accordance with the Train Service Description on the terms and conditions of this agreement.

### 3.2 **Nature and scope of Operational Rights**

- (a) The right to operate granted under **clause 1.13.4** is a non-exclusive contractual right and does not give the Operator any right, title or interest of any proprietary nature in the Network.
  - (b) The Operator must:
    - (i) only operate on, or use any part of, the Network that is specifically included in this agreement; and
    - (ii) not use the Network for:
      - (A) carrying out any provisioning, inspection, testing or maintenance of Rolling Stock;
      - (B) any marshalling, shunting or other relocation of Rolling Stock;
      - (C) storage of Rolling Stock; or
      - (D) any purpose other than the operation of Train Services,
- unless otherwise expressly:
- (iii) permitted or required to do so under this agreement;

(iv) directed to do so by Queensland Rail in accordance with this agreement; or

(v) expressly permitted under another agreement with Queensland Rail.

### **3.3 Nomination of Subsequent Operators**

~~(b)~~(a) Subject to **clause 3.3(c)2-2(d)**, the Access Holder may, from time to time, provided that it is not in material breach of any of its obligations under this agreement, nominate one or more Accredited ~~Railway Rolling Stock Operators~~ **Operators - (Subsequent Operator)** to utilise all or part of the Access Rights upon giving at least 20 Business Days prior written notice to Queensland Rail. The notice must:

(i) specify:

- (A) the name, ABN, address and contact details of the ~~Nominee~~**Subsequent** Operator;
- (B) the Access Rights which the Access Holder wishes to allocate to that ~~Nominee~~**Subsequent** Operator for that Operator to use in providing some or all of the Train Services for the Access Holder;
- (C) the first day and the last day of the period for which the Access Rights are to be allocated to that ~~Nominee~~**Subsequent** Operator; and

(ii) be accompanied by:

~~(A) in the case of the Initial Operator, a counterpart of this agreement, executed by that Operator, which reflects, in **schedule 2** to this agreement, the Access Rights which the Access Holder wishes to allocate to that Operator and any changes to the agreement required pursuant to **clause 4.2**.~~  
or

~~(B)~~(A) ~~in the case of a Subsequent Operator, a counterpart of the relevant~~**Subsequent Agreement**, executed by the relevant Subsequent Operator, which reflects, in **schedule 1** to that agreement, particulars applicable to the relevant Subsequent Operator, and which reflects in **schedule 2** to that agreement, the Access Rights which the Access Holder wishes to allocate to that Subsequent Operator and includes any further changes required pursuant to **clause 4.2**;<sup>2</sup> or

<sup>2</sup> For the avoidance of doubt, the Access Holder and Queensland Rail are not required to renegotiate the terms of a Subsequent Agreement. The terms, unless otherwise agreed by the Access Holder and Queensland Rail will be identical to the terms of this agreement except as is necessary to reflect the Train Services to be operated by that Subsequent Operator and to reflect that Subsequent Operator's operations.

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~~(C)~~(B) where the ~~Nominee~~Subsequent Operator is a party to an Existing Agreement, a statement and evidence identifying that ~~Railway~~Rolling Stock Operator's execution of the Existing Agreement in respect of utilisation of Access Rights and evidence of that ~~Railway~~Rolling Stock Operator's agreement to the relevant nomination.

~~(e)~~(b) Access Rights allocated by the Access Holder to be used from time to time by the Initial Operator and any Subsequent Operators may not exceed, in aggregate, the Access Holder's Access Rights under this agreement.

~~(d)~~(c) Despite any other provision in this agreement, Queensland Rail is not obliged to accept, or act on:

- (i) any nomination by the Access Holder under **clause 3.3(a)2-2(b)**;  
or
- (ii) any variation which increases the allocation of Access Rights (including an increase to the period for which the Access Rights are to be allocated) under **clause 4.1**,

if Queensland Rail (acting reasonably) determines that the ~~Nominee~~Subsequent Operator, either:

- (iii) is in material breach of any of its obligations under an existing access agreement with Queensland Rail; or
- (iv) is not Accredited.

~~(e)~~(d) Queensland Rail must:

- (i) promptly assess any nomination against the matters listed in **clause 3.3(c)2-2(d)**;
- (ii) within ten Business Days of receiving a nomination under **clause 3.3(a)2-2(b)**, notify the Access Holder and the ~~Nominee~~Subsequent Operator whether it accepts or rejects the nomination; and
- (iii) if it rejects the nomination, provide reasons for the rejection in writing to the Access Holder and the ~~Nominee~~Subsequent Operator and thereafter use reasonable endeavours to facilitate the resolution of any matter the subject of its reasons for the rejection; or
- (iv) if it accepts the nomination, promptly do all things reasonably required to give effect to the nomination and minimise any delay to Train Services to the extent practicable including agreeing to amendments in this agreement and any Subsequent Operator's Subsequent Agreement (if applicable) to the extent required and including compliance with **clause 4.2(a)** (where applicable); and

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~~(v)~~ after accepting the nomination and, if required, complying with **clause 4.2(a)**, ~~relevantly:~~

~~(A)~~ exchange executed counterparts of this agreement with the Initial Operator and the Access Holder; or

~~(B)(v)~~ exchange executed counterparts of a Subsequent Agreement with the Subsequent Operator and the Access Holder; ~~or~~

~~as the case may be and in accordance with clause 27.11.~~

### **2.3 — References to Nominee Operator**

~~A reference in clause 2 and 4.2 to “Nominee Operator” or “that Operator” is a reference to the relevant Accredited Railway Operator as nominated by the Access Holder.~~

## **31 — Operational Rights**

### **3.11.1 — Grant of Operational Rights**

~~On and from the Commitment Date for each Train Service until the End Date for that Train Service, Queensland Rail grants, and must provide, to the Operator the right to operate that Train Service in accordance with the Train Service Description on the terms and conditions of this agreement.~~

### **3.21.1 — Nature and scope of Operational Rights**

~~(a) The right to operate granted under clause 3.1 is a non-exclusive contractual right and does not give the Operator any right, title or interest of any proprietary nature in the Network.~~

~~(b)(a) The Operator must:~~

~~(i) only operate on, or use any part of, the Network that is specifically included in this agreement; and~~

~~(ii)(i) not use the Network for:~~

~~(A) carrying out any provisioning, inspection, testing or maintenance of Rolling Stock;~~

~~(B)(A) any marshalling, shunting or other relocation of Rolling Stock;~~

~~(C)(A) storage of Rolling Stock; or~~

~~(D)(A) any purpose other than the operation of Train Services,~~

~~unless otherwise expressly:~~

~~(iii)(i) permitted or required to do so under this agreement;~~

~~(iv)(i) directed to do so by Queensland Rail in accordance with this agreement; or~~

~~(v)(i) expressly permitted under another agreement with Queensland Rail.~~

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## 4 Relationship with Operator

### 4.1 Changes to Operator nominations

- (a) The Access Holder may, from time to time, upon giving at least ten Business Days prior written notice to Queensland Rail and the Operator:
- (i) vary any nomination previously given by the Access Holder under this agreement so as to vary either or both of the following:
    - (A) the Access Rights which the Access Holder has allocated to the Operator; or
    - (B) the period for which the Access Rights are to be allocated to the Operator (provided that the period does not extend beyond the End Date for the relevant Train Service); or
  - (ii) withdraw any nomination previously given by the Access Holder under **clause 3.3(a)2-2(b)** or this **clause 4.1(a)**.
- (b) Queensland Rail must notify the Access Holder and the Operator if it accepts or rejects the variation (providing its reasons) in accordance with **clause 3.3(c)2-2(d)**.
- (c) If Queensland Rail accepts a variation made in accordance with **clause 2.2** or **4.1**:
- (i) ~~this agreement and all relevant Subsequent Agreements are this agreement is~~ varied in accordance with the variation and, despite any other provision in this agreement, each Party agrees, and is deemed, to be bound by the varied agreement on and from the date the Access Holder receives the notice referred to in **clause 4.1(b)**; or
  - (ii) Queensland Rail must comply with **clause 4.2** (if applicable).
- (d) The Access Holder is deemed to have withdrawn its nomination of the Operator if this agreement is terminated or expires.

### 4.2 Nominations with different Train Descriptions

- (a) If at any time:
- (i) the Access Holder intends to:
    - (A) nominate an Accredited ~~Railway~~Rolling Stock Operator to utilise all or part of the Access Rights in accordance with **clause 3.3(a)2-2(b)**; or
    - (B) vary a nomination previously given by the Access Holder in accordance with **clause 4.1**;
- and
- (ii) the Train Services of the ~~Nominee~~Subsequent Operator will have a Train Service Description different from that contemplated in **schedule 2**; or

- (iii) the Access Holder otherwise wishes to vary the Train Services from the Train Service Description contemplated in **schedule 2**,

then:

- (iv) prior to nominating the ~~Nominee~~Subsequent Operator or varying a nomination, Queensland Rail and the Access Holder must negotiate and endeavour to agree any amendments to any relevant agreements (including any amendments to the Access Rights and the Access Charges and providing replacement **schedules** (as relevant)) that may be necessary to reflect the Train Service Description of the Train Services to be operated by that Operator for that part of the Access Rights to be allocated to that Operator;
- (v) Queensland Rail and the Access Holder (each acting reasonably and using reasonable endeavours to minimise any disruptions to Train Movements) must agree the date on which those amendments take effect;
- (vi) this agreement is varied in accordance with those amendments and, despite any other provision in this agreement, each Party agrees, and is deemed, to be bound by the varied agreement on and from the date referred to in **clause 4.2(a)(v)**; and
- (vii) no amendment to the Access Rights that results in the Access Holder being granted increased rights to access the Network has any effect unless and until the Access Holder and Queensland Rail have complied with Queensland Rail's Access Undertaking (as amended by any change in Access Undertaking) (including with respect to the allocation of those increased Access Rights).

#### 4.3 **Reduction of rights resulting in an Over-Allocation**

If at any time:

- (a) the Access Rights of:
  - (i) the Access Holder are reduced, relinquished or transferred under this agreement; or
  - (ii) the Nominated Monthly Train Services in respect of a Train Service Description are reduced or varied under this agreement; and
- (b) as a result of such reduction, relinquishment or transfer of Access Rights or reduction or variation of Nominated Monthly Train Services in respect of a Train Service Description, the Access Rights allocated by the Access Holder to the Operator or any Subsequent Operators under **clause 2.2** or **4.1** for a Train Service Description exceed, in aggregate, the Access Holder's Access Rights for that Train Service Description following the reduction, relinquishment or transfer (such excess being the **Over-Allocation**),

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then, unless the Access Holder varies the nominations in accordance with **clause 4.1(a)** within ten Business Days of such reduction, relinquishment or transfer to eliminate the Over-Allocation, the Access Holder will be deemed to have varied the nominations in accordance with **clause 4.1(a)** as follows:

- (c) if the Access Holder has nominated only the Initial Operator for that Train Service Description, reducing the Access Rights for that Train Service Description which the Access Holder has allocated to the Initial Operator under this agreement by the Over-Allocation; or
- (d) if the Access Holder has nominated the Initial Operator and one or more Subsequent Operators in respect of an affected Train Service Description, reducing the Access Rights for that Train Service Description which the Access Holder has allocated to each the Initial Operator and each Subsequent Operator under each relevant agreement by a share of the Over-Allocation that is as closely as possible proportionate to the Train Services allocated to the Initial Operator and each Subsequent Operator for the affected Train Service Description as a share of the total Train Services allocated to the Initial Operator and Subsequent Operators for that Train Service Description,

and such reduction will take effect on the date the reduction, variation, relinquishment or transfer takes effect, with Queensland Rail providing written notice of the reduction to the Initial Operator and Subsequent Operators, if affected by same, as soon as practicable.

#### 4.4 Information

- (a) Nothing in **clause 24** prevents or otherwise restricts the Parties from disclosing to one another information in relation to or in connection with this agreement.
- (b) If requested by a Party, then the Party who received the request must promptly provide to the requesting Party any information in relation to the exercise of rights or performance of obligations under this agreement.
- (c) Without limitation to **clause 4.4(b)**, where either Queensland Rail, the Operator or the Access Holder gives a Notice (including an invoice) under this agreement to another Party, then that Party must also give a copy of that Notice (including an invoice) to each other Party.

#### 4.5 Participation in Disputes

- (a) Despite **clause 19**, where:
  - (i) a Dispute Notice is given to the Access Holder under **clause 19.1(b)**; and
  - (ii) the Dispute is solely between the Operator and Queensland Rail and does not require the Access Holder's participation to resolve the Dispute,

the Access Holder may elect not to participate in the dispute resolution process under **clause 19** by giving notice to that effect to the other Parties.

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- (b) Where the Access Holder gives a notice under **clause 4.5(a)**, **clause 19** will apply as though a reference to the Parties does not include the Access Holder in relation to that Dispute.
- (c) Despite **clause 19**, where:
  - (i) a Dispute Notice is given to the Operator under **clause 19.1(b)**; and
  - (ii) the Dispute is solely between the Access Holder and Queensland Rail and does not require the Operator's participation to resolve the Dispute, the Operator is not entitled to participate in the dispute resolution process.

#### 4.6 **Representations and warranties**

- (a) In addition to any other express or implied representations and warranties in this agreement, each of the Access Holder, Operator and Queensland Rail represent, warrant and undertake to each other that:
  - (i) it is a corporation validly existing under the laws applicable to it;
  - (ii) it has the power to enter into and perform all of its obligations under this agreement and has obtained all necessary consents and approvals to enable it to do so;
  - (iii) its obligations under this agreement are enforceable in accordance with the relevant terms and are fully binding on it;
  - (iv) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this agreement;
  - (v) there is:
    - (A) no litigation, arbitration or administrative proceeding taking place, pending, commenced or, to its knowledge, threatened against it; and
    - (B) no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it, which would or could have a material adverse effect on its ability to perform its obligations under this agreement; and
  - (vi) it will, as soon as practicable, notify the other Party of the occurrence of, or pending or threatened occurrence of, any event that may cause or constitute a material breach of any of the acknowledgments, representations, warranties or covenants of the that Party under this agreement and any event that could have a material adverse effect on its ability to perform its obligations under this agreement; and
  - (vii) all information provided by each Party to the other Party, whether pursuant to this agreement or otherwise, in relation to or in

connection with the Train Services, the Party's rights or obligations under this agreement or the negotiation of this agreement, is correct and complete in all material respects and is not, whether by omission or otherwise, misleading or deceptive.

- (b) The representations and warranties set out in **clause 4.6(a)** are taken to be given and made on the Commencement Date and on each day during the Term.

## 5 Accreditation

- (a) The Operator and Queensland Rail must, on the Commitment Date for Train Services and then until the End Date for those Train Services, hold the necessary Accreditation in accordance with this agreement.
- (b) The Operator must:
  - (i) at least 20 Business Days prior to the Commitment Date, satisfy Queensland Rail (acting reasonably) of its compliance with **clause 5(a)5(a)**; and
- (c) Queensland Rail and the Operator will provide to the other Party, and continue to provide to the other Party, a copy of the relevant Accreditation, including:
  - (i) all relevant notices from any Authority affecting or likely to affect the Accreditation;
  - (ii) the relevant details of any renewal, suspension, amendment/variation, restriction or termination of that Accreditation; and
  - (iii) all accreditation-relevant conditions and accreditation notices (as those terms are defined under or restrictions imposed on the TRSA) relating to that Accreditation/accreditation by the Rail Safety Regulator.
- (d) The Operator must not operate Rolling Stock on the Network unless the Operator holds the Accreditation necessary to do so and then must do so in accordance with that Accreditation and this agreement.

## 6 Payment obligations

### 6.1 Access Charges

- (a) The Access Holder must pay to Queensland Rail the Access Charges at the times and in the manner set out in this agreement and any other charges or amounts payable in accordance with this agreement.
- (b) The Access Charges include amounts payable in relation to:
  - (i) the reservation of capacity in the Network for the Train Services; and

- (ii) the utilisation of the Access Rights for the Train Services.
- (c) After the last day of each calendar month during the Term; and
  - (i) where this agreement has expired or terminated, after that expiration or termination,

Queensland Rail will provide to the Access Holder an invoice for the Access Charges and any other charges or amounts payable by the Access Holder under this agreement (if any such amounts are payable) for that month or on or after the expiry or termination of this agreement (as applicable).

- (d) For clarity, Queensland Rail will review and amend **schedule 3** (including to vary or escalate Access Charges Inputs) from time to time in accordance with this agreement.

#### 6.2 **Obligation to make payments**

- (a) Unless this agreement provides otherwise, the due date for the payment of an amount payable by a Party under this agreement is that date which is ten Business Days from the date the invoice is received.
- (b) After a Party receives an invoice from another Party for an amount payable in accordance with this agreement, the paying Party must, on or prior to the due date for the payment of that amount, either:
  - (i) pay the other Party an amount equal to the amount payable as shown on the invoice; or
  - (ii) if the paying Party disputes on a bona fide basis all or part of the amount payable as shown on the invoice:
    - (A) pay by the due date the amount not in dispute and 50% of the amount in dispute; and
    - (B) give notice in writing to the other Party that it disputes the amount payable as shown on the invoice and a detailed statement as to the reasons for disputing the amount payable.

#### 6.3 **Method of payment**

A Party must pay any amounts payable to another Party in accordance with this agreement in Australian currency by:

- (a) direct deposit into an account nominated by the invoicing Party for that purpose; or
- (b) such other method as the invoicing Party may reasonably require from time to time.

#### 6.4 **Disputing payments**

- (a) If a Party has paid the amounts and given a notice in accordance with **clause 6.2** then, unless the Parties resolve the dispute in accordance

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with **clause 19.249.2**, the dispute must be referred for determination by an Expert under **clause 19.349.3**.

- (b) Upon resolution of any dispute between the Parties about the calculation of an amount payable as shown on an invoice, if the amount payable as agreed by the Parties or determined by an Expert or a court is more or less than the amount that was paid, then the difference must be paid or refunded by the relevant Party to the other Party within five Business Days after the resolution of the dispute together with interest on that amount calculated in accordance with **clause 6.56.5** (provided that for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount in dispute would have been due and payable but for the dispute).

#### 6.5 Interest on overdue payments

- (a) If any amount which a Party is required to pay to another Party under this agreement is not paid on or before the due date for payment, interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.
- (b) Interest will be calculated at the Interest Rate and must be paid monthly. Any interest accrued but unpaid at the end of each month will be capitalised and will thereafter itself bear interest.

#### 6.6 Adjustments

- (a) If any change, escalation or variation in the Access Charges is backdated, or otherwise relates, to a date on or before the date on which particular Train Services were operated in accordance with this agreement, then the Access Charges paid or payable in respect of those Train Services must be adjusted by Queensland Rail and the Access Holder to pass through that change, escalation or variation.
- (b) After taking account of the adjustment referred to under **clause 6.6(a)**:
  - (i) if there has been an under-recovery of Access Charges by Queensland Rail, then the Access Holder must pay the amount of that under-recovery to Queensland Rail; and
  - (ii) if there has been an over-recovery of Access Charges by Queensland Rail, then Queensland Rail must refund the amount of that over-recovery to the Access Holder.
- (c) For clarity, if Queensland Rail has issued an invoice for Train Services but the Access Holder has not yet paid that invoice, then Queensland Rail may issue a replacement or additional invoice for the purposes of giving effect to **clauses 6.6(a)** and **(b)**.
- (d) Any adjustment of an Access Charge in accordance with this **clause 6.6** will include interest calculated in accordance with **clause 6.5** as though the adjustment was due and payable on the date when the original invoice for the Access Charge to which the adjustment relates was due and payable.



- (e) This **clause 6.6** does not apply in relation to an Adjustment Charge (as defined in the Access Undertaking) which is incorporated in any Access Charge in accordance with **schedule 3** and the Access Undertaking.

## 6.7 Performance Level Reporting Regime

- (a) Queensland Rail will provide monthly reports to each other Party documenting Queensland Rail's performance in relation to the relevant performance levels as set out in **schedule 5 (Performance Levels)**.
- (b) Disputes regarding Queensland Rail's documentation of its Performance Levels will be determined in accordance with **clause 19**.
- (c) The Parties must, if requested by another Party, meet as soon as practicable after the Commencement Date to negotiate ~~in good faith~~ to endeavour to agree additional Performance Levels and the reporting regime (other than the Performance Levels set out in **clause 6.7(a)**) within 12 months (or such longer period as the Parties may agree (acting reasonably)) after the Commencement Date.
- (d) The Parties' agreed Performance Levels may involve financially based incentives and sanctions and, unless otherwise agreed, will be applicable for the Term.
- (e) A failure to agree the Performance Levels by the Parties is a Dispute for the purposes of **clause 19**.
- (f) On and from the date the agreed Performance Levels are implemented by the Parties, the Parties must monitor, record and assess the performance of their respective obligations under this agreement against the Performance Levels. Each Party must comply with the reporting and assessment requirements as agreed by the Parties and set out in **schedule 5**.

## 7 Network management

### 7.1 Maintenance

- (a) Queensland Rail is responsible for the management of the Network and shall retain control over all activities on the Network.
- (b) Queensland Rail must carry out Maintenance Work on the Network such that subject to any agreed criteria and the Network Management Principles:
  - (i) the Network is consistent with the Rolling Stock Interface Standards; and
  - (ii) the Operator can operate Train Services in accordance with this agreement.
- (c) Nothing in this agreement obliges Queensland Rail to fund or construct any Extension required to provide the Access Rights held under the agreement.

- (d) Queensland Rail reserves the right to authorise third parties to carry out Third Party Works on, under or over the land on which the Network is located. In the event that Queensland Rail has a contractual relationship with the third party, Queensland Rail must ensure that the third party undertakes the work in a manner that meets the requirements listed in **clause 7.1(b)**.

## 7.2 **Network Control**

- (a) Queensland Rail will provide, and has exclusive responsibility for, Network Control in respect of the Network.
- (b) Queensland Rail may exercise Network Control by issuing Network Control Directions to the Operator and the Operator's Associates.
- (c) In exercising Network Control, Queensland Rail may, subject to the Network Management Principles:
  - (i) delay, alter, add, cancel, re-route or re-schedule a Train Service; and
  - (ii) alter the Scheduled Times for Train Services in the Train Schedule.
- (d) The Operator must:
  - (i) comply with Network Control Directions;
  - (ii) ensure that:
    - (A) Train drivers are contactable by the Network Controller to receive Network Control Directions using communications systems which comply with the Operating Requirements Manual; and
    - (B) all of the Operator's Trains are equipped with means of communication to permit the Operator's Associates to comply with this agreement;
  - (iii) notify the Network Controller as soon as the Operator becomes aware that it is not possible for the Operator (or the Operator's Associates) to comply with a Network Control Direction or the Operator (or the Operator's Associates) has not complied with a Network Control Direction; and
  - (iv) notify the Network Controller as soon as the Operator becomes aware of any changes or delays in Train Services or any circumstances which have affected or may affect Network Control including the ability of any Train Service to conform to its Scheduled Times.

## 7.3 **Compliance**

- (a) Queensland Rail must observe and comply with:

- (i) all applicable Laws and Authorisations including Queensland Rail's Accreditation, to the extent that the Laws and Authorisations relate to Queensland Rail's performance of its obligations or exercise of its rights under this agreement;
  - (ii) the lawful requirements of relevant Authorities, to the extent that those requirements relate to Queensland Rail's performance of its obligations or exercise of its rights under this agreement;
  - (iii) this agreement;
  - (iv) the IRMP including any safety and environment standards identified in the IRMP as applicable to Queensland Rail;
  - (v) the Network Management Principles;
  - (vi) the Operating Requirements Manual; and
  - (vii) the Access Undertaking, to the extent that the Access Undertaking relates to Queensland Rail's performance of its obligations or exercise of its rights under this agreement,
- (b) Queensland Rail must provide that as far as practicable:
- (i) the Network Management Principles; and
  - (ii) the Operating Requirements Manual,

will be applied consistently for all ~~Railway~~Rolling Stock Operators on the Network~~2~~.

and, where observance or compliance with the matters in **paragraphs (i) to (vii) of clause 7.3(a)** cannot occur because of an inconsistency between those matters, then:

- (c) for the purpose of observance and compliance, those matters must be prioritised in the above order (with a matter earlier in the list having a higher priority for observance and compliance to a matter later in the list); and
- (d) Queensland Rail's obligation under this **clause 7.37.3** is to observe and comply with those matters in that order of priority,

to the extent of the inconsistency.

- (e) Without limitation to this **clause 7**, Queensland Rail must at all times act in accordance with Prudent Practices.

~~(f) Queensland Rail must notify the Access Holder and the Operator of any failure, or likely failure, by Queensland Rail to comply with this agreement as soon as practicable after Queensland Rail becomes aware of that failure or likely failure.~~

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## **8 Train operations**

### **8.1 Operation of Train Services**

The Operator must only operate Train Services in accordance with this agreement (including the Train Service Description and any Network Control Directions) if the Operator has obtained the prior written approval of Queensland Rail (not to be unreasonably withheld) (for example, an authority to travel) including any terms and conditions of that approval in addition to or varying this agreement in respect of those Train Services (including in respect of the Access Charges applicable) and complies with that approval and those terms and conditions in operating the Train Services.

### **8.2 Additional Train Services**

If the Access Holder notifies Queensland Rail that it wishes to have the Operator (who the Access Holder must identify when notifying Queensland Rail) operate an Additional Train Service, and the Operator has notified Queensland Rail that it is able and willing to operate the Additional Train Service then:

- (a) Queensland Rail must use reasonable endeavours to schedule the Additional Train Service in accordance with the Network Management Principles; and
- (b) on and from the Additional Train Service being scheduled in the relevant Daily Train Plan, the Additional Train Service will be treated as though it was a Train Service for the purpose of this agreement including in relation to the payment of Access Charges.

### **8.3 Ad Hoc Train Services**

- (a) If the Access Holder notifies Queensland Rail that it wishes to operate an Ad Hoc Train Service, then Queensland Rail may, but is not obliged to, schedule the Ad Hoc Train Service in the Daily Train Plan.
- (b) If Queensland Rail schedules the Ad Hoc Train Service in the Daily Train Plan then, on and from the Ad Hoc Train Service being scheduled in the relevant Daily Train Plan, the Ad Hoc Train Service will be treated as though it was a Train Service for the purpose of this agreement except that Ad Hoc Train Services will not be counted as Train Services for the purpose of calculation of Take or Pay Charges or for calculating the number of contracted Train Services for the purposes of identifying whether an Endorsed Variation Event has occurred.
- (c) If Queensland Rail schedules an Ad Hoc Train Service in the Daily Train Plan then, despite any other provision in this agreement the Operator must, in operating the Ad Hoc Train Service, comply with the Train Service Description subject to any derogations permitted by Queensland Rail.

### **8.4 Compliance**

- (a) The Operator must observe and comply with:

- (i) all applicable Laws and Authorisations including the Operator's Accreditation and the Operator's Emergency Management Plan, to the extent that the Laws and Authorisations relate to the Operator's performance of its obligations or exercise of its rights under this agreement;
- (ii) the lawful requirements of relevant Authorities, to the extent that those requirements relate to the Operator's performance of its obligations or exercise of its rights under this agreement;
- (iii) this agreement;
- (iv) the IRMP including any safety and environment standards identified in the IRMP as applicable to the Operator;
- (v) the Network Management Principles;
- (vi) the Operating Requirements Manual;
- (vii) all Network Control Directions;
- (viii) the relevant requirements of:
  - (A) any Authorisation; and
  - (B) any other consent, approval, lease, licence or other authority,

held by or applying to Queensland Rail, or to which Queensland Rail is a Party, from time to time in relation to the Network, other relevant facilities (if any) or land to which the Operator is provided access by Queensland Rail in accordance with this agreement (provided Queensland Rail has notified the Operator of those relevant requirements); and

- (ix) the Access Undertaking, to the extent that the Access Undertaking relates to the Operator's performance of its obligations or exercise of its rights under this agreement,

and, where observance or compliance with the matters in **paragraphs (i) to (ix)** cannot occur because of an inconsistency between those matters, then:

- (x) for the purpose of observance and compliance, those matters must be prioritised in the above order (with a matter earlier in the list having a higher priority for observance and compliance to a matter later in the list); and
- (xi) the Operator's obligation under this **clause 8.4(a)** is to observe and comply with those matters in that order of priority,

to the extent of the inconsistency.

- (b) Without limitation to **clause 8.4(a)**, the Operator must:

- (i) not access or be upon the Network (or the land on which the Network is located) for any purpose other than to exercise its rights and to comply with its obligations in accordance with this agreement;

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- (ii) at all times act in accordance with Prudent Practices;
- (iii) do everything necessary in accordance with Prudent Practices to avoid causing or contributing to any nuisance, annoyance or disturbance to Queensland Rail or the occupiers or users of the Network, or land adjacent to the Network;
- (iv) in accordance with Prudent Practices, not do or omit to do anything that would cause or contribute to the Network (or the land on which the Network is located) not being clean, presentable, well maintained and in good repair, appearance and condition;
- (v) not cause or allow any rubbish, debris, or freight, in accordance with Prudent Practices, to be deposited or released on or about the Network (or the land on which the Network is located) except as expressly required by the Operating Requirements Manual or any Network Control Directions;
- (vi) obtain and maintain all necessary Authorisations required for the Operator to exercise the Operator's rights or comply with the Operator's obligations under this agreement;
- (vii) not interfere with, hinder or prejudice:
  - (A) Queensland Rail's conduct of its operations;
  - (B) Queensland Rail's or any other Network Participant's use of the Network; or
  - (C) the functions and obligations of Queensland Rail as a Railway Manager (including under Queensland Rail's Accreditation);
- (viii) not in breach of this agreement or through negligent act or omission:
  - (A) cause, permit or contribute to any act or omission that may result in Queensland Rail:
    - (1) failing to comply with any Law; or
    - (2) incurring (for clarity, directly or indirectly) any costs or expenses in complying with any Law that Queensland Rail would not otherwise have incurred; or
  - (B) fail to promptly comply with a direction given by Queensland Rail for the purpose of Queensland Rail's compliance with any Law relating to the Network, Queensland Rail's Rail Infrastructure Operations or this agreement (including the Train Services).
- (ix) ensure that its Rolling Stock operate safely, and otherwise be responsible for the operation of its Rolling Stock, on the Network (including ensuring that its Rolling Stock are accompanied at all times while on the Network by a member of the Operator's

Associates who has authority to manage, and to keep secure, that Rolling Stock and anything on, or being transported by, that Rolling Stock); and

- (x) without limitation to ~~clause 8.4(b)(ix)~~~~8.4(b)(ix)~~, ensure that the operation of its Rolling Stock (including the loading, unloading and cleaning of its Rolling Stock) is undertaken in a manner that:
  - (A) does not affect:
    - (1) the safe operation of the Rolling Stock or the Network; or
    - (2) the operations or activities of Queensland Rail or other Network Participants; and
  - (B) in accordance with Prudent Practices, ensures that all things on or in the Operator's Rolling Stock remain on or in the Operator's Rolling Stock (and, if applicable, are secured in position) during transit.

- (c) Where the Operator fails to comply with ~~clause 8.4(b)(v)~~~~8.4(b)(v)~~, Queensland Rail may remove and dispose of the relevant rubbish, debris, or freight and the Operator must pay Queensland Rail's costs and expenses incurred by Queensland Rail in doing so and those costs and expenses will be a debt due and owing by the Operator to Queensland Rail.

~~(d) The Operator must notify Queensland Rail of any material failure, or likely material failure, by the Operator to comply with this agreement as soon as practicable after the Operator becomes aware of that failure or likely failure.~~

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## 8.5 Compliance before commencing to operate a Train Service

- (a) Without limiting any other provisions of this agreement, the Operator must only commence operating Train Services under this agreement if in respect of those Train Services:
  - (i) all Security as required in accordance with **clause 17** has been provided;
  - (ii) an Operating Plan has been prepared by the Operator and a copy provided to Queensland Rail;
  - (iii) an EIRMR has been prepared by the Operator and a copy provided to Queensland Rail so that any environmental risks and associated controls identified in the EIRMR can be addressed as part of the IRMP process under **clause 9**;
  - (iv) an IRMP has been agreed, determined or reviewed in relation to those Train Services in accordance with **clause 9** (except to the extent that **clauses 9.1 to 9.2** do not apply in accordance with **clause 9.3(c)**);

- (v) the Operator has done all things necessary in relation to the Operator's Emergency Management Plan to comply with **clause 10.1**;
  - (vi) all Insurances in accordance with **clause 16** have been effected and evidence of those Insurances has been provided to Queensland Rail in accordance with **clause 16.7(a)**;
  - (vii) the Operator holds the Accreditation necessary for it to operate the Train Services and has provided to Queensland Rail all things relating to that Accreditation in accordance with **clause 5(c)**;
  - (viii) the Operator has observed, complied with or implemented, all aspects of the Operator's Emergency Management Plan, the Operator's Accreditation and the IRMP that are required to be complied with prior to Train Services commencing;
  - (ix) the Operator has satisfied the requirements in **clause 8.10** which relate to the authorisation of Rolling Stock and Train Configurations; and
  - (x) the Operator has done all things that are necessary, and which can reasonably be done prior to operating the Train Services, to ensure the Operator's compliance with this agreement including the IRMP.
- (b) Queensland Rail must use reasonable endeavours to cooperate with the Operator to facilitate the Operator's compliance with **clause 8.5(a)**.
- (c) If the Operator has not complied with **clause 8.5(a)** for the relevant Train Services:
- (i) by the Compliance Date and Queensland Rail does not reasonably expect that the Operator can do so before the Commitment Date for those Train Services; or
  - (ii) by the Commitment Date for those Train Services,
- then:
- (iii) provided that Queensland Rail has complied with **clause 8.5(b)**, Queensland Rail may notify the Operator and Access Holder requiring the Operator to comply with **clause 8.5(a)** in respect of those Train Services by a date which is 20 Business Days after the date of that notice; and
  - (iv) where the Operator does not comply with **clause 8.5(a)** by that date (**Failure**), Queensland Rail may, by notice to the Operator and the Access Holder:
    - (A) reduce the Operator's right to operate under this agreement in relation to the relevant Train Services relating to the Failure, but that reduction will not affect any other right to operate (if any) under this agreement relating to other Train Services which are not affected by that Failure (if any); and



(B) a reduction referred to under **clause 8.5(c)(iv)(A)** will not affect any Access Rights held by the Access Holder.

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- (v) Without limiting the Access Holder's rights under **clause 2.2** and **4.1**, the Access Holder will have the right, under **clauses 2.2** and **4.1**, to nominate a new Operator to utilise the Access Rights which were previously allocated to the non-complaint Operator.

#### 8.6 **Compliance with Scheduled Time**

The Operator must only operate Train Services in accordance with the applicable Scheduled Times and the relevant Train Schedule unless:

- (a) the Operator is expressly permitted or required to do otherwise in accordance with this agreement, the Operating Requirements Manual, the Network Management Principles or a Network Control Direction; or
- (b) the Parties agree otherwise.

#### 8.7 **Alterations to Train Services**

- (a) If the Operator is not able to operate a Train Service in accordance with its Scheduled Time, then:
- (i) the Operator must, as soon as practicable prior to the time when that Train Service was scheduled for operation, notify Queensland Rail and the Access Holder that it is not able to operate that Train Service and specify the reason(s) for its inability; and
- (ii) if the Operator has complied with **clause 8.7(a)(i)**, then Queensland Rail will use reasonable endeavours to provide an Alternative Schedule Time for the relevant Train Service unless this would:
- (A) alter the Scheduled Times for other Train Movements; or
- (B) result in Queensland Rail incurring additional costs or expenses.
- (b) If Queensland Rail provides an Alternative Schedule Time for a Train Service in accordance with **clause 8.7(a)(ii)**, the Operator must notify Queensland Rail and the Access Holder promptly whether the Operator accepts that Alternative Schedule Time. If the Operator accepts that Alternative Schedule Time, then the Operator must operate the Train Service in accordance with that Alternative Schedule Time. For clarity, **clause 8.7(a)(ii)** does not apply to that Alternative Schedule Time.
- (c) If the Operator is not able to operate a Train Service in accordance with its Scheduled Time or an Alternative Schedule Time made available in accordance with **clause 8.7(a)(ii)** (or has not immediately notified Queensland Rail accepting such an Alternative Schedule Time), Queensland Rail may authorise the operation of another Train Movement at that Scheduled Time.

## 8.8 Operator to supply information

- (a) The Operator must provide and maintain all software, hardware and associated communication links necessary to ensure, to Queensland Rail's satisfaction (acting reasonably), an effective interface between the Operator's and Queensland Rail's information systems as nominated by Queensland Rail. The interface with Queensland Rail's information systems will be subject to any requirements and controls specified by Queensland Rail (in its reasonable discretion) including to protect the integrity and confidentiality of those information systems and the information contained in them.
- (b) Prior to substantially varying or amending the interface standards referred to in **clause 8.8(a)** Queensland Rail will, ~~in good faith,~~ consult with the Operator in relation to any proposed amendments and Queensland Rail will use reasonable endeavours to minimise any cost and disruption to the Operator which may result from any proposed amendments.
- (c) The Operator must provide information to Queensland Rail as required in accordance with the Operating Requirements Manual (including any details in relation to Train Services or contact and other details for interface coordination).

## 8.9 Queensland Rail must supply Data

- (a) The Parties acknowledge that Queensland Rail may from time to time collect data in respect of the Operator's Rolling Stock (**Data**).
- (b) Queensland Rail must, if reasonably requested by an Operator, provide the Operator with access to the Data. The Operator will be responsible for all costs related to the transfer, conversion, modification and storage of any Data made available to the Operator by Queensland Rail.
- (c) Despite any other provision in this agreement, if the Operator receives any data from Queensland Rail that is not in respect of the Operator's Rolling Stock, then the Operator must:
  - (i) immediately notify Queensland Rail, providing details of the relevant data;
  - (ii) not use the data for any purpose;
  - (iii) not disclose the data to any person; and
  - (iv) comply with all directions given by Queensland Rail in relation to that data including the deletion, redirection or return of that data.
- (d) All material supplied or made available by one Party (the Supplier) to the other Party remains the intellectual property of the Supplier and cannot be reproduced or used for any purpose other than the purpose for which it was supplied without the prior written approval of the Supplier.

## 8.10 Authorisation of Rolling Stock and Train Configurations

- (a) The Operator must only operate a Train Service using Rolling Stock or a Train Configuration in respect of which the Operator has:
- (i) provided to Queensland Rail:
    - (A) a certificate by a suitably qualified person, approved by Queensland Rail and appointed by and at the cost of the Operator, that the Operator's Rolling Stock and Train Configurations comply with the Interface Standards agreed in the IRMP (other than exceptions or unverified/unknown characteristics listed on that certificate); and
    - (B) relevant documentation (including reports on trials and/or commissioning tests and load tables) if required to demonstrate to the reasonable satisfaction of Queensland Rail that the Operator's Rolling Stock and Train Configurations comply with the Interface Standards agreed in the IRMP (other than exceptions or unverified/unknown characteristics listed on the certificate),
- (Certification);** and
- (ii) obtained a notice from Queensland Rail (whose notice and satisfaction will not be unreasonably withheld or delayed) indicating that Queensland Rail is satisfied with that Certification for the purposes of those Train Services.

If the Operator obtains a notice referred to in **paragraph (ii)** that is subject to conditions (including conditions relating to the period for which that notice will apply), then the Operator must comply with those conditions and must only operate a Train Service in accordance with those conditions and while that notice applies.

- (b) During the Term, if the Operator wishes to modify any of the Rolling Stock or Train Configurations used for Train Services or add new or additional Rolling Stock or Train Configurations, then the Operator must not use any such Rolling Stock or Train Configurations for those Train Services unless and until:
- (i) the IRMP has been reviewed in accordance with **clause 9.2** in relation to the modified Rolling Stock or Train Configurations;
  - (ii) the Operator has complied with **clause 8.10(a)** in relation to the modified Rolling Stock or Train Configurations, as applicable; and
  - (iii) where such modification is not otherwise covered by **clause 4.2**, the Parties (each acting reasonably) have agreed any amendments to this agreement (including varying the methodology, rates or other inputs for calculating Access Charges and any necessary changes to the IRMP) reasonably necessary to

reflect the authorisation and use of the modified Rolling Stock or Train Configurations on the Network.

#### **8.11 Entering and exiting the Network**

- (a) The Access Holder and the Operator are responsible for, and bear the cost and risk of, obtaining and maintaining any rights to access or use Private Infrastructure that are necessary in order to enter or exit the Network or otherwise operate the Train Services in accordance with this agreement.
- (b) Despite any other provision in this agreement, the Access Holder and the Operator are not relieved of their respective obligations under this agreement (and must continue to comply with all of their respective obligations under this agreement) even if the Access Holder or the Operator cannot or does not obtain or maintain any such rights.

#### **8.12 Notification of damage or disrepair**

- (a) The Operator must notify Queensland Rail as soon as practicable of any damage to, disrepair of or failure in the operation or function of any part of the Network of which the Operator becomes aware.
- (b) Queensland Rail must notify the Operator as soon as practicable of any damage to, disrepair of or failure in the operation or function of any part of the Network relevant to the Operator of which Queensland Rail becomes aware.

#### **8.13 Replacement of Operating Requirements Manual**

Nothing in this agreement restricts or limits Queensland Rail's right to amend or replace the Operating Requirements Manual through the submission of a draft access undertaking or a draft amending access undertaking to the QCA in accordance with the QCA Act.

## **9 Interface risk management**

### **9.1 Compliance with IRMP**

- (a) The Operator and Queensland Rail must observe and comply with their respective responsibilities and obligations set out in the IRMP.
- (b) The Operator must use reasonable endeavours to not cause, permit or contribute to any act or omission which may give rise to Interface Risks that are not addressed in the IRMP. If the Operator does cause, permit or contribute to any act or omission that gives rise to, or is likely to give rise to, Interface Risks that are not addressed in the IRMP, the Operator must notify Queensland Rail as soon as practicable of the act or omission (as applicable) and the relevant Interface Risk.
- (c) Queensland Rail must use reasonable endeavours to not cause, permit or contribute to any act or omission which may give rise to Interface Risks that are not addressed in the IRMP. If Queensland Rail does cause, permit or contribute to any act or omission that gives rise to, or is

likely to give rise to, Interface Risks that are not addressed in the IRMP, Queensland Rail must notify the Operator as soon as practicable of the act or omission (as applicable) and the relevant Interface Risk.

- (d) If either Queensland Rail or the Operator (as applicable) fails to comply with the IRMP it must notify the Operator or Queensland Rail (as applicable) of the non-compliance as and when it becomes aware of such non-compliance. The notice must include details of the nature of the non-compliance and how the non-complying Party has rectified or intends to rectify the non-compliance.

## 9.2 **Review of IRMP**

- (a) The Operator and Queensland Rail must:
  - (i) upon the reasonable request at any time by either of them; or
  - (ii) if the Operator changes its Operating Plan (in which case the Operator must provide a copy of the amended Operating Plan to Queensland Rail); and
  - (iii) for any new or varied Train Services or Ad Hoc Train Services from time to time,

jointly review the IRMP, and amend it (including by replacing it) as necessary, to ensure that the Operator and Queensland Rail continue to agree that the Interface Risk Assessment is still applicable and all reasonably foreseeable Interface Risks are effectively managed under the IRMP.

- (b) For the purposes of a review referred to in **clause 9.2(a)**:
  - (i) if either Queensland Rail or the Operator is not satisfied that the Interface Risk Assessment is still applicable and all reasonably foreseeable Interface Risks are effectively managed under the IRMP, then those Parties will undertake a joint Interface Risk Assessment (including, if those Parties agree that it is appropriate, only in relation to specific matters or activities) as part of such a review;
  - (ii) Queensland Rail (acting reasonably) may request that the Operator review and update its EIRMR and provide Queensland Rail with a copy of its updated EIRMR prior to and for the purposes of the Parties undertaking a joint Interface Risk Assessment; and
  - (iii) if Queensland Rail and the Operator are not able to agree any matter in relation to such a review, either of those Parties may treat that inability to agree as a Dispute for the purposes of **clause 19**.
- (c) -For clarity, the Operator must not:
  - (i) operate any new or varied Train Services under this agreement unless the IRMP has been reviewed in accordance with this **clause 9.2** in relation to those new or varied Train Services (as applicable); and

- (ii) use any Rolling Stock or Train Configuration in operating a Train Service unless the IRMP has either been:
  - (A) prepared on the basis of the Train Services being operated using that Rolling Stock or Train Configuration (as applicable); or
  - (B) reviewed in accordance with this **clause 9.2** in relation to that Rolling Stock or Train Configuration (as applicable).

(d) For administrative ease, the IRMP may be amended by the exchange of written notices by the duly authorised representatives of the Parties.

### 9.3 **Application of TRSA**

- (a) To the extent that anything under this **clause 9** is inconsistent with the TRSA, the TRSA prevails to the extent of the inconsistency.
- (b) The IRMP and the provisions under this agreement relating to the IRMP (including in relation to compliance with it and its review):
  - (i) together comprise an interface agreement (as defined under the TRSA) between the Operator and Queensland Rail; and
  - (ii) despite any other provision to the contrary in this agreement, may be disclosed to the Rail Safety Regulator to the extent that it is reasonably necessary to do so to comply with this agreement or the TRSA or any other Law.
- (c) Without limiting **clause 9.3(a)**, to the extent that the Rail Safety Regulator has:
  - (i) ~~decided~~determined under section ~~78~~110 of the TRSA an arrangement that is to apply in relation to the management of risks to safety as between the Operator and Queensland Rail; and
  - (ii) ~~stated~~directed that ~~arrangement in an interface direction~~the Operator or Queensland Rail give effect to those arrangements (as defined under the TRSA),  
**clauses 9.19.1 to 9.29.2** (including any IRMP) are subject to and must be consistent with that ~~arrangement~~direction.

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### 9.4 **Rights for Inspection or Audit**

- (a) Subject to **clause 9.4(b)**~~9.4(b)~~, if either the Operator or Queensland Rail has reasonable grounds to believe that the other has not complied, or is not complying, with any aspect of the IRMP or the Operating Requirements Manual, or any obligation or duty under the TRSA, then that Party may conduct, or require the conduct of, an inspection or audit in respect of that compliance.
- (b) Prior to exercising a right under **clause 9.4(a)**, a Party must:

- (i) notify the other of those Parties of that belief (including the grounds supporting that belief) and require that other Party to demonstrate that they are compliant; and
  - (ii) only proceed to an inspection or audit if that other Party fails to demonstrate compliance to the first Party's satisfaction (acting reasonably).
- (c) Without limiting **clause 9.4(a)**, each of Queensland Rail and the Operator may conduct or require the conduct of an inspection or audit to assess the other's compliance with the IRMP periodically as specified in the IRMP.

#### 9.5 Notice of Inspection or Audit

The Party (**Inspecting Party**) conducting or requiring the conduct of an inspection or audit referred to in **clause 9.4 (Inspection or Audit)** must give the other Party reasonable prior notice of that Inspection or Audit (except in the case of emergencies or if an event or circumstance referred to in **clauses 14 or 15** has occurred) and that notice must include the following:

- (a) details of the Inspection or Audit to be carried out;
- (b) the name of the person conducting the Inspection or Audit;
- (c) the timing and expected duration of the Inspection or Audit;
- (d) the location of the Inspection or Audit;
- (e) the grounds on which the Inspecting Party requires the Inspection or Audit; and
- (f) the Inspecting Party's requirements (acting reasonably) of the other Party in relation to the Inspection or Audit.

#### 9.6 Conduct of Inspection or Audit

- (a) Subject to **clause 9.6(b)**, any Inspection or Audit may be conducted by:
  - (i) the Inspecting Party or its appointed representative; or
  - (ii) by a suitably qualified person acceptable to Queensland Rail and the Operator (each acting reasonably).
- (b) If an Inspection or Audit requires access to commercially sensitive information, then:
  - (i) the Inspection or Audit must only be conducted by a person referred to in **clause 9.6(a)(ii)**; and
  - (ii) that person must:
    - (A) prior to being provided with the commercially sensitive information, execute a confidentiality deed:
      - (1) in favour of the Party who is subject to the Inspection or Audit;

- (2) on terms satisfactory to that Party (acting reasonably); and
- (3) that requires the person:
  - to keep that information confidential;
  - to use it only for the purpose of the Inspection or Audit;
  - to not disclose that information to the Inspecting Party or any other person (or another Party); and
  - to return (or, if applicable, destroy any copy of) that information after completion of the Inspection or Audit,

subject to reasonable exceptions including except to the extent:

- required or compelled by, or necessary to observe, administer or comply with, any Law;
  - consistent with a person's right to disclosure under any Law; and
  - necessary for the conduct of any legal proceedings (including any dispute resolution process under this agreement); and
- (B) be given access to the commercially sensitive information, once they have executed that confidentiality deed and delivered it to the Party who it is in favour of.
- (c) Each Party must use reasonable endeavours to ensure that an Inspecting Party, its appointed representative or the person appointed to conduct an Inspection or Audit are entitled to enter and be on its land and premises (whether or not owned or leased) and to access and inspect any other of its relevant property, including in the case of the Operator, its Rolling Stock, for the purposes of carrying out any Inspection or Audit.
  - (d) An Inspecting Party, in exercising any right of Inspection or Audit, must:
    - (i) not interfere unreasonably with another Party's Trains and Rolling Stock or the Network;
    - (ii) ensure that the Inspection or Audit does not adversely affect any other Network Participant's Train services or Train Movements;
    - (iii) not cause or contribute to any damage to property, any Environmental Harm or any injury or death of persons;
    - (iv) comply with the health, safety, environment and other requirements as required by another relevant Party (acting reasonably); and



- (v) use reasonable endeavours to minimise any disruption to the Party who is subject to the Inspection or Audit.
  - (vi) use all reasonable endeavours to mitigate any loss or damage arising from the conduct of an Inspection or Audit.
- (e) An Inspecting Party is not liable for:
- (i) any delays or cancellation of Train Services; or
  - (ii) Claims suffered or incurred by or made or brought by or against another Party,

as a result of the Inspecting Party exercising its rights under **clause 9.4** provided that the Inspecting Party complies with **clause 9.6(d)**.

#### 9.7 **Cooperation for Inspection or Audit**

- (a) Each Party must provide all reasonable assistance required by the Inspecting Party in conducting any Inspection or Audit, including allowing the Inspecting Party, its appointed representative or a person appointed to conduct an Inspection or Audit to discuss any relevant matter with that Party's Associates. A member of the Associates of the Party who is subject to the Inspection or Audit may be present at the Inspection or Audit.
- (b) Nothing in **clauses 9.4 to 9.7(a)**:
- (i) obliges Queensland Rail (as a Party subject to Inspection or Audit), or entitles the Operator (as the Inspecting Party), to do anything that may adversely affect:
    - (A) the operation of Train services by another Network Participant; or
    - (B) Queensland Rail's compliance with another Network Participant's access agreement or, if applicable, the Access Undertaking; or
  - (ii) obliges a Party who is subject to an Inspection or Audit, or entitles the Inspecting Party, to do anything that:
    - (A) would result in the Party who is subject to the Inspection or Audit not complying with any Law; or
    - (B) adversely affects the safe operation of the Network including the safety of any person.

#### 9.8 **Costs for Inspection or Audit**

- (a) For an Inspection or Audit under **clause 9.4(c)**, the Inspecting Party must bear the costs of conducting the Inspection or Audit.
- (b) For an Inspection or Audit under **clause 9.4(a)**:
- (i) the Party whose operations are Inspected or Audited must bear the reasonable costs of the conduct of the Inspection or Audit to the

extent that the stated grounds for requiring the Inspection or Audit are demonstrated to exist; or

- (ii) the Inspecting Party must bear the costs of conducting such Inspection or Audit to the extent that the stated grounds for requiring the Inspection or Audit are not demonstrated to exist,

as a result of the Inspection or Audit.

#### 9.9 Results of Inspection or Audit and general compliance

- (a) The Inspecting Party must provide the other Party with a copy of the report for the relevant Inspection or Audit.
- (b) An Inspection or Audit by a Party does not relieve either Party of its obligations under this agreement or at Law.

#### 9.10 Cooperation for rail safety investigation

If ~~the Rail Safety Regulator,~~ a rail safety officer, ~~the rail safety regulator,~~ a ~~board of inquiry~~ prescribed authority (as those terms are defined under the TRSARSNL) or other Authority is undertaking an investigation, inquiry inspection, audit or other review in relation to a Party's compliance with its obligations or duties under the TRSARSNL, then the Parties will provide such cooperation and assistance to each other, as is reasonable in the circumstances, in relation to that investigation, inquiry inspection, audit or other review.

## 10 Incident, environmental and emergency management plan requirements

### 10.1 Operator's Emergency Management Plan

- (a) Prior to commencing to operate any Train Services (including any new or varied Train Services) the Operator must develop a proposed Operator's Emergency Management Plan which:
  - (i) complies with the TRSA'sRSNL's requirements for an emergency management plan; and
  - (ii) except to the extent inconsistent with those requirements:
    - (A) details procedures that are adequate to manage an Incident including all actions to be taken to prevent, minimise or mitigate any threat or danger to any person or property including:
      - (1) the matters outlined in the Operating Requirements Manual, from time to time, relevant to the management of Network Incidents – for example, safety and environment matters; and
      - (2) any matters otherwise referred to in this agreement for inclusion in such a plan;

- (B) at all times during the Term is compatible with this agreement and the Queensland Rail Emergency Procedures and with Queensland Rail's emergency management plan; and
- (C) is consistent with:
  - (1) Prudent Practices, all relevant Laws and all applicable Australian or other industry standards; and
  - (2) this agreement including the Network Management Principles, the IRMP and the Operating Requirements Manual,

and obtain a notice from Queensland Rail (whose satisfaction must not be unreasonably withheld or delayed) that it has no objection to that plan.

- (b) As soon as practicable after receiving the proposed Operator's Emergency Management Plan, Queensland Rail (acting reasonably) must either notify the Operator that it:
  - (i) has no objections; or
  - (ii) has objections (including details of those objections),to the proposed Operator's Emergency Management Plan.
- (c) If Queensland Rail notifies the Operator, under **clause 10.1(b)**, that Queensland Rail has objections, then:
  - (i) the Operator must develop an amended plan in accordance with **clause 10.1(a)**; and
  - (ii) **clause 10.1(b)** and this **clause 10.1(c)** will apply in respect of that amended plan.
- (d) If the Operator intends to amend the Operator's Emergency Management Plan, then:
  - (i) the Operator must notify Queensland Rail and provide Queensland Rail with details of the proposed amendments and the reasons for them;
  - (ii) **clauses 10.1(a) to (c)** will also apply in respect of those amendments as if they were a proposed Operator's Emergency Management Plan; and
  - (iii) those amendments will not be effective unless and until the Operator has obtained a notice from Queensland Rail that it has no objection to those amendments.
- (e) The Operator must ensure procedures are in place, and are implemented, which ensure compliance by the Operator with any reporting requirements in the Operator's Emergency Management Plan and, to the extent relevant, the Queensland Rail Emergency Procedures and Queensland Rail's emergency management plan.

- (f) Without limitation to Queensland Rail's right to object to a proposed Operator's Emergency Management Plan (or an amendment to the Operator's Emergency Management Plan) under this **clause 10.140.4**, Queensland Rail must raise an objection if Queensland Rail considers that the proposed Operator's Emergency Management Plan (or the relevant amendment) is inconsistent with Queensland Rail's or another Network Participant's emergency management plan or would adversely affect a coordinated response to a Network Incident or other event or incident that is preventing or affecting, or is likely to prevent or affect, the operation of Train services on the Network.
- (g) Queensland Rail (acting reasonably) may request the Operator to coordinate and cooperate with Queensland Rail or another Network Participant to ensure that the Operator, Queensland Rail and other Network Participants have emergency management plans that are not inconsistent and allow a coordinated response to Network Incidents or other emergencies.
- (h) Without limitation to the Operator's obligations under section ~~82(3)(e)~~113(2) of the ~~TPRSARSNL~~, if requested by Queensland Rail (acting reasonably), the Operator must assist and participate in exercises with Queensland Rail and, if applicable, other Network Participants, to test the effectiveness of the emergency management plans of Queensland Rail, the Operator and, if applicable, other Network Participants including whether those emergency management plans are inconsistent and allow for a coordinated response to Network Incidents or other emergencies.
- (i) Despite **clauses 10.1(f) to (h)** or any other provision of this agreement, Queensland Rail is not obliged to ensure, and does not assume any responsibility for ensuring, that the Operator's Emergency Management Plan:
  - (i) is consistent with Queensland Rail's or any other Network Participant's emergency management plan; or
  - (ii) will allow for a coordinated response to Network Incidents or other emergencies.
- (j) For the purpose of this **clause 10.140.4**, a reference to an **emergency management plan** is a reference to an emergency management plan as referred to under section ~~82~~113 of the ~~TPRSARSNL~~ and, in the case of the Operator, the Operator's Emergency Management Plan.

## 10.2 Obstructions

- (a) The Operator must not cause or contribute to any Obstruction or permit to continue any Obstruction to the extent caused or contributed to by the Operator.

(b) Queensland Rail must not cause or contribute to any Obstruction or permit to continue any Obstruction to the extent caused or contributed to by Queensland Rail.

(c) Queensland Rail may do anything that it considers necessary:

(i) to remove, rectify, mitigate or otherwise deal with any Obstruction;  
or

(ii) to recommence Train Movements where there is or was an Obstruction,

including to move, or remove from the Network, any of the Operator's Rolling Stock (including any freight) that is causing or contributing to an Obstruction or preventing or hindering Train Movements. To the extent that costs and expenses from an Obstruction are caused or contributed to by the Operator, the Operator must pay Queensland Rail's costs and expenses incurred by Queensland Rail in relation to that Obstruction (including costs and expenses for doing anything under this **clause 10.2(c)**) and those costs and expenses will be a debt due and owing by the Operator to Queensland Rail.

(d) Queensland Rail will use reasonable endeavours to consult with the Operator, prior to exercising any right under **clause 10.2(c)**, where Queensland Rail intends to interfere with the Operator's Rolling Stock or any other thing for which the Operator is responsible.

(e) If Queensland Rail gives a Network Control Direction to the Operator to assist Queensland Rail to remove, rectify, mitigate or otherwise deal with an Obstruction caused or contributed to by another Network Participant (including to use any of the Operator's Rolling Stock to move, or remove from the Network, any Rolling Stock of another Network Participant), Queensland Rail will reimburse to the Operator its reasonable direct costs and expenses of providing such assistance.

### 10.3 Notification

(a) Queensland Rail will notify the Operator of any Network Incident (other than an Incident) that may reasonably be expected to materially adversely affect the Train Services as soon as practicable after the Network Incident comes to Queensland Rail's attention.

(b) As soon as practicable after the Operator or the Operator's Associates become aware of:

(i) any Incident;

(ii) any Environmental Harm;

(iii) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in:

(A) Environmental Harm; or

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(B) a category A notifiable occurrence (as defined under the ~~TRSA~~SNL) or any other requirement for Queensland Rail to notify an Authority in accordance any Law;

- (iv) any Obstruction;
- (v) any material breach or suspected material breach of any Safeworking Procedures, Safety Standards or other safety requirements set out in the Operating Requirements Manual; or
- (vi) anything which the Operator observes may cause or contribute to the occurrence of any matter referred to in **clauses 10.3(b)(i) to (v)**,

**(Notifiable Events)**, the Operator must notify Queensland Rail of that Notifiable Event (including any action or intervention taken or being taken by the Operator).

(c) Where:

- (i) the Operator is required to give a notice under **clause 10.3(b)**; and
- (ii) a Train Service is affected by, involved with or has caused or contributed to the relevant event,

the Operator's notice must specify the Train Service and provide details of:

- (iii) any substance or thing carried by that Train Service that could potentially cause or contribute to any:
  - (A) Environmental Harm;
  - (B) loss of, damage to or destruction of real or personal property (including property of another Party); or
  - (C) personal injury to or death of any person; and
- (iv) any Dangerous Goods (if any) carried by the Train Service.

(d) Without limitation to **clauses 10.3(b)** and **(c)**, where any substance or thing referred to in **clause 10.3(c)** (including any Dangerous Goods carried by that Train Service) have escaped or been released or discharged or there is a material or imminent risk of such an escape, release or discharge, the Operator must immediately notify Queensland Rail and provide all relevant details of the release, discharge or risk (including as requested by Queensland Rail) relevant to Queensland Rail's Rail Infrastructure Operations.

(e) For clarity, **clauses 10.3(c)(iv)** or ~~(iv)(d)~~ apply without limitation to **clause 10.5**.

#### 10.4 **Management and response**

(a) If an Incident occurs:

- (i) the Operator and Queensland Rail must coordinate and manage the response to that Incident in accordance with this agreement and the relevant requirements in the Operating Requirements Manual; and
- (ii) an investigation into that Incident will be conducted where required, and in accordance with the relevant provisions of the Operating Requirements Manual, the Operator and Queensland Rail must cooperate, and ensure their Associates cooperate, fully with any such investigation.

#### 10.5 **Dangerous Goods**

##### **[Option A: Where the Train Service is not to carry Dangerous Goods:**

The Operator must ensure that the Train Services do not carry Dangerous Goods. ]

##### **[Option B: Where the Train Service will or may carry Dangerous Goods:**

- (a) The Operator must ensure that the Train Services do not carry Dangerous Goods, except:
  - (i) as expressly provided in this agreement; or
  - (ii) with the prior permission of Queensland Rail (not to be unreasonably withheld).
- (b) If the Operator wishes to obtain Queensland Rail's permission to carry any Dangerous Goods, the Operator must first satisfy Queensland Rail (acting reasonably) that:
  - (i) carrying the relevant Dangerous Goods in the manner proposed by the Operator is permitted under all relevant Laws and Authorities and any applicable Dangerous Goods Code;
  - (ii) any Authorisations required under any applicable Law or Dangerous Goods Code have been, or will be, obtained and maintained and are, or will be, available for inspection by Queensland Rail if requested; and
  - (iii) all Laws, including Authorisations, applicable in relation to those Dangerous Goods and all requirements of any applicable Dangerous Goods Code are, or will be, complied with.
- (c) Unless otherwise expressly provided in this agreement, where either **clause 10.5(a)(i)** or **(ii)** are satisfied and the relevant Train Service will carry Dangerous Goods, the Operator must ensure that:
  - (i) any Authorisations required under any applicable Law or the applicable Dangerous Goods Code have been obtained prior to the operation of that Train Service and are available for inspection by, or for copies to be provided to, Queensland Rail if requested;

- (ii) all Laws, including Authorisations, applicable in relation to those Dangerous Goods and all requirements of any applicable Dangerous Goods Code are complied with;
- (iii) Queensland Rail is notified of the details of the Dangerous Goods (including an accurate description of the Dangerous Goods and the applicable Dangerous Goods United Nations (UN) Number) as soon as practicable prior to the operation of that Train Service; and
- (iv) before any Dangerous Goods are carried on that Train Service, the Operator's Emergency Management Plan includes procedures for responding to an Incident involving those Dangerous Goods, or any other event or circumstance that gives rise to a material or imminent risk of an escape, release or discharge of those Dangerous Goods.]

#### 10.6 **Intervention to prevent or mitigate damage**

Where Queensland Rail becomes aware of:

- (a) any event, circumstance, condition, operation, activity or omission in connection with the Network, the Train Services or any other related activity of the Operator which has caused or contributed to or is likely to cause or contribute to:
  - (i) any Environmental Harm;
  - (ii) any failure by Queensland Rail to comply with or observe any Law;
  - (iii) Queensland Rail being subject to a lawful direction, order or other requirement by any Authority;
  - (iv) any loss of, damage to or destruction of real or personal property (including property of the other Party); or
  - (v) any personal injury to or death of any person; and
- (b) Queensland Rail:
  - (i) considers that action or intervention is required; or
  - (ii) is given a direction by an Authority that action or intervention is required,

to prevent, mitigate or remedy the matter referred to in **clause 10.6(a)**,

then:

- (c) Queensland Rail will notify the Operator of that requirement and, where practicable, any action or intervention that Queensland Rail (acting reasonably) or, if applicable, the relevant Authority considers necessary to prevent, mitigate or remedy the matter referred to in **clause 10.6(a)**; and



- (d) as soon as practicable after receiving such a notice, the Operator will:
  - (i) comply with the requirements of the applicable Authority and any other requirements specified by Queensland Rail in that notice; and
  - (ii) take whatever other action or intervention is required to prevent, mitigate or remedy the matter referred to in **clause 10.6(a)**.

#### 10.7 **Noise mitigation**

- (a) In addition to any noise mitigation or management requirements under the IRMP or as otherwise agreed between the Parties, the Operator must pay to Queensland Rail a contribution, as determined by Queensland Rail (acting reasonably), to the costs and expenses incurred by Queensland Rail in relation to any noise mitigation or management measures on the Network, or land adjacent to the Network, that are considered necessary by Queensland Rail (acting reasonably) to comply with noise levels, limits, standards, guidelines or other requirements that Queensland Rail is required to comply with or which are required in order for Queensland Rail to comply with under any applicable Law (**Noise Mitigation Requirements**).
- (b) Queensland Rail will (acting reasonably):
  - (i) consult with the Operator prior to Queensland Rail electing to implementing noise mitigation or management measures on the Network, or land adjacent to the Network, to comply with any applicable Noise Mitigation Requirements from time to time; and
  - (ii) notify the Operator of how it will determine the Operator's contribution to its costs and expenses in relation to any noise mitigation or management measures, including:
    - (A) prior to electing to implement noise mitigation or management measures on the Network, provide to the Operator any tender documents and quotes to support any expenses which Queensland Rail will seek to recover.

### 11 **Inspection of Trains and Rolling Stock**

- (a) Where:
  - (i) Queensland Rail believes (acting reasonably) that the Operator's Rolling Stock or Train Configurations do not comply with:
    - (A) the authorised Rolling Stock and Train Configurations applicable to the Train Services;
    - (B) any applicable Laws relevant to the Train Services; and
  - (ii) Queensland Rail cannot otherwise reasonably confirm that compliance,

Queensland Rail may:

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- (iii) notify the Operator of its belief (including the grounds supporting that belief) and require the Operator to demonstrate that the Rolling Stock or Train Configurations are compliant; and
- (iv) where the Operator fails to demonstrate compliance:
  - (A) inspect any Trains or Rolling Stock utilised or intended to be utilised for the Train Services; or
  - (B) require the Operator to have an inspection conducted,  
after giving notice of that inspection or requirement to the Operator and for this purpose, Queensland Rail or Queensland Rail's Associates will be entitled at any time to enter and ride on the Operator's Trains or Rolling Stock.
- (b) Queensland Rail may require any of the Operator's Rolling Stock (either loaded or empty) to be available at such location on the Network as Queensland Rail may require (acting reasonably) for weighing, measuring or other inspection at any time specified by Queensland Rail (acting reasonably), provided that Queensland Rail must use reasonable endeavours to minimise any diversion or delay to a Train Service.
- (c) If any of the Operator's Rolling Stock is reasonably considered by Queensland Rail to be loaded:
  - (i) in excess of its rated carrying capacity; or
  - (ii) in an unsafe or insecure manner,then Queensland Rail may:
  - (iii) at any time require the Operator to discontinue the Train Service or to remove the excess or adjust the load at the Operator's expense; or
  - (iv) where the Operator fails to immediately remove the excess or adjust the load, arrange for its removal or adjustment and Queensland Rail's costs and expenses of doing so will be a debt due and owing by the Operator to Queensland Rail.
- (d) The Operator must provide all reasonable assistance required by Queensland Rail in conducting any inspection, including allowing Queensland Rail, its appointed representative or a person appointed to conduct an inspection to discuss any relevant matter with the Operator's Associates. A member of the Operator's Associates may be present at the inspection.
- (e) Nothing in this **clause 11** obliges the Operator, or entitles Queensland Rail, to do anything that would result in the Operator not complying with any Law.
- (f) The Operator must bear the reasonable costs of the conduct of the inspection to the extent that the inspection demonstrates that a relevant non-compliance exists.

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- (g) Queensland Rail must bear the costs of conducting the inspection to the extent that the inspection demonstrates that no relevant non-compliance exists.
- (h) An inspection by Queensland Rail under this **clause 11** does not relieve the Operator of its obligations under this agreement or at Law.

## 12 Risk and indemnities

### 12.1 Indemnities for personal injury and property damage

- (a) Subject to **clause 13** (and without limitation to **clause 12.2**), the Operator indemnifies and will keep indemnified each other Party and that other Party's Associates against all Losses suffered or incurred by, or Claims brought against or made upon, that other Party or its Associates (as applicable) in respect of:
  - (i) any loss of, damage to or destruction of real or personal property (including property of any Party); or
  - (ii) personal injury to or death of any person,in each case to the extent caused or contributed to by:
  - (iii) a breach of this agreement by the Operator; or
  - (iv) any negligent act or omission of the Operator or the Operator's Associates in the performance of obligations, or in the exercise of rights, under this agreement.
- (b) Subject to **clause 13** (and without limitation to **clause 12.2**), Queensland Rail indemnifies and will keep indemnified each other Party and that other Party's Associates against all Losses suffered or incurred by, or Claims brought against or made upon, that other Party or its Associates (as applicable) in respect of:
  - (i) any loss of, damage to or destruction of real or personal property (including property of any Party); or
  - (ii) personal injury to or death of any person,in each case to the extent caused or contributed to by:
  - (iii) a breach of this agreement by Queensland Rail; or
  - (iv) any negligent act or omission of Queensland Rail or Queensland Rail's Associates in the performance of obligations, or in the exercise of rights under this agreement.
- (c) Subject to **clause 13**, the Access Holder indemnifies and will keep indemnified each other Party and that other Party's Associates against all Losses suffered or incurred by, or Claims brought against or made upon, that other Party or its Associates (as applicable) in respect of:
  - (i) any loss of, damage to or destruction of real or personal property (including property of any Party); or

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(ii) personal injury to or death of any person,

in each case to the extent caused or contributed to by:

(iii) a breach of this agreement by the Access Holder; or

(iv) any negligent act or omission of the Access Holder or the Access Holder's Associates in the performance of obligations, or in the exercise of rights under this agreement.

### 12.2 Operator's carriage indemnity

(a) This **clause 12.2** only applies where the Operator holds the Access Rights and the Operator's Customer is not a Party.

(b) The Parties acknowledge and agree that if the Operator's Customer were a Party to this agreement, then **clause 13** should and would apply as if a reference to the Operator in **clause 13** included a reference to the Operator's Customer with the effect of limiting and excluding Claims and liability for Losses as between the Operator's Customer and Queensland Rail – for example, excluding Claims by the Operator's Customer against Queensland Rail for Consequential Loss (where applicable).

(c) As there is no contract between Queensland Rail and the Operator's Customer addressing the matters referred to under **clause 12.2(b)**, the Operator indemnifies and will keep indemnified Queensland Rail and its Associates from all Claims by the Operator's Customer (including any Loss arising out of Claims) in a way that gives effect to **clause 13** as if **clause 13** did apply as between Queensland Rail and the Operator's Customer (with any reference to the Operator in **clause 13** being a reference to the Operator's Customer). For example, if the Operator's Customer is not a Party and commences a Claim against Queensland Rail for Consequential Loss in circumstances where the Operator is excluded from making any such Claim, then the Operator will indemnify Queensland Rail for that Consequential Loss.

(d) The Operator is responsible for all conduct of the Operator's Customer relating to this agreement (including the Train Services). Any act or omission of the Operator's Customer is deemed to be an act or omission by the Operator for the purposes of this agreement.

### 12.3 Conditions of carriage exclusions and limitations of liability

Without limiting **clause 12.2**, the Operator (and where the Operator's Customer is a Party, the Operator's Customer) must:

(a) ensure Queensland Rail has the benefit of any exclusion or limitation of liability in favour of, or for the benefit of, the Operator under the Operator's conditions of carriage in relation to any person, or any person whose property is, being transported on Train Services including the Operator's Customer; and

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- (b) provide to Queensland Rail details of the provisions of the conditions of carriage relevant to those exclusions and limitations of liability in place from time to time.

#### 12.4 **Assistance in defence of Claims arising from Network Incidents**

Each Party must provide reasonable assistance to each other Party in the defence of any Claim made against that other Party by a third party arising out of any event in connection with a Network Incident.

#### 12.5 **Parties responsible for their Associates**

- (a) A Party may allow any of that Party's Associates to exercise any of the Party's rights or to comply with any of the Party's obligations under this agreement.
- (b) Each Party is responsible for the conduct of that Party's Associates in exercising any of that Party's rights or complying with any of the Party's obligations as if that conduct was the conduct of that Party itself.
- (c) If a Party delegates or subcontracts the exercise or performance of any of its rights or obligations under this agreement to any person, then:
  - (i) that Party remains fully responsible for the exercise or performance of the delegated or subcontracted (as applicable) rights or obligations; and
  - (ii) any conduct of any delegate or subcontractor (as applicable) will be taken to be the conduct of the Party.

#### 12.6 **Benefit of indemnities in favour of Associates**

- (a) Each Party acknowledges and agrees that its obligation to indemnify the other Party's Associates under this **clause 12** is for the benefit of the other Party's Associates.
- (b) For the purpose of section 55 of the *Property Law Act 1974* (Qld) (and without limiting the operation of that section), each Party acknowledges that any person who is comprised in the other Party's Associates may accept that benefit.
- (c) Each of the Parties acknowledge that valuable consideration was received for the grant of the benefit referred to in **clause 12.6(a)** and that benefit may be enforced by its Associates (as applicable) in accordance with section 55 of the *Property Law Act 1974* (Qld).
- (d) Without limiting **clauses 12.6(a) to (c)**, each Party hereby gives notice, for and on behalf of that Party's Associates, to the other Party accepting the benefit of the indemnities under this **clause 12** that are in favour of that Party's Associates. The notice under this **clause 12.6(d)** is taken to be given on each day during the Term (including the Commencement Date and the Termination Date) and on each day after the Termination Date while those indemnities survive the expiry or termination of this agreement.

## 13 Limitations on liability

### 13.1 No liability for Consequential Loss

- (a) Subject to **clause 13.1(b)**, despite any other provision in this agreement no Party is liable to another Party for any Consequential Loss suffered or incurred by, or Claimed against, the other Party.
- (b) **Clause 13.1(a)** does not apply in relation to any Loss suffered or incurred by, or Claimed against:
  - (i) a Party to the extent caused or contributed to by an Inspecting Party failing to comply with its obligations under **clauses 9.4 to 9.10** in relation to conducting that Inspection or Audit.

### 13.2 Limitation on Claims

A Party must not make any Claim against the other Party under, in relation to or arising out of this agreement or its subject matter including any breach of this agreement by, or any act or omission of, the other Party unless:

- (a) notice and full details of the Claim have been given to the other Party within one year after the occurrence of the event or circumstance out of which such Claim arises; and
- (b) subject to **clause 13.3**, the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action (and, for clarity, the amount of any Claim is not limited to the amount exceeding that threshold).

### 13.3 Failure to pay amounts

No exclusion or limitation of liability, or restriction on the existence of or ability to make any Claim, in this **clause 13** applies to Claims made by a Party against the other Party for monies due and payable in accordance with this agreement including under **clause 6** and **clauses 13.4, 13.5, and 13.6**.

### 13.4 Liability for Network

- (a) Subject to **clause 13.4(b)**, without limiting any other provisions of this agreement and to the extent permitted by law, Queensland Rail and its Associates are not liable to another Party for any Losses, and the other Party must not make any Claim against either Queensland Rail or its Associates, including in respect of any damage to or loss or destruction of any property (including that other Party's property) or any injury to or death of any person, arising out of or in connection with:
  - (i) the standard, capability or condition of the Network; or
  - (ii) any failure of or defect in the Network; ~~or~~
  - (iii) maintenance of the Network; or
  - ~~(iii)(iv)~~ failure to meet Performance Levels (except as set out in agreed Performance Levels).

- (b) Despite **clause 13.4(a)**, another Party may bring a Claim against Queensland Rail to the extent that any Loss, damage, injury, cost or expense results directly from the failure of Queensland Rail to perform its obligations under **clause 7.1** or Queensland Rail's negligence in performing those obligations.

### 13.5 **Claims in respect of delays to Train Movements**

No Party (**Affected Party**) will have or make any Claim against another Party (**Defaulting Party**) in respect of delays to Train Movements unless, and will only have a Claim to the extent that:

- (a) the delay was a result of a breach of this agreement by the Defaulting Party, or negligence on the part of the Defaulting Party; and
- (b) the delay is not attributable to:
- (i) the Affected Party;
  - (ii) another Network Participant or Party (other than the Defaulting Party);
  - (iii) a Force Majeure Event;
  - (iv) a Planned Possession, Urgent Possession or Emergency Possession of the Network in a manner consistent with the Network Management Principles;
  - (v) Rail Infrastructure Operations scheduled in a manner consistent with the Network Management Principles;
  - (vi) an event, incident or circumstance on Private Infrastructure; or
  - (vii) any action taken by Queensland Rail (acting reasonably) or by an Authority in response to, or as a consequence of, an emergency<sup>3</sup> or a genuine safety risk (including a Network Incident), or any personal injury to or the death of any person on or near the Network, any Rolling Stock or any land or other thing on or near the Network.

### 13.6 **Claims in respect of non-provision of access**

Another Party will not have, and must not make, any Claim against Queensland Rail in respect of the non-provision of access or the cancellation of any Train Service (**Claim Event**) unless, and will only have a Claim to the extent that each of the following is satisfied:

- (a) the Claim Event was a result of a breach of this agreement by, or the negligence of, Queensland Rail;

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<sup>3</sup> An emergency includes any actual or impending circumstance that poses a threat of causing or contributing to:

- injury or death of any person;
- the destruction of or material damage to any real or personal property; **or**
- a material interference with, or loss or disruption of, a person's normal business operations; **or**
- any Environmental Harm.

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- (b) the Claim Event is not attributable primarily to:
- (i) a Party other than Queensland Rail;
  - (ii) another Network Participant (other than Queensland Rail);
  - (iii) a Force Majeure Event;
  - (iv) a Planned Possession, Urgent Possession, Emergency Possession or Rail Infrastructure Operations or other works related to such a Possession;
  - (v) Rail Infrastructure Operations scheduled in a manner consistent with the Network Management Principles;
  - (vi) an event, incident or circumstance on Private Infrastructure; or
  - (vii) any action taken by Queensland Rail (acting reasonably) or by an Authority in response to, or as a consequence of, an emergency<sup>4</sup> or a genuine safety risk (including a Network Incident), or any personal injury to or the death of any person on or near the Network, any Rolling Stock or any land or other thing on or near the Network;
- (c) a Train Service is cancelled due to Queensland Rail failing to make the Network available for the Operator to operate the Train Service at the Scheduled Time and Queensland Rail was not able to offer a reasonable Alternative Scheduled Time.

## 14 Suspension

### 14.1 Right of suspension – Operator

- (a) Queensland Rail (acting reasonably) may, by notice in writing to the Operator, immediately suspend the right of the Operator to operate some or all of the Train Services upon the occurrence of any one or more of the following events or circumstances:
- (i) any event or circumstance described in **clauses 15.2(a)15.1(a) to (j)** occurs;
  - (ii) the rights of the Access Holder are suspended in accordance with **clause 14.2**;
  - (iii) the Operator fails to comply with a notice given by Queensland Rail requiring the Operator (within the reasonable time specified in that notice) to cease conduct that Queensland Rail considers

<sup>4</sup> An emergency includes any actual or impending circumstance that poses a threat of causing or contributing to:

- injury or death of any person;
- the destruction of or material damage to any real or personal property; or
- a material interference with, or loss or disruption of, a person's normal business operations
- any Environmental Harm.

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(acting reasonably) is causing or threatening to cause serious environmental harm or material environmental harm (as those terms are defined in the *Environmental Protection Act 1994* (Qld)); or

- (iv) the Operator has failed, or in Queensland Rail's reasonable opinion the Operator will, or intends to fail, to comply with:
  - (A) any Law or Network Control Direction or the Operating Requirements Manual relating to the operation of Train Services; or
  - (B) any obligation of the Operator under this agreement.
- (b) Such a suspension will continue until such time as the Operator has satisfied Queensland Rail (acting reasonably) that:
  - (i) the relevant event or circumstance has been remedied or, if applicable, has been avoided and will not re-occur; and
  - (ii) where appropriate, that the Operator has taken action to prevent the recurrence of that event or circumstance.

#### 14.2 **Right of suspension – Access Holder**

- (a) Queensland Rail (acting reasonably) may, by notice in writing to the Access Holder, immediately suspend the right of the Access Holder to have an Operator operate some or all of the Train Services upon the occurrence of any one or more of the following events or circumstances:
  - (i) any event or circumstance described in **clauses 15.3(a)15.2(a) to (f)** occurs which has not been remedied in accordance with **clause 15.615.5**.
- (b) Such a suspension will continue until such time as the Access Holder has satisfied Queensland Rail (acting reasonably) that:
  - (i) the relevant event or circumstance has been remedied or, if applicable, has been avoided and will not re-occur; and

where appropriate, that the Access Holder has taken action to prevent the recurrence of that event or circumstance.

#### 14.3 **Details of suspension**

A notice of suspension given by Queensland Rail in accordance with this **clause 14** must set out:

- (a) the rights of the Access Holder or the Operator which are affected by the suspension;
- (b) the reasons for the suspension; and
- (c) the actions the Access Holder or the Operator must take to have the suspension lifted.

#### 14.4 Effect of suspension

The suspension of any rights by Queensland Rail in accordance with this **clause 14**:

- (a) is revocable at any time by Queensland Rail;
- (b) has no effect upon obligations, debts or liabilities which have accrued before that suspension took effect;
- (c) does not affect or suspend any other obligation of the Access Holder or the Operator, including the obligation to pay Access Charges relating to the period of the suspension;
- (d) is without prejudice to any Party's other rights and remedies in respect of the relevant default, event or circumstance; and
- (e) if it is the Operator whose rights have been suspended:
  - (i) does not affect the Access Holder's Access Rights or the ability of the Access Holder to nominate an Operator generally in accordance with **clauses 2.2 or 4.1**; and
  - (ii) does not prohibit the Access Holder from nominating a different Operator to utilise the suspended Train Services in accordance with **clauses 2.2 or 4.1**.

### 15 Default and termination

#### 15.1 Ipsso Facto Amendments

(a) For the purpose of this clause 15, **Ipsso Facto Amendments** means:

- (i) the amendments to the *Corporations Act 2001 (Cth)* set out in Part 2 of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017 (Cth)*; and
- (ii) any regulations, declarations or legislative instruments, prescribed, made or declared pursuant to sections 415D, 434J or 451E of the *Corporations Act 2001 (Cth)*.

(b) Clauses 15.2(c), 15.3(c), 15.4(a) and 15.5(a) are subject to the Ipsso Facto Amendments to the extent they apply to this agreement.

#### 15.2 Termination of Operator by Queensland Rail

Subject to **clause 15.615-5**, without limiting any other rights of termination in this agreement or otherwise existing at Law, Queensland Rail (acting reasonably) may, by notice in writing to the Operator, immediately terminate this agreement in relation to the Operator upon the occurrence of any one or more of the following events or circumstances:

- (a) the Operator fails, in any material respect, to perform or comply with this agreement;
- (b) the Operator fails to pay when due any amount payable, or to provide and maintain Security, in accordance with this agreement;

- (c) without limiting any other clause of this agreement and subject to clause 15.1, an Insolvency Event occurs in relation to the Operator;
- (d) there are no Access Rights under this agreement including as a result of reductions or relinquishments in accordance with **clause 21**;
- (e) a Repeated Breach by the Operator exists;
- (f) the Operator fails to comply with a notice given by Queensland Rail requiring the Operator (within the reasonable time specified in that notice) to cease conduct that Queensland Rail considers (acting reasonably) is causing or threatening to cause serious environmental harm or material environmental harm (as those terms are defined in the *Environmental Protection Act 1994* (Qld));
- (g) the Operator purports to Assign or Charge its rights or interest in this agreement other than in accordance with **clause 22**;
- (h) the Operator fails to comply with the Train Service Description without first obtaining the prior written consent of Queensland Rail;
- (i) the Operator fails to comply with the IRMP or any other safety or environment related obligation under this agreement; or
- (j) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations or exercise its rights under this agreement.

#### 15.215.3 **Termination of Access Holder by Queensland Rail**

Subject to **clause 15.6****15.5**, without limiting any other rights of termination in this agreement or otherwise existing at Law, Queensland Rail (acting reasonably) may, by notice in writing to the Access Holder, immediately terminate this agreement in relation to the Access Holder upon the occurrence of any one or more of the following events or circumstances:

- (a) the Access Holder fails, in any material respect, to perform or comply with this agreement;
- (b) the Access Holder fails to pay when due any amount payable, or to provide and maintain Security, in accordance with this agreement;
- (c) without limiting any other clause of this agreement and subject to clause 15.1, an Insolvency Event occurs in relation to the Access Holder;
- (d) a Repeated Breach by the Access Holder exists;
- (e) the Access Holder fails to comply with a notice given by Queensland Rail requiring the Access Holder (within the reasonable time specified in that notice) to cease conduct that Queensland Rail considers (acting reasonably) is causing or threatening to cause serious environmental harm or material environmental harm (as those terms are defined in the *Environmental Protection Act 1994* (Qld));
- (f) the Access Holder purports to Assign or Charge its rights or interest in this agreement other than in accordance with **clause 22**;

#### ~~15.3~~15.4 **Termination by the Operator**

Subject to **clause 15.6**~~15.5~~, without limiting any other rights of termination in this agreement or otherwise existing at Law, the Operator (acting reasonably) may, by notice in writing to the other Parties, immediately terminate this agreement insofar as it relates to the Operator upon the occurrence of any one or more of the following events or circumstances:

- (a) without limiting any other clause of this agreement and subject to clause 15.1, an Insolvency Event occurs in relation to Queensland Rail;
- (b) Queensland Rail fails to pay when due any amount payable under this agreement; or
- (c) Queensland Rail fails, in any material respect, to perform or comply with this agreement other than where this agreement excludes Queensland Rail's liability for that failure, or where Queensland Rail is not otherwise liable under this agreement for that failure.

#### ~~15.4~~15.5 **Termination by the Access Holder**

Subject to **clause 15.6**~~15.5~~, without limiting any other rights of termination in this agreement or otherwise existing at Law, the Access Holder (acting reasonably) may, by notice in writing to the other Parties, immediately terminate this agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) without limiting any other clause of this agreement and subject to clause 15.1, an Insolvency Event occurs in relation to Queensland Rail;
- (b) Queensland Rail fails to pay when due any amount payable under this agreement; or
- (c) Queensland Rail fails, in any material respect, to perform or comply with this agreement other than where this agreement excludes Queensland Rail's liability for that failure, or where Queensland Rail is not otherwise liable under this agreement for that failure.

#### ~~15.5~~15.6 **Remedy**

If an event or circumstance set out in **clause 15.2**~~15.4~~ or **15.3**~~15.2~~ (except **clauses 15.2(c)**~~15.4(e)~~ to **(d)** and **clause 15.3(c)**~~15.2(e)~~ to **(d)**) (**Event**) occurs then the relevant Party (**Terminating Party**) may only terminate this agreement if:

- (a) the Terminating Party serves a notice (**Notice to Remedy**) on the other Party (**Defaulting Party**) notifying the Defaulting Party of the Event, providing details of the Event and requiring the Defaulting Party:
  - (i) to remedy the Event (if the Event is capable of being remedied); or
  - (ii) to take action to ensure such an Event does not recur (if the Event is not capable of being remedied),

and specifying a reasonable period in which to do the things in **paragraph (i)** or **(ii)**, as applicable having regard to the nature of the Event (**Relevant Period**) – however, if the Event is one in:

- (iii) **clause ~~15.2(b)~~15.4(b)** or **~~15.3(b)~~15.2(b)**, then the Relevant Period must be ten Business Days; or
  - (iv) **clause ~~15.2(a)~~15.4(a)** or **~~15.3(a)~~15.2(a)**, then the Relevant Period must be 20 Business Days; and
- (b) no Defaulting Party:
- (i) remedies the Event, if the Event is capable of being remedied; or
  - (ii) takes action to ensure such an Event does not recur and pays, if applicable, reasonable compensation to the Terminating Party in respect of the Event (subject to any relevant exclusions or limitations of liability under this agreement including **clause 13**), if the Event is not capable of being remedied,

within the Relevant Period.

#### ~~15.6~~**15.7 Termination for Change in Control**

Queensland Rail may terminate this agreement immediately if:

- (a) there is a Change in Control of the Access Holder; and
- (b) the Access Holder has not obtained Queensland Rail's prior consent (such consent not to be unreasonably withheld) to that Change in Control.

#### ~~15.7~~**15.8 Effect of Termination of Operator**

The termination of any Operator's rights to operate by Queensland Rail in accordance with this **clause 15**:

- (a) does not affect the Access Holder's Access Rights or the ability of the Access Holder to nominate an Operator generally in accordance with **clauses 2.2 or 4.1**; and
- (b) does not prohibit the Access Holder from nominating a different Operator to utilise the suspended Train Services in accordance with **clauses 2.2 or 4.1**.

#### ~~15.8~~**15.9 Effect of Termination of Access Holder**

If the agreement is terminated in accordance with **clause ~~15.3~~15.2**; then the Access Holder is deemed to have withdrawn its nomination of the Operator in accordance with **clause 4.1**.

#### ~~15.9~~**15.10 Obligations and other rights upon termination or expiration**

- (a) A Party's right to make a Claim or recover damages or avail itself of other remedies under this agreement or at Law or to recover monies due to it under this agreement is not prejudiced by the termination, pursuant to **clause 15**, or expiry of this agreement.

- (b) The expiry or termination of this agreement releases all Parties from all further obligations or liabilities under this agreement except for:
  - (i) rights which accrued on or before termination, including for breach of this agreement which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this agreement; or
  - (ii) any provisions which are expressed as surviving the expiry or termination of this agreement.

#### ~~15.10~~**15.11 Removal of Rolling Stock following termination**

- (a) Immediately on expiration of the Term, and as soon as practicable after termination of the operational right to operate for any other reason, the Operator must, at the Operator's cost and risk, remove from the Network (or the land on which the Network is located) all of the Operator's Rolling Stock and all vehicles, equipment, freight, debris, or rubbish brought onto the Network (or the land on which the Network is located) by, for or on behalf of the Operator relating to the Train Services.
- (b) If the Operator fails to remove its Rolling Stock from the Network:
  - (i) Queensland Rail may give a notice to the Operator demanding the removal of Rolling Stock by a time specified by Queensland Rail; and
  - (ii) if the Operator fails to remove that Rolling Stock by that time, Queensland Rail may remove that Rolling Stock and recover the reasonable costs of doing so from the Operator.
- (c) The Operator is liable, and indemnifies Queensland Rail, for all costs and expenses incurred by Queensland Rail in relation to any damage caused to the Network by the Operator in removing any Rolling Stock.
- (d) The Operator must comply with all Network Control Directions, and all other directions issued by Queensland Rail (acting reasonably), in relation to the removal of the Rolling Stock in accordance with this **clause ~~15.11~~15.10**.

#### ~~15.11~~**15.12 Access Holder remedy of Operator breach**

If the Operator has breached the agreement then the Access Holder, at its election, may seek to remedy the breach in accordance with **clause ~~15.6~~15.5**.

## **16 Insurance**

### **16.1 Operator's Obligation to obtain and maintain Insurance**

The Operator must:

- (a) effect, or cause to be effected, before the Commitment Date (or, if applicable, the earliest Commitment Date); and

- (b) maintain, or cause to be maintained, until both the expiry of the Term and the Operator having fully complied with **clause 15.1145-10**,

insurances in accordance with Prudent Practices having regard to the Operator's activities, works, obligations and responsibilities under this agreement (including insurances covering all risks of an insurable nature in respect of which the Operator is obliged to indemnify Queensland Rail under this agreement) provided that such insurances must include (without limitation):

- (c) a public liability policy of insurance:
- (i) that covers the Operator and each of the Operator's agents, consultants, contractors and their sub-contractors (each an **Insured Party**);
  - (ii) for an amount of not less than \$350 million per occurrence;
  - (iii) the coverage of which includes (without limitation):
    - (A) the rights, interests and liability in respect of any Claim against an Insured Party arising out of:
      - (1) any damage or loss occurring to any property; and
      - (2) injury (including death) to any person,
    - (B) the Operator's operations and activities on the Network; and
  - (iv) that has a maximum deductible for any one claim of \$500,000;
- (d) a carrier liability policy of insurance:
- (i) that covers the Operator's liability in relation to goods being transported by Train Services;
  - (ii) for an amount of not less than \$10 million per occurrence; and
  - (iii) that has a maximum deductible for any one claim of \$500,000; and
- (e) all other insurances that the Operator or the Operator's agents, consultants, contractors and their sub-contractors are required by Law to hold in relation to or in connection with the exercise of rights or the performance of obligations under this agreement.

## 16.2 **Access Holder's obligation to obtain and maintain Insurance**

The Access Holder must:

- (a) effect and maintain insurance covering such liability as arises at common law or by virtue of any relevant Workers Compensation Legislation in respect of any Access Holder's staff; and
- (b) effect, or cause to be effected, before the Commitment Date (or, if applicable, the earliest Commitment Date); and

- (c) maintain, or cause to be maintained, until both the expiry of the Term and the Operator having fully complied with **clause 15.1145-10**,

insurance in accordance with Prudent Practices having regard to the Access Holder's activities, works, obligations and responsibilities under this agreement (including insurances covering all risks of an insurable nature in respect of which the Access Holder is obliged to indemnify Queensland Rail under this agreement).

### 16.3 Insurer

The Access Holder and the Operator must ensure that their respective Insurance, effected and maintained in accordance with **clause 16.1** or **16.2**, is with an insurer having an insurance financial strength rating of "A" or better by Standard & Poor's or, if Standard & Poor's ceases to exist or to provide such ratings, the rating which most closely corresponds to that rating by another agency or person which is recognised in global financial markets as a major ratings agency.

### 16.4 Essential terms and conditions

The Access Holder and the Operator must ensure that, for their respective Insurances, to the extent permitted by Law, all Insurances effected and maintained in accordance with **clause 16.1** or **16.2** must:

- (a) note the interests of Queensland Rail; and
- (b) not contain any exclusions, endorsements or alterations which adversely amend the cover provided without the written consent of Queensland Rail (which consent must not be unreasonably withheld or delayed).

### 16.5 Payment of premium and deductibles

The Access Holder and the Operator:

- (a) must pay when due all premiums, charges and other expenses necessary for effecting and maintaining in force their respective Insurances; and
- (b) are responsible for the payment of all policy deductibles or excesses for their respective Insurances.

### 16.6 No prejudicial action by the Operator

The Access Holder and the Operator respectively must not do, or permit anything to be done (including any omission), which:

- (a) may result in any respective Insurance being vitiated or rendered void or voidable; or
- (b) would give rise to an entitlement by its insurer to avoid payment of any claim in whole or in part under its respective Insurances.

### 16.7 Disclosure of Insurance

- (a) The Access Holder and the Operator must provide to Queensland Rail evidence of their respective insurance policies effected and maintained pursuant to this **clause 16** (including evidence that the cover provided



under those insurance policies comply with **clause 16** and of the currency of those insurance policies) -to Queensland Rail's reasonable satisfaction:

- (i) at least ten Business Days prior to the initial Commitment Date;
  - (ii) upon renewal of each Insurance during the Term; and
  - (iii) whenever requested to do so in writing by Queensland Rail.
- (b) If the Access Holder or the Operator, whenever required to do so under this agreement, fails to produce to Queensland Rail evidence to the satisfaction of Queensland Rail (acting reasonably) of Insurances that have been effected or maintained by it, Queensland Rail may:
- (i) effect and maintain the Insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Queensland Rail; or
  - (ii) suspend this agreement under **clause 14.1(a)(i)**~~14.1(a)(i)~~ or ~~14.2(a)~~~~14.2(a)(i)~~.
- (c) For the avoidance of doubt, a certificate of currency which provides evidence of compliance with **clause 16** will be considered sufficient evidence for the purposes of **clause 16.7(a)**.

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#### 16.8 **Compliance**

The Access Holder and the Operator must at all times comply with the terms of their respective Insurances effected under this **clause 16**.

#### 16.9 **Claims**

- (a) In addition to any other obligation on the Access Holder or the Operator, the Access Holder and the Operator respectively must:
- (i) notify Queensland Rail as soon as practicable after the occurrence of any claim under their respective Insurance (including providing reasonable details of the claim relevant to or arising out of the subject matter of this agreement); and
  - (ii) keep Queensland Rail informed of subsequent developments concerning any claim.
- (b) Upon settlement of a claim under any Insurance covering damage to the Network, if Queensland Rail is entitled to payment in respect of such damage, the Insurance monies received must be paid to Queensland Rail commensurate with the amount to be paid out by Queensland Rail in relation to the damage unless the Access Holder or the Operator has already partially or totally indemnified Queensland Rail for the relevant damage (including in respect of the amount of any deductible), in which case the monies will be paid to the Access Holder or the Operator (as applicable) but only to the extent that Queensland Rail has been indemnified.

#### 16.10 Insurance not a limit of Operator's liability

The Access Holder and the Operator's compliance with their respective Insurances does not limit that Party's liabilities or obligations under this agreement.

#### 16.11 -Joint Insurance Policy

- (a) To the extent that the Operator has complied with its obligations to insure in accordance with **clause 16.1**, the Access Holder is not required to take out insurance which would cover the same risks.
- (b) If the Operator and Access Holder deem it efficient and appropriate, the Operator and Access Holder may take out joint insurance policies to comply with their respective insurance obligations under this **clause 16**.

### 17 Security

#### 17.1 Obligation to provide Security

- (a) The Operator and the Access Holder (if the Access Holder is not also the Operator) must (in appropriate cases and having regard to the Parties' financial capability):
  - (i) on or before the Commitment Date, provide to Queensland Rail security in the form set out in **clause 17.1(b)** for the relevant Security Amount respectively; and
  - (ii) thereafter maintain that security (including for any increased or decreased amount or any top up) in accordance with this **clause 17**,
- (b) Security must be in the form of:
  - (i) a bank guarantee that:
    - (A) is unconditional and irrevocable and in favour of Queensland Rail;
    - (B) is issued by an Australian institution:
      - (1) authorised to carry on a banking business and entitled to call itself a 'bank' pursuant to the *Banking Act 1959* (Cth); and
      - (2) which has an Acceptable Credit Rating;
    - (C) requires the issuing bank to pay on demand by Queensland Rail:
      - (1) without recourse to the Operator or the Access Holder (as the case may be) or any other person;
      - (2) irrespective of the performance or non-performance of the Operator or the Access Holder (as the case may be) or Queensland Rail under this agreement; and

- (3) despite any notice or other communication from the Operator or the Access Holder (as the case may be) or any other person,

an amount or amounts up to the amount specified in the bank guarantee;

- (D) has no expiry date; and
- (E) is otherwise in a form acceptable to Queensland Rail; or
- (ii) any other form acceptable to Queensland Rail (in its absolute discretion).

#### 17.2 Recourse to Security

- (a) A Security may be called upon by Queensland Rail in any circumstance where the Access Holder or Operator (as the case may be):
  - (i) fails to pay, on or before the due date, any amount that is payable by the Access Holder or Operator (as the case may be) to Queensland Rail under this agreement; or
  - (ii) Queensland Rail otherwise suffers or incurs a Loss in respect of which the Access Holder or Operator (as the case may be) is required to indemnify Queensland Rail in accordance with this agreement.
- (b) If Queensland Rail calls on a Security, the Access Holder or Operator (as the case may be) must deliver to Queensland Rail a further Security for the amount called upon, or a replacement Security for the remaining amount of the existing Security plus the amount called upon in exchange for the existing Security, within five Business Days after Queensland Rail calls on the Security so that the Security held by Queensland Rail is equal to the Security Amount.
- (c) If an Insolvency Event occurs, or Queensland Rail (acting reasonably) suspects that an Insolvency Event has occurred, in relation to the Access Holder or Operator (as the case may be), Queensland Rail may:
  - (i) in respect of any amounts due but unpaid by the Access Holder or Operator (as the case may be) under this agreement:
    - (A) decline payment from the Access Holder or Operator (as the case may be) of all or part of those amounts; and
    - (B) immediately call upon the Security for those amounts for which payment was so declined; or
  - (ii) in respect of any amounts paid by the Access Holder or Operator (as the case may be) under this agreement after the time when the Insolvency Event occurred or Queensland Rail (acting reasonably) suspects that an Insolvency Event occurred:
    - (A) refund all or part of those amounts to the Access Holder or Operator (as the case may be); and

- (B) immediately call upon the Security for the amounts so refunded.

### 17.3 **Review of Security**

- (a) Queensland Rail may:
  - (i) at any time, from time to time, and must upon a request from the Access Holder or Operator (who may each request a review only once in any 12 month period), review the amount of the Security Amount, taking into consideration all of the matters that Queensland Rail considers relevant including:
    - (A) the financial performance of the Operator or the Access Holder (as the case may be);
    - (B) the Operator's or the Access Holder's (as the case may be) past performance under this agreement (whether in relation to payments or otherwise); and
    - (C) expected future payment obligations under this agreement; and
  - (ii) acting reasonably, determine that the amount of the Security Amount should be increased or decreased.
- (b) If Queensland Rail determines under **clause 17.3(a)** that the amount of the Security Amount should be:
  - (i) increased, the relevant Security provider must deliver to Queensland Rail further Security for the amount of the increase, or a replacement Security for the revised amount in exchange for the existing Security; or
  - (ii) decreased, the relevant Security provider must deliver to Queensland Rail a replacement Security for the revised amount in exchange for the existing Security,

within ten Business Days after Queensland Rail gives notice of its determination so that the Security held by Queensland Rail is equal to the Security Amount as determined by Queensland Rail.

### 17.4 **Return of Security**

Queensland Rail must, subject to the rights of recourse to the Security under this **clause 17**, promptly return the Security to the relevant Security provider as soon as practicable after both of **(a)** and **(b)** below occur or **(c)** below occurs:

- (a) this agreement has expired or terminated; and
- (b) in Queensland Rail's opinion (acting reasonably) there is no reasonable prospect that:
  - (i) money or damages will become owing (whether actually or contingently) by that Party to Queensland Rail in connection with this agreement; and

- (ii) any payment towards the satisfaction of that Party's obligation to pay any amount to Queensland Rail under this agreement will be void, voidable or refundable under any Law (including any Law relating to insolvency),

provided that, in any event, Queensland Rail will return the Security to the relevant Party within three months of the expiry or termination of this agreement; or

- (c) an Assignee provides a replacement Security in accordance with **clause 22.2(d)(ii)** (in which case Queensland Rail must return the relevant Security within 2 Business Days of lodgement of that replacement Security).

## 18 Adjustment for changes

### 18.1 Review of schedule 3

- (a) This **clause 18.1**:
  - (i) applies to the extent that a Reference Tariff applies to the Train Services (including where a relevant Reference Tariff is approved by the QCA after the Commencement Date); and
  - (ii) does not apply where there is no Reference Tariff that is applicable to the relevant Train Services.
- (b) **Schedule 3** must be reviewed by Queensland Rail as soon as practicable after a Reference Tariff Provision, or any change in a Reference Tariff Provision, is approved by the QCA from time to time. For clarity, Queensland Rail is not obliged to conduct such a review where there ceases to be a Reference Tariff that is relevant to the Train Services.
- (c) The purpose of the review under this **clause 18.1** is to determine the amendments to **schedule 3** that are necessary to ensure **schedule 3** remains consistent with the Reference Tariff Provisions (including take or pay) —to the extent that **schedule 3** was consistent with those Reference Tariff Provisions at the Commencement Date (and always subject to any differences referred to in **clause 18.1(d)(ii)**).
- (d) Without limiting the matters that Queensland Rail must consider in a review under **clause 18.1(b)**, any review of **schedule 3** must have regard to the following:
  - (i) any relevant new or varied Reference Tariff;
  - (ii) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Provision; and
  - (iii) any other relevant provisions of the Access Undertaking.

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- (e) After Queensland Rail's review of **schedule 3**, Queensland Rail must notify the other Parties of whether it proposes to amend **schedule 3** and if so, the amendments to **schedule 3** that will apply and the date from which those amendments take effect (**Amendment Notice**). For clarity, the amendments may take effect retrospectively, but must not take effect prior to the time when the relevant Reference Tariff Provision, or amendments to the relevant Reference Tariff Provision, take effect as approved by the QCA.
- (f) If the Access Holder does not accept some or all of the amendments in the Amendment Notice or where Queensland Rail has decided not to amend **schedule 3**, then:
  - (i) the Access Holder may only give Queensland Rail a Dispute Notice within ten Business Days after being given that Amendment Notice; and
  - (ii) if the Access Holder gives such a Dispute Notice and the Parties do not resolve the Dispute in accordance with **clause 19.2**, the Dispute must be referred for determination by an Expert under **clause 19.3**.
- (g) For clarity, in this **clause 18.1** a reference to **schedule 3** includes each other provisions (including defined terms) of this agreement relevant to **schedule 3** but only to the extent that they are directly necessary for the application, or interpretation, of **schedule 3**.
- (h) For clarity, **clause 2.2** of **schedule 3** and **clause 18.1** must not be applied in a manner that will result in any part of an Access Charge Input being escalated twice for the same period based on the change in CPI over that period.

## 18.2 Adjustment for a Material Change

- (a) This **clause 18.2** does not apply where a Reference Tariff applies or in relation to a Material Change to the extent that the Net Financial Effect of that Material Change has been, or will be, removed as a result of:
  - (i) amendments to **schedule 3** in accordance with **clause 18.1**; or
  - (ii) the escalation or variation of Access Charge Inputs in accordance with this agreement.
- (b) If a Material Change occurs, then Queensland Rail must as soon as reasonably practicable notify the Access Holder giving details of the Net Financial Effect of that Material Change.
- (c) Within five Business Days after Queensland Rail gives a notice under **clause 18.2(b)**, the Access Holder and Queensland Rail must meet and negotiate, ~~in good faith,~~ adjustments to this agreement, including adjustments to the Access Charges, in order to remove as far as practicable the relevant Net Financial Effect and to put Queensland Rail in the position it would have been in had there been no Material Change.

- (d) If the Access Holder and Queensland Rail do not reach agreement within 15 Business Days after Queensland Rail's notice under **clause 18.2(b)** or otherwise resolve the matter in accordance with **clause 19.2**, then the matter must be referred to an Expert for determination in accordance with **clause 19.3**.
- (e) Each Party's obligations under this agreement will continue despite the existence of a Material Change.

## 19 Disputes

### 19.1 Application of Dispute resolution process

If any dispute, complaint or question arises between the Parties in relation to this agreement (**Dispute**), then:

- (a) that Dispute must be resolved in accordance with this **clause 19**; and
- (b) a Party may give the other Parties a notice in writing (**Dispute Notice**) setting out details of the Dispute and requiring that it be dealt with in the manner set out in this **clause 19**.

### 19.2 Resolution by escalation

- (a) Within five Business Days after the date on which a Party gives the other Parties a Dispute Notice (**Dispute Notice Date**), representatives of the Parties must meet and use reasonable endeavours to resolve the Dispute.
- (b) If the Dispute is not resolved under **clause 19.2(a)**, senior management representatives of the Parties (who, for a Party, are senior to that Party's representative(s) referred to in **clause 19.2(a)**) must, within ten Business Days after the Dispute Notice Date, meet and use reasonable endeavours to resolve the Dispute.
- (c) If the Dispute is not resolved under **clause 19.2(b)**, the Dispute must be referred to each Party's chief executive officer (or his or her nominee – who, for a Party, must be more senior than that Party's representative(s) referred to in **clauses 19.2(a)** and **(b)**) for resolution.
- (d) Subject to **clauses 1.149.4**, if the Dispute is not resolved under **clause 19.2(c)** within 20 Business Days after the Dispute Notice Date (or such other time as agreed between the Parties), the relevant Dispute:
  - (i) must, where this agreement requires referral to an Expert; and
  - (ii) may, by agreement of the Parties (in each Party's absolute discretion) in any other case,
 be referred for resolution by an Expert in accordance with **clause 19.3**.
- (e) If a Party's representative under **clause 19.2(a)** or **19.2(b)** is not authorised:
  - (i) to act on behalf of that Party in relation to the Dispute; or

(ii) to resolve the Dispute with immediate binding effect on that Party, the Dispute is deemed to have not been resolved under **clause 19.2(a)** or **19.2(b)** (as applicable).

### 19.3 Resolution by Expert

(a) This **clause 19.3** is subject to **clauses 1.149-4**.

(b) If a Dispute, or any other matter, is required to be referred to, or determined by, an Expert in accordance with this agreement (including under **clause 19.2(d)**):

- (i) the Expert must be appointed by agreement between the Parties or, in default of such appointment within ten Business Days after the need to refer the Dispute to an Expert, will be that person nominated, at either Party's request, by:
  - (A) where the Parties agree the Dispute is primarily of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
  - (B) where the Parties agree the Dispute is primarily of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; or
  - (C) in any other case, the President (for the time being) of the Queensland Law Society Inc.;
- (ii) the Expert must:
  - (A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
  - (B) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by written notice to the Parties before his or her appointment;
  - (C) not be an employee of a Party or of a Related Party of a Party;
  - (D) not be permitted to act until he or she has given written notice to each Party that he or she is willing and able to accept the appointment;
  - (E) have regard to the provisions of this agreement and consider all submissions (including oral submissions by each Party provided that such oral submissions are made in the presence of the Parties), supporting documentation, information and data with respect to the matter submitted by the Parties;
  - (F) for clarity, only make a determination in a way that is consistent with this agreement;



- (G) provide the Parties with a copy of his or her determination in the form of a report within a reasonable time after his or her appointment;
  - (H) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties; and
  - (I) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration including the *Commercial Arbitration Act 2013* (Qld), will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and
- (iii) if the Expert is to be nominated by a person referred to in **clause 19.3(b)(i)**, the Parties must comply with and do all things necessary to satisfy and to give effect to the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert; and
  - (iv) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting appointment as the Expert.
- (c) The Parties must do everything reasonably requested by the Expert to assist the Expert including producing information and materials as requested by the Expert and attending any hearing convened by the Expert.
  - (d) In the absence of manifest error, a decision of the Expert is final and binding upon all Parties.
  - (e) The costs of the Expert (and any advisers engaged by the Expert) will be borne in equal shares by the Parties. Each Party must bear its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).

#### **19.4 — Resolution of Disputes by Rail Safety Regulator**

- ~~(a) Nothing in this **clause 19** prevents a Party from, at any time, referring any relevant Dispute to the Rail Safety Regulator for resolution in accordance with the TRSA.~~
- ~~(b) To the extent that any Dispute is referred to the Rail Safety Regulator for resolution in accordance with the TRSA and the Rail Safety Regulator agrees to determine the dispute, the process under the TRSA prevails to the extent of any inconsistency with this **clause 19**.~~

~~(c) Without limitation to **clause 19.4(b)**:~~

~~(i) each Party will:~~

~~(A) do all things reasonably necessary to inform the Rail Safety Regulator about the matter in dispute; and~~

~~(B) participate in the dispute resolution process in good faith; and~~

~~(ii) the Parties agree that it is reasonable for the Rail Safety Regulator to determine the dispute including, if applicable, by giving a safety matter direction or interface direction.~~

#### ~~19.5~~19.4 **Determination by court**

If any Dispute is not resolved in accordance with this **clause 19**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.

#### ~~19.6~~19.5 **Injunctive Relief**

Nothing in this agreement prevents a Party from seeking urgent injunctive relief from a court.

#### ~~19.7~~19.6 **Dispute not to affect performance of obligations**

The Parties are not relieved from performing their obligations under this agreement because of the existence of a Dispute.

#### ~~19.8~~19.7 **Extension of time frames**

Where a timeframe applies under this **clause 19** in relation to a Dispute, the Parties may (acting reasonably) agree to vary that timeframe and if the Parties do agree a varied timeframe then this **clause 19** will apply in relation to that Dispute subject to that varied timeframe.

## 20 Force majeure

### 20.1 Force Majeure Event occurrence

- (a) If a Party (**Affected Party**) is prevented or hindered by a Force Majeure Event from fully or partly complying with any obligation (except for any obligation to pay money) under this agreement, the Affected Party must, as soon as reasonably practicable, give notice of the Force Majeure Event to the other Parties including reasonable details of:
- (i) the Force Majeure Event;
  - (ii) the effect of the Force Majeure Event on the performance of the Affected Party's obligations;
  - (iii) the likely duration of the delay in performance of those obligations; and
  - (iv) details of the actions the Affected Party has taken to remedy the situation and details of any actions that the Affected Party proposes to take to remedy the situation.

## 20.2 **Suspension of obligations**

- (a) The obligations of the Affected Party will be suspended where by reason of a Force Majeure Event that Party is delayed in, or prevented from, carrying out its obligations under this agreement.
- (b) Notwithstanding **clause 20.2(a)**, the Access Holder will be relieved from obligations in respect of the payment of Access Charges during the period that the Network is damaged or destroyed by a Force Majeure Event or the Force Majeure Event otherwise prevents Queensland Rail from providing access to the Network in accordance with **clause 2** of this agreement.

## 20.3 **Duty to Mitigate**

Each Party will use all reasonable diligence to remedy or overcome the effect of the Force Majeure Event as soon as possible and will attempt to identify alternative viable means of providing the Access Rights affected and to mitigate the effect of the Force Majeure Event. No Party will be obliged to settle any strike, lockout or other labour dispute on terms not acceptable to it.

## 20.4 **End of period of Force Majeure**

Subject to **clauses 20.5(c)** and **clause 20.6**, the suspension of the obligations of the Parties due to a Force Majeure Event ends when the Party that issued the notice of the Force Majeure Event is able to resume full performance of its obligations under this agreement at which time it must issue a notice to the other Parties advising that it intends to recommence the performance of its obligations and must thereafter recommence the performance of its obligations.

## 20.5 **Termination for Loss or Damage to the Network**

- (a) In the event that any part of the Network is damaged or destroyed by a Force Majeure Event and in Queensland Rail's reasonable opinion the cost of repairing such damage or replacing that part of the Network is not economic on the basis of the then and committed future utilisation of that part of the Network, Queensland Rail must promptly by written notice advise the Access Holder of:
  - (i) the estimated cost of effecting the necessary repairs or replacement works;
  - (ii) the amount of insurance available to effect the necessary repairs and replacement works;
  - (iii) a detailed explanation as to why the cost of repairing or replacing is not economic; and
  - (iv) Queensland Rail's intention to not repair or replace the relevant part of the Network unless the Access Holder or any other Access Holder using that part of the Network pay the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.

- (b) If the Access Holder gives notice to Queensland Rail advising that it will pay the difference between the amount of insurance available to effect the necessary repairs or replacement works and the cost of necessary repairs or works (or a part of that cost as requested by Queensland Rail), then Queensland Rail will proceed with the repairs or replacement within a reasonable time after receipt by Queensland Rail from the Access Holder of payment of the relevant amount subject to reaching agreement with any other Access Holder using the affected part of the Network. Where the Access Holder pays to Queensland Rail the whole of the estimated cost, Queensland Rail must, upon completion of the necessary repairs or replacement works, refund to the Access Holder any amount by which the amount paid by the Access Holder exceeds the actual cost and the Access Holder shall pay to Queensland Rail the amount by which the actual cost exceeds the amount paid by the Access Holder.
- (c) If within three months after receipt of a notice from Queensland Rail under **Clause 20.5(a)** the Access Holder has not given notice to Queensland Rail pursuant to **Clause 20.5(b)** indicating that it will pay the whole, or that part requested by Queensland Rail, of the cost of the necessary repairs or replacement works, and Queensland Rail has not subsequently agreed to fund the repairs or replacement works within that period, the Access Holder or Queensland Rail shall have the right to terminate this agreement in accordance with **clause 20.7**.

#### 20.6 **Repair Negotiations**

If an Access Holder gives Queensland Rail a notice pursuant to **clause 20.5(b)**~~20.5(b)~~, then the Access Holder and Queensland Rail will promptly commence negotiations of a Funding agreement in accordance with **clause 1.4** of the Undertaking.

#### 20.7 **Termination after extended Force Majeure Event**

Subject to **clause 20.6** or the process under **clause 20.5** having been finalised (if applicable), if by reason of a Force Majeure Event either Queensland Rail or the Access Holder (relevantly the **Afflicted Party**) is rendered unable to perform its obligations under this agreement for a period of more than 6 consecutive months, the Access Holder and Queensland Rail must meet in an endeavour to identify any alternative viable means to provide the suspended Access Rights and failing an alternative means being agreed upon within one month of the end of the six month period the other Party may terminate this agreement by 30 days' written notice to the Afflicted Party and the provisions of this agreement relating to termination set out in **clauses 15.10-15.9** and **15.11-15.10** apply without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

## 21 Reduction and relinquishment of Access Rights

### 21.1 Reduction of Access Rights

- (a) If:
- (i) the Access Holder fails to have an Operator operate all Train Services on Scheduled Train Paths for seven or more (not necessarily consecutive) weeks out of any 12 consecutive weeks when such Train Services are scheduled; and
  - (ii) Queensland Rail 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 Access Rights in question,
- then:
- (iii) Queensland Rail may, within ten Business Days after the last of those seven occasions, give a notice to the Access Holder (**Resumption Notice**):
    - (A) that Queensland Rail is considering reducing the Access Holder's Access Rights from a nominated date (**Date of Resumption**) to the extent of that underutilisation; and
    - (B) requesting the Access Holder to demonstrate a sustained requirement for the Access Rights.
  - (b) If a Resumption Notice is given to the Access Holder and the Access Holder has not demonstrated to Queensland Rail's reasonable satisfaction, within 40 Business Days (or longer period if agreed between the Access Holder and Queensland Rail (both acting reasonably)) of receiving the Resumption Notice, a sustained requirement for the Access Rights that were not utilised:
    - (i) Queensland Rail must promptly notify the Access Holder of whether Queensland Rail has decided to proceed with the resumption and, if Queensland Rail has decided to proceed, whether Queensland Rail has decided to reduce the level of resumption, or nominate a later date for the Date of Resumption, from that given in the Resumption Notice (**Resumption Decision Notice**); and
    - (ii) if Queensland Rail has decided to proceed with the resumption, the Access Holder's entitlement to operate Train Services shall be reduced to the level specified in the Resumption Notice with effect on and from the Date of Resumption (except to the extent that

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those matters have been varied in accordance with **clause 21.1(b)(i)**).

- (c) If the Access Holder does not agree with the reduction of the Access Holder's entitlement proposed by Queensland Rail pursuant to **clause 21.1(a)21.4(a)** and **(b)**, the Access Holder may, within 20 Business Days of the receipt of the Resumption Decision Notice, notify Queensland Rail in writing that it disputes the proposed reduction in which case the Access Holder may refer the dispute for determination by an Expert in accordance with **clause 19.319.3** of this agreement. The Expert will determine whether the conditions for a reduction in Access Rights set out in **clause 21.1(a)21.4(a)** have been met and whether the Access Holder has demonstrated a sustained requirement for that part of the Access Rights to which the reduction would apply. The reduction proposed in the Resumption Decision Notice will not take effect until resolution of the dispute and then only to the extent that the reduction is consistent with the Expert's determination.
- (d) Queensland Rail may withdraw the Resumption Notice or the Resumption Decision Notice at any time prior to the later of the Date of Resumption and ten Business Days following the resolution of the dispute.
- (e) In the event that the Access Holder's entitlement to operate Train Services is reduced in accordance with this **clause 21.1**, the agreement (including the Access Charges) will be varied accordingly.
- (f) A Train Service has not been operated on a Scheduled Train Path if the Operator has failed:
  - (i) to present the relevant Train at the scheduled entry point onto the Network; or
  - (ii) to operate the relevant Train so that it completes its full journey, in conformance with the locations and days set out in the Scheduled Train Paths applicable to such Train Service except:
    - (iii) where the prior agreement of Queensland Rail and the Operator has resulted in the Operator using an alternative Train Path for that Train service.

## 21.2 Relinquishment of Access Rights

- (a) If the Access Holder intends to relinquish all or part of the Access Rights, the Access Holder must give Queensland Rail reasonable notice of its intention to do so specifying:
  - (i) the Access Rights that the Access Holder intends to relinquish (**Nominated Access Rights**);
  - (ii) if the Access Holder intends that all or part of the Relinquished Access Rights be used so Queensland Rail can grant specific access rights to a specified Access Seeker (as defined in the

Access Undertaking) (**Transfer**), the identity of that Access Seeker (**Transferee**) – and, for clarity, the Access Holder may itself be that Access Seeker; and

- (iii) subject to **clause 21.2(b)**, the date (**Relinquishment Date**) on which and the period for which the Nominated Access Rights are to be relinquished.
- (b) The period from the giving of the notice under **clause 21.2(a)** until the Relinquishment Date must not exceed nine months.
- (c) The relinquishment of any Nominated Access Rights in accordance with this **clause 21.2** is subject to and conditional on the Access Holder paying to Queensland Rail the Relinquishment Fee on or before the Relinquishment Date.
- (d) If the Access Holder pays the Relinquishment Fee to Queensland Rail on or before the Relinquishment Date, then the terms of this agreement will cease to apply in respect of the Nominated Access Rights on the Relinquishment Date.
- (e) Queensland Rail must facilitate a Transfer in respect of a Transferee if:
  - (i) the relevant access rights to be granted to the Transferee are included in a new or varied access agreement with the Transferee on terms satisfactory to Queensland Rail (acting reasonably);
  - (ii) Queensland Rail is satisfied (acting reasonably) that the new or varied access agreement with the Transferee has been developed in accordance with the requirements of the Access Undertaking;
  - (iii) the Access Holder has complied with **clause 21.2(a)** and paid the Relinquishment Fee to Queensland Rail on or before the Relinquishment Date; and
  - (iv) Queensland Rail has sufficient Available Capacity (as defined in the Access Undertaking) so that it can grant all of the relevant access rights to the Transferee without adversely affecting any other third Party.
- (f) If the Relinquishment Fee is not paid on or prior to the Relinquishment Date, then the Access Holder is taken to have withdrawn the notice given under **clause 21.2(a)** and Queensland Rail has no further obligations under this **clause 21.2** in relation to the relevant relinquishment.

### 21.3 Replacement Access Agreement

If Queensland Rail or the Access Holder identify an opportunity for Queensland Rail to enter into an Access Agreement with an existing or prospective Access Holder that would result in a lessening of the Relinquishment Fee that would otherwise be payable to Queensland Rail under **clause 21.2**, Queensland Rail will not unreasonably delay the process for negotiating and executing an Access Agreement with that existing or prospective Access Holder.

#### 21.4 **Termination where no Access Rights remain**

- (a) Subject to **clause 21.4(b)**, where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this agreement to the extent that there are no longer any Access Rights remaining the subject of this agreement, then Queensland Rail may terminate this agreement by notice to the Access Holder (without prejudice to those provisions which are stated to survive this agreement).
- (b) Where, but for the operation of Ad Hoc Train Services, the Access Holder has no right to utilise the Network, unless otherwise agreed between the Parties (each acting reasonably), this agreement will continue to operate in relation to those Ad Hoc Train Services.
- (c) Any termination under **clause 21.4** is without prejudice to any rights of any Party which accrued on or before termination.

#### 21.5 **Effect on entitlement to operate and Access Charge Rates**

Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this agreement then for the avoidance of doubt:

- (a) the Access Holder's entitlements to have an Operator operate Train Services is also reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights;
- (b) the Access Holder's Nominated Monthly Train Services for each applicable Train Service Description will be taken to be varied to be reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights; and
- (c) the Access Holder will no longer be obliged to pay Access Charges in respect of the resumed, reduced, relinquished or transferred Access Rights (except for any such Access Charges that accrued prior to the resumption, reduction, relinquishment or transfer payable in respect of the part of the Year prior to the resumption, reduction, relinquishment or transfer).

## 22 **Assignment**

### 22.1 **Assignment by Queensland Rail**

- (a) Queensland Rail may Assign all or part of its rights or obligations under this agreement to an Assignee who has the expertise, the financial resources and other relevant resources to enable it to discharge the obligations of Queensland Rail under the QCA Act, the Access Undertaking and this agreement without the prior consent of the other Parties provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to be bound by and to perform the obligations of Queensland Rail under the Access Undertaking and this agreement to the extent of the rights and obligations Assigned to the Assignee.



- (b) On the Assignee entering into that deed, and subject to that deed becoming effective in accordance with its terms, Queensland Rail is released and discharged from further liability under this agreement in respect of the obligations which the Assignee has undertaken to be bound by and to perform.

## 22.2 Assignment by the Access Holder

- (a) The Access Holder may only Assign all or part of its rights and obligations under this agreement in accordance with this **clause 22.2**.
- (b) The Access Holder may, provided it is not in material default in the performance or observance of any of its obligations under this agreement, Assign the whole of its rights and obligations under this agreement to:
  - (i) subject to **clause 22.2(c)**, a Related Party who is capable of performing the obligations of the Access Holder under this agreement; or
  - (ii) a person who is not a Related Party with the prior written consent of Queensland Rail provided that such consent will not be unreasonably withheld:
    - (A) if Queensland Rail is satisfied (acting reasonably) that such person:
      - (1) has the financial resources and capability to perform the Access Holder's obligations under this agreement; and
      - (2) is otherwise capable of performing the Access Holder's obligations under this agreement
- (c) Where **clause 22.2(b)(i)** applies:
  - (i) the Access Holder remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee (**Assigned Obligations**); and
  - (ii) the Assignee's performance of the Assigned Obligations will (to the extent of such performance) discharge the Access Holder's liability for performance of those Assigned Obligations.
- (d) Any Assignment by the Access Holder of its rights or obligations under this agreement is conditional on and does not take effect until:
  - (i) the Assignee covenants with Queensland Rail by deed, in such terms as Queensland Rail may reasonably require, to be bound by and to perform the obligations of the Access Holder under this agreement; and
  - (ii) the Assignee provides to Queensland Rail any Security that is required to be provided and maintained by the Access Holder in accordance with **clause 17**.

### 22.3 Assignment by Operator

The Operator cannot Assign all or part of its rights and obligations under this agreement.

### 22.4 Charging

- (a) The Access Holder (**Chargor**) may only mortgage, charge, encumber or otherwise grant any security over (**Charge**) all or any of its rights and obligations under this agreement in whole or in part, in favour of any person (**Chargee**), if the Chargor, the Chargee and Queensland Rail execute a covenant by deed on terms satisfactory to Queensland Rail (acting reasonably), including terms that the Chargee, and any person (including any receiver or receiver and manager or agent) claiming through the Chargee, must comply with the provisions of this agreement including this **clause 22** in the exercise of its rights in relation to the Charge (including in exercising any power of sale) as if it were originally a Party to this agreement in the position of the Charger.
- (b) If the Operator is not also the Access Holder, then the Operator cannot Charge all or any of its rights and obligations under this agreement in favour of any person.

### 22.5 Effect of Assignment or Charge

Any purported Assignment or Charge in breach of this **clause 22** is of no effect.

## 23 Representations and warranties

- (a) In addition to any other express or implied representations and warranties in this agreement, Queensland Rail and the Operator respectively represent, warrant and undertake to each other that:
  - (i) it is a corporation validly existing under the laws applicable to it;
  - (ii) it has the power to enter into and perform all of its obligations under this agreement and has obtained all necessary consents and approvals to enable it to do so;
  - (iii) it has the resources and capability to perform all of its obligations under this agreement and is able to pay its debts as and when they fall due;
  - (iv) its obligations under this agreement are enforceable in accordance with the relevant terms and are fully binding on it;
  - (v) it is not in breach or default under any agreement to which it is a Party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this agreement;
  - (vi) there is:

- (A) no litigation, arbitration or administrative proceeding taking place, pending, commenced or, to its knowledge, threatened against it; and
- (B) no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it,

which would or could have a material adverse effect on its ability to perform its obligations under this agreement;

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- (vii) it will as soon as practicable notify the other Party of the occurrence of, or pending or threatened occurrence of, any event that may cause or constitute a material breach of any of the acknowledgments, representations, warranties or covenants of that Party under this agreement and any event that could have a material adverse effect on its ability to perform its obligations under this agreement;
  - (viii) it and its Associates have all of the necessary competencies, skills and experience to exercise its rights (including to operate the Train Services) and perform its obligations, under this agreement in accordance with Prudent Practices;
  - (ix) all information provided by each Party to the other Party, whether pursuant to this agreement or otherwise, in relation to or in connection with the Train Services, the Party's rights or obligations under this agreement or the negotiation of this agreement, is correct and complete in all material respects and is not, whether by omission or otherwise, misleading or deceptive.
- (b) The representations and warranties set out in **clause 23(a)** are taken to be given and made on the Commencement Date and on each day during the Term.
- (c) The Operator has the right, at its cost and risk, to inspect the Network (including circumstances of the Network such as fencing and level crossing protection) subject to:
- (i) the Operator giving written notice to Queensland Rail of its request to inspect the Network a reasonable time prior to the date of the intended inspection;
  - (ii) the Operator receiving from Queensland Rail a notice (not to be unreasonably withheld) confirming that the inspection may occur and setting out the requirements for that inspection including in relation to any of the matters referred to in **clauses 23(c)(iii) to (v)**;
  - (iii) that inspection being conducted:
    - (A) in the presence of a nominated representative of Queensland Rail;
    - (B) at a time satisfactory to Queensland Rail; and

- (C) in a manner that does not cause or contribute to any disruption of, or other adverse effect to, any Train Movements or Rail Infrastructure Operations;
  - (iv) the Operator paying, or if paid by Queensland Rail reimbursing, to Queensland Rail the costs and expenses reasonably incurred by Queensland Rail in relation to the Operator's inspection (including the costs and expenses of a representative of Queensland Rail attending the inspection and, if relevant, for any track protection officers) and those costs and expenses will be a debt due and owing by the Operator to Queensland Rail; and
  - (v) such other conditions as may be required by Queensland Rail (acting reasonably) in relation to the inspection including compliance with Queensland Rail's Safeworking Procedures and Safety Standards.
- (d) Any inspection undertaken pursuant to **clause 23(c)** does not restrict or limit any obligation which Queensland Rail has under this agreement.

## 24 Confidentiality

### 24.1 Confidentiality obligation

Subject to **clause 24.2**, a Party (**Recipient**), in respect of the Confidential Information of another Party (**Disclosing Party**) that is provided to the Recipient by or on behalf of the Disclosing Party, must:

- (a) treat that Confidential Information as (and keep it) confidential;
- (b) only use that Confidential Information for the purposes of this agreement or for which it was disclosed; and
- (c) treat that Confidential Information as the property of the Disclosing Party.

### 24.2 Exceptions

A Recipient of Confidential Information is not required to comply with **clause 24.1** to the extent that:

- (a) the Disclosing Party has given its written consent (which must not be unreasonably withheld) to the relevant disclosure or use; or
- (b) another Confidentiality Exception applies to the relevant disclosure or use.

## 25 Notices

### 25.1 Form of Notice

A notice, demand, certification, process or other communication (**Notice**) relating to this agreement (other than Network Control Directions) must be in writing in English and may be given by an agent of the sender and may be in electronic form.

## 25.2 Notices to each Party

If a provision of this agreement requires a Party to give Notice to a particular Party, then the Party giving the Notice must, at the same time, also give that Notice to every other Party to this agreement in the same manner as the original Notice was required to be given.

## 25.3 Method of giving a Notice

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

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

## 25.4 Particulars for the giving of Notices

- (a) The particulars for the giving of Notices are initially:

### Queensland Rail

Delivery address: Floor 14, 305 Edward Street, Brisbane Qld 4000

Postal address: GPO Box 1429, Brisbane Qld 4001

Email: ~~insert current email address~~ [GeneralCounsel@qr.com.au](mailto:GeneralCounsel@qr.com.au)

Attention: General Counsel

Access Holder

As set out in **item 2 of schedule 1**.

### Operator

As set out in **item 4 of schedule 1**.

- (b) Each Party may change its particulars for delivery of Notices by notice to each other Party.

## 25.5 Effect and receipt of Notices

- (a) Subject to **clause 25.5(b)**, a Notice is given:
  - (i) if personally delivered, at the time of delivery;
  - (ii) if posted, on the third day after the date of posting; and
  - (iii) if sent by email, on receipt of a delivery confirmation report by the sender which records the time that the email was delivered to the recipient or the recipient's email server.

- (b) If a Notice is given:
  - (i) after 5:00pm in the place of receipt; or
  - (ii) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken to have been given on the next day which is not a Saturday, Sunday or public holiday in the place of receipt.

## 25.6 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this agreement may be served by any method contemplated by this **clause 25** or in accordance with any applicable law.

## 25.7 Representatives of the Operator

- (a) The persons referred to in **item 12** of **schedule 1** are the relevant Party's representatives in relation to the relevant matters for which they have been nominated in respect of this agreement or the Train Services.
- (b) The initial contact details for those persons are as set out in **item 12** of **schedule 1**.
- (c) Each Party:
  - (i) must notify all other Parties of any changes to those representatives or their contact details on or prior to that change occurring (subject to **clause 25.7(c)(ii)**); and
  - (ii) must ensure that any person ceasing to be such a representative is replaced on or prior to (or, if this is not possible, as soon as practicable after) the time when that person ceases to be a representative.
- (d) Nothing in this **clause 25.7** limits the requirements that may be set out in the Operating Requirements Manual in relation to the nomination of representatives or the provision of contact details for nominated representatives (including, for example, the nomination of persons as incident response coordinators or for the recovery of Rolling Stock).

## 26 GST

### 26.1 Definitions

In this agreement the expressions **adjustment note**, **consideration**, **GST**, **input tax credit**, **supply**, **tax invoice**, **recipient** and **taxable supply** have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### 26.2 Sums exclude GST

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

### 26.3 Responsibility for GST

- (a) Despite any other provisions in this agreement, if GST is imposed on any supply made by a Party (or any entity through which that Party acts) (**Supplier**) under or in connection with this agreement, the recipient must pay to the Supplier an amount equal to the GST payable on the supply.
- (b) Subject to **clause 26.5**, the recipient must pay the amount referred to in **clause 26.3(a)** in addition to, and at the same time as, payment for the supply is required to be made under this agreement.

### 26.4 Reimbursement of expenses

If this agreement requires a Party to reimburse or indemnify any other Party for any expense, loss or outgoing (**reimbursable expense**) incurred by another Party, the amount required to be reimbursed or indemnified by the first Party will be the sum of:

- (a) the amount of the reimbursable expense net of input tax credits (if any) to which the other Party (or the representative member of the GST group of which the other Party is a member) is entitled in respect of the reimbursable expense; and
- (b) if the other Party's recovery from the first Party is a taxable supply, any GST payable in respect of that supply.

### 26.5 Tax invoice

If an amount on account of GST or a GST inclusive price is charged or varied under this agreement, the Supplier must provide to the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.

### 26.6 Adjustment

If the amount of GST paid or payable by the Supplier (or the representative member of the GST group of which the Supplier is a member) on any supply made under this agreement differs from the amount on account of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the Supplier or the Supplier to the recipient, as the case requires.

## 27 General

### 27.1 Duty

- (a) The Access Holder, as between the Parties, is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by Queensland Rail) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

- (b) If Queensland Rail pays any duty (including any fine, interest or penalty except where such fine, interest or penalty arises from a default by Queensland Rail) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it, the Access Holder must pay that amount to Queensland Rail on demand.

#### **27.2 Legal costs**

Except as expressly stated otherwise in this agreement, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this agreement.

#### **27.3 Waiver and exercise of rights**

- (a) Waiver of any right arising in relation to a failure to comply with this agreement must be in writing and signed by the Party granting the waiver.
- (b) A single or partial exercise or waiver by a Party of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A Party is not liable for any Loss of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (d) A failure or delay in the exercise, or partial exercise, of a right arising from a breach of this agreement does not result in a waiver of that right.

#### **27.4 Amendments**

Except as otherwise provided in this agreement and subject to **clause 4.1(c)** and **4.2(a)(vi)**, an amendment of this agreement will only be effective if it is in writing and executed by all Parties.

#### **27.5 Rights cumulative**

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

#### **27.6 Consents**

Except as expressly stated otherwise in this agreement, a Party may conditionally or unconditionally give or withhold any consent, approval, acceptance or notice of no objection to be given under this agreement and is not obliged to give its reasons for doing so.

#### **27.7 Further steps**

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this agreement and to perform its obligations under it.

#### **27.8 Governing law and jurisdiction**

- (a) This agreement is governed by and is to be construed in accordance with the laws applicable in the State of Queensland.



- (b) Each Party irrevocably and unconditionally:
- (i) agrees that the courts of the State of Queensland and any courts which have jurisdiction to hear appeals from any of those courts are to have exclusive jurisdiction to settle disputes which may arise out of or in connection with this agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this agreement may be brought in, and only in, such courts;
  - (ii) waives any objection which it may have now or in the future to the laying of the venue of any Proceedings in such courts and any claim that any such Proceedings have been brought in an inconvenient forum; and
  - (iii) agrees that a final judgment in any Proceedings brought in such courts is conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

#### 27.9 **Liability**

An obligation of two or more persons binds them separately.

#### 27.10 **Counterparts**

This agreement may consist of a number of counterparts (electronic or otherwise) and, if so, the counterparts taken together constitute one document and become binding upon each Party upon exchange of counterparts.

#### 27.11 **Legally binding**

- (a) This agreement is binding on the Access Holder and Queensland Rail when executed by those Parties or when counterparts are exchanged between those Parties pursuant to **clause 27.10**.
- (b) This agreement is binding as between the Access Holder, Queensland Rail and the Operator when:
  - (i) the Operator has signed the agreement or the Parties have exchanged counterparts pursuant to **clause 27.10**; or
  - (ii) if the Operator does not execute the agreement at the same time as the Access Holder and Queensland Rail, when Queensland Rail accepts the nomination of the Operator in accordance with **clause 2.2** and Queensland Rail provides the Access Holder and the Operator with an executed counterpart of the agreement in accordance with **clause 1.1(a)(i)2.2(e)(v)**.

#### 27.12 **Entire understanding**

- (a) This agreement contains the entire understanding between the Parties as to the subject matter of this agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this

agreement are merged in and superseded by this agreement and are of no effect.

- (c) No oral explanation or information provided by any Party to another:
  - (i) affects the meaning or interpretation of this agreement; or
  - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

#### 27.13 Relationship of Parties

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

#### 27.14 Severability

- (a) Subject to **clause 27.14(b)**, if a provision of this agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this agreement.
- (b) **Clause 27.14(a)** does not apply if severing the provision:
  - (i) materially alters:
    - (A) the scope and nature of this agreement; or
    - (B) the relative commercial or financial positions of the Parties; or
  - (ii) would be contrary to public policy.

#### 27.15 Survival

- (a) **Clauses 4.4, 4.5, 6, 8.9(c), 8.9(e) to (d), 12, 13, 15.9, 15.1145-40, 16.9, 17.2, 17.4, 18, 19 and 24 to 28** remain in full force and effect and survive the expiry or termination of this agreement.
- (b) **Clause 15.1145.40** remains in full force and effect and survives the expiry or termination of this agreement until the Operator has fully complied with it.
- (c) All indemnities and exclusions, limitations and other restrictions on liability contained in this agreement survive the expiration or termination of this agreement.
- (d) All representations and warranties in this agreement survive the execution and delivery of this agreement and the completion of the transactions contemplated by it.

#### 27.16 Benefit

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

#### 27.17 No merger

The rights and obligations of the Parties:

- (a) continue until satisfied in full;
- (b) do not merge on the completion of any transaction contemplated by this agreement; and
- (c) survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

#### 27.18 **Enforcement of indemnities**

It is not necessary for a Party to incur expense or make a payment before enforcing an indemnity contained in this agreement.

#### 27.19 **Sublease**

- (a) The Parties acknowledges that:
  - (i) Queensland Rail's interest in all or part of the land on which the Network is located and over which the Train Services will operate is or will be held under:
    - (A) the Sublease; or
    - (B) a lease, easement, licence, statutory right or other arrangement or right other than the Sublease,  
**(Land Tenure)**; and
  - (ii) this agreement is subject to the terms and conditions (including all reservations), whether express or implied, of the Sublease (or the Head Lease) and any other Land Tenure.
- (b) Queensland Rail must do either or both of the following:
  - (i) give the Access Holder and the Operator a copy of any Land Tenure (together with any relevant amendments from time to time); or
  - (ii) notify the Access Holder and the Operator of any requirements that the Operator must comply with in relation to that Land Tenure (together with any amendments from time to time) **(Tenure Requirements)**.
- (c) Despite any other clause in this agreement and to the extent that the Operator operates Train Services on any part of the Network on land, or otherwise accesses land, that is the subject of any Land Tenure, the Operator must:
  - (i) observe and comply with all relevant obligations of Queensland Rail under that Land Tenure and the Tenure Requirements; and
  - (ii) not act, omit to act or permit, cause or contribute to any act or omission that may result in Queensland Rail:
    - (A) breaching a term of any Land Tenure; or

- (B) incurring (directly or indirectly) any costs or expenses in complying with a Land Tenure that Queensland Rail would not otherwise have incurred.
- (d) If there is an inconsistency between the terms of this agreement and the terms of any Land Tenure or Tenure Requirements which means that Queensland Rail or the Operator cannot comply with both this agreement and that Land Tenure or those Tenure Requirements, then the terms of that Land Tenure or those Tenure Requirements (as applicable) prevail to the extent of the inconsistency and the provisions of this agreement will be construed accordingly.
- (e) If Queensland Rail's rights in respect of the Land Tenure are terminated for any reason other than the default of Queensland Rail of any agreement that affects Queensland Rail's use of that Land Tenure or other than by agreement between Queensland Rail and the relevant land owner, then Queensland Rail may by notice to the Access Holder and the Operator suspend and/or terminate this agreement insofar as it relates to that part of Network which is situated on that Land Tenure (in which case the Access Holder's obligation to pay Access Charges is suspended and/or terminated commensurate with that suspension or termination).

**27.20 Most favoured nation status**

- (a) The Access Holder may (acting reasonably) notify Queensland Rail that it believes that:
  - (i) Queensland Rail has entered into an access agreement with another Network Participant for a Train service that transports the same commodity in the same geographic area as a Train Service (**Like Train Service**); and
  - (ii) the access charges applicable to the Like Train Service have been developed in contravention of the price differentiation provisions under the relevant Access Undertaking's pricing principles that applied to the development of those access charges (**Price Differentiation Provisions**),and provide Queensland Rail with reasons why the Access Holder considers this to be the case.
- (b) Within 20 Business Days after receiving such a notice, Queensland Rail must notify the Access Holder:
  - (i) whether it agrees that the access agreement with the other Network Participant is for a Like Train Service including, if it does not agree, its reasons; and
  - (ii) where it does agree with the matter in **clause 27.20(b)(i)**, whether it agrees that the access charges applicable to the Like Train Service have been developed in contravention of the Price

Differentiation Provisions including, if it does not agree, its reasons.

- (c) Within 40 Business Days after giving a notice under **clause 27.20(b)** agreeing to the matter in **clause 27.20(b)(ii)**, Queensland Rail must notify the Access Holder:
  - (i) whether Queensland Rail has been able to vary the access charges applicable to the Like Train Service to rectify the contravention of the Price Differentiation Provisions; or
  - (ii) where Queensland Rail has not been able to vary those access charges, that Queensland Rail agrees to vary the Access Charge to rectify the contravention of the Price Differentiation Provisions including how the Access Charge will be varied.
- (d) If the Access Holder (acting reasonably) is not satisfied with Queensland Rail's responses under **clauses 27.20(b)** or **(c)**, the dispute must be referred to an Expert for resolution in accordance with **clause 19.3**.
- (e) If:
  - (i) another Network Participant notifies Queensland Rail that it believes:
    - (A) that some or all of the Train Services transport the same commodity in the same geographic area as a Train service operated by that other Network Participant; and
    - (B) that the Access Charges for those Train Services have been developed in contravention of the price differentiation provisions under the relevant Access Undertaking's pricing principles that applied to the development of the Access Charges; and
  - (ii) Queensland Rail agrees with the matters referred to in **clauses 27.20(e)(i)(A)** and **(B)**,

then Queensland Rail may notify the Access Holder varying the Access Charge to rectify the relevant contravention.

- (f) In this **clause 27.20**, a reference to the Access Charges, or the access charges applicable to another Network Participant's Train service, includes the methodology, rates and other inputs used to calculate those Access Charges or access charges, as applicable.
- (g) This **clause 27.20** only applies in relation to an access agreement or access charges for a Like Train Service where that access agreement was entered into by the relevant parties after the date of this agreement.

## 28 Interpretation

### 28.1 Definitions

In this agreement:

**Acceptable Credit Rating** means a minimum long term credit rating of not less than “A” from Standard and Poor’s Rating Service (or equivalent rating by another internationally recognised ratings agency).

**Access Charge Input** means a rate or other input, used for the purpose of calculating Access Charges, as specified in **clause 04 of schedule 3** (including as varied, escalated or replaced from time to time in accordance with this agreement).

**Access Charges** means the charges which includes Take or Pay Charges, determined in accordance with **schedule 3**. *[Note: where a Reference Tariff does not apply to the setting of Access Charges, this definition must be checked against what the Parties agree to in **schedule 3**]*

~~**Access Rights** has the meaning given in **clause 2.1(a)**.~~

Field Code Changed

**Access Undertaking** means Queensland Rail’s access undertaking as approved by the QCA under the QCA Act, from time to time.

~~**Access Rights** has the meaning given in **clause 2.1(a)**.~~

**Accreditation** means accreditation (including any exemption from the requirement for such accreditation and any conditions applying to that accreditation or exemption) in accordance with Part **53 Division 4** of the **TRSARSNL** and **Accredited** means to have Accreditation.

**Ad Hoc Train Service** means a train service additional to the number of Train Services permitted under this agreement and varying from the Train Service Description, but agreed to by Queensland Rail.

**Additional Train Service** means the operation of a Train in accordance with this agreement that would be a Train Service but for it being in addition to the Train Service Levels set out in the Train Service Description.

**Affected Party** has the meaning given in **clause 20.1(a)**.

**Alternative Schedule Time** has the meaning given to that term in the Access Undertaking.

**Assign** means assign, novate, transfer or otherwise deal with, and **Assignment** and **Assignee** have a corresponding meaning.

**Associates** means, for a Party:

- (a) directors, officers, employees, contractors, agents or consultants of that Party; and

- (b) where the Party is:
- (i) the Operator, any other person under the control or supervision of, or acting for or on behalf of, the Operator in connection or relating to the Train Services;
  - (ii) the Access Holder, any other person under the control or supervision of, or acting for or on behalf of, the Access Holder in connection or relating to the Access Holder's obligations under this agreement; or
  - (iii) Queensland Rail, and any other person under the control or supervision of, or acting for or on behalf of, Queensland Rail in connection with or relating to the provision of the Access Rights,

including any worker (as defined under the *Work Health and Safety Act 2011* (Qld)) who carries out work for that Party, but for the avoidance of doubt, the Operator is not an Associate of the Access Holder and the Access Holder is not an Associate of the Operator for the purposes of this agreement.

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

**Authority** means:

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

including any officer or agent of the foregoing acting in that capacity but excluding the Rail Authority and, for the avoidance of doubt, excluding Queensland Rail.

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

**Certification** has the meaning given in **clause 8.10(a)(i)**.

**Change in Control** means:

- (a) a change in the entity that controls a Party;
- (b) an entity that controls a Party ceases to control a Party; or

(c) if a Party is not controlled, another entity acquires control of a Party, except where:

- (d) a Party is listed on the Australian Securities Exchange before, and remains listed after, the relevant change;
- (e) the relevant change relates directly to the initial listing of a Party on the Australian Securities Exchange; or
- (f) for paragraphs (a) and (b), the ultimate holding company of a Party remains the same following the relevant change.

For the purposes of this definition “control”, “controls”, “controlled” and “ultimate holding company” have the meaning given to those terms in the Corporations Act.

**Change in Law** means:

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

**Change to Credit** means:

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



- (b) any change in the funding received by Queensland Rail from any Authority in relation to the relevant part of the Network.

**Charge** has the meaning given in **clause 22.4**.

**Chargee** has the meaning given in **clause 22.4**.

**Claim** means any claim, cause of action, proceeding, liability, suit or demand (including by way of contribution or indemnity) whether:

- (a) arising in contract, in tort (including negligence), under any Law or otherwise; or
- (b) present or future, fixed or unascertained, actual or contingent.

**Claim Event** has the meaning given in **clause 13.6**.

**Commitment Date**, for a Train Service, has the meaning given in **item 10 of schedule 1** for that Train Service.

**Commencement Date** has the meaning given in **item 7 of schedule 1**.

**Compliance Date**, for a Train Service, has the meaning given in **item 9 of schedule 1** for that Train Service.

**Confidential Information** means:

- (a) the terms of this agreement; and
- (b) any information, data or other matter (in this definition, **information**) disclosed to a Recipient by, or on behalf of, a Disclosing Party where:
  - (i) the disclosure of the information by the Recipient would reasonably be expected to adversely affect the commercial interests of the Disclosing Party; or
  - (ii) the information is marked or otherwise indicated as confidential at the time of the disclosure to the Recipient,excluding information that:
  - (iii) was in the Recipient's lawful possession prior to the disclosure; or
  - (iv) whether before or after the disclosure:
    - (A) is in the public domain through means other than a breach of confidentiality by the Recipient (or anyone to whom the Recipient has disclosed it); or
    - (B) is received by the Recipient independently from a third party who is free to disclose such information.

**Confidentiality Exception** means:

- (a) any disclosure or use of Confidential Information consented to by the Disclosing Party under **clause 24.2(a)**;
- (b) any disclosure of Confidential Information to another Party, provided that the confidentiality obligations under this agreement continue to apply to

that Confidential Information as if the disclosure was made directly by the Disclosing Party to that other Party; or

- (c) any disclosure or use of Confidential Information:
- (i) to the extent necessary to:
    - (A) the Recipient's directors, officers or employees; or
    - (B) without limiting **paragraph (c)(xii)** of this definition, the directors, officers or employees of a Related Party of the Recipient;
  - (ii) to the extent required or compelled by, or necessary to observe, administer or comply with, any Law (other than section 275(1) of the *Personal Property Securities Act 2009* (Cth));
  - (iii) to the extent consistent with a person's right to disclosure under any Law;
  - (iv) without limiting **paragraphs (c)(ii)** or **(iii)** of this definition, in accordance with the Access Undertaking (including the Network Management Principles) including:
    - (A) in publishing or providing MTPs and DTPs; and
    - (B) for the purpose of consultations or negotiations relating to a modification of a MTP or the scheduling of a DTP in variation from an MTP,
  - (v) to the extent necessary for the conduct of any legal proceedings (including any dispute resolution process under the Access Undertaking or the QCA Act);
  - (vi) to the extent required under any stock exchange listing requirement or rule;
  - (vii) to the Rail Safety Regulator or the QCA;
  - (viii) to the Recipient's solicitors, barristers, or accountants under a duty of confidentiality (which is not waived by the Recipient without the prior written consent of the Disclosing Party);
  - (ix) to the Recipient's engineering or other technical consultants and advisers to the extent necessary for the provision of advice to the Recipient (provided they are under a legal obligation not to disclose the Confidential Information to any third party);
  - (x) to the Recipient's banker, financier or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Disclosing Party under which they are obliged to keep the Confidential Information confidential;

- (xi) if Queensland Rail is the Recipient, to any responsible Minister (as defined in the Rail Authority Act);
- (xii) if Queensland Rail is the Recipient, to the extent necessary to:
  - (A) the Rail Authority; and
  - (B) the Rail Authority's board members;
  - (C) the Rail Authority's:
    - (1) chief executive officer, chief finance officer and other senior executives (as those terms are defined under the Rail Authority Act); and
    - (2) other officers and employees;
- (xiii) for the purpose of facilitating Network Control Directions where the disclosure of information is by Queensland Rail in the usual course of undertaking Network Control;
- (xiv) to the extent necessary by any person involved in clearing a Network Incident or other event or incident that is preventing or affecting the operation of Train services on the Network;
- (xv) to the extent necessary by Queensland Rail for the purpose of responding to, managing or clearing a Network Incident or other event or incident that is preventing or affecting, or is likely to prevent or affect, the operation of Train services on the Network;
- (xvi) to any bona fide assignee if such assignee has executed a legally enforceable confidentiality deed in favour of the Disclosing Party under which they are obliged to keep the Confidential Information confidential.

**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 revenue, loss of production, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill, wasted overheads or any damage to credit rating whatsoever; and
- (d) any loss arising out of any Claim by a third party, whether arising in contract, in tort (including negligence), under any law or otherwise and whether present or future, fixed or unascertained, actual or contingent, but does not include:
  - (e) a loss (including a loss arising out of a Claim by a third party) in respect of:

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

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

**CPI** means the Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No.6401.0) as published by the Australian Bureau of Statistics (or other successor, authority or instrumentality having jurisdiction in the matter) as varied from time to time in accordance with this agreement.

**Daily Train Plan** or **DTP** has the meaning given to that term in the Access Undertaking.

**Dangerous Goods** means any substance or thing defined as dangerous goods, explosives or radioactive material under a Dangerous Goods Code.

**Dangerous Goods Code** means:

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

**Data** has the meaning given in **clause 8.9(a)**.

**Disclosing Party** has the meaning given in **clause 24.1**.

**Dispute** has the meaning given in **clause 19.1**.

**Dispute Notice** has the meaning given in **clause 19.1(b)**.

**Dispute Notice Date** has the meaning given in **clause 19.2(a)**.

**Emergency Possession** means a Possession:

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

**Endorsed Variation Event** has the meaning given to that term in the Access Undertaking.

**End Date** means, for a Train Service, the date specified in **item 8 of schedule 1**.

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

**EIRMR** means the environmental investigation and risk management report developed by the Operator to identify and assess the environmental risks associated with the proposed Train Services and to identify applicable control measures to effectively manage those risks and as further outlined in the Operating Requirements Manual. For the avoidance of doubt, the EIRMR is used to inform the Interface Risk Assessment and the development of the IRMP.

**Existing Agreement** means an existing access agreement between Queensland Rail, the Access Holder and a nominated Accredited ~~Railway~~Rolling Stock Operator relating to the operation of any of the Train Services.

**Expert** means an expert appointed in accordance with **clause 19.3**.

**Extension** has the meaning given to that term in the Access Undertaking.

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

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

and includes:

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

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

**GST** has the meaning given in **clause 26.1**.

**Head Lease** means the lease from the Governor in Council to the State of Queensland (represented by the Department of Transport and Main Roads) of land on which all or part of the Network is located, granted in accordance with section 240(2) of the TIA.

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

**Impost Change** means:

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

**Incident** means any Network Incident involving the activities of the Operator.

**Initial Operator** means the first Accredited ~~Railway~~**Rolling Stock** Operator nominated by the Access Holder to become bound to an access agreement with Queensland Rail and the Access Holder relating to the operation of any of the Train Services.

**Insolvency Event** means, in relation to a Party, any one or more of the following events:

- (a) the Party is not able to pay all its debts from the Party's own money as and when they become due or has stated that it is unable to do so;
- (b) the Party has been presumed to be insolvent or unable to pay its debts under any applicable legislation;

- (c) a resolution is passed that the Party be wound up or placed in liquidation voluntarily or that an administrator be appointed;
- (d) an application or order has been made for the winding up or dissolution of the Party (other than an application which is dismissed or withdrawn within ten Business Days after such proceedings were commenced);
- (e) a controller, administrator, receiver, liquidator or provisional liquidator has been appointed to the Party or in respect of any of its property;
- (f) the Party has entered into or taken any action to enter into (whether formally or informally) an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (g) a mortgagee has entered into possession of any of the Party's assets or undertakings; or
- (h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction has occurred in respect of the Party,

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

**Inspection or Audit** has the meaning given in **clause 9.5**.

**Insurance** means those insurances to be effected and maintained in accordance with **clause 16**.

**Interest Rate** means the rate which is the aggregate of:

- (a) 2% per annum; and
- (b) the Commonwealth Bank of Australia's reference rate being the "Reference Rate" quoted by the Commonwealth Bank of Australia (or any successor bank) for borrowers with overdrafts of \$100,000 or more on any relevant date as published in the Australian Financial Review (or in the event that such a rate is not so quoted or published at or in respect of any relevant date, such other similar rate to the "Reference Rate" specified by a major commercial bank agreed between the Parties or, if not agreed, a rate determined by an Expert in accordance with **clause 19.3**).

**Interface Risk** means a risk to the safety of persons or property or to the environment<sup>5</sup> arising from the interaction between the Operator's proposed operations and any one or more of:

<sup>5</sup>

Environmental risks include:

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

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

including risks of Environmental Harm arising out of the Operator's proposed operations on the Network, provided that a reference to operations in this definition includes railway operations as defined in the [TRRSARSNL](#).

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

- (a) identify all reasonably foreseeable Interface Risks;
- (b) evaluate the possibility of the Interface Risks occurring and the safety, commercial and other consequences of those Interface Risks;
- (c) identify appropriate controls and measures to adequately manage all Interface Risks (including any training required for the Operator's Associates);
- (d) identify the Party responsible for implementing such controls and measures and ensuring their on-going effectiveness;
- (e) identify the applicable Safeworking Procedures and Safety Standards to be adhered to including Queensland Rail's safety policies and procedures and the Operating Requirements Manual;
- (f) identify the minimum standards relating to the interface between Rolling Stock and the Network with which the Rolling Stock and Train Configurations must comply in order for them to be able to be operated on the relevant parts of the Network (or, if already agreed, agree variations (if any) to those standards);
- (g) identify:
  - (i) any relevant Laws and the controls, standards and procedures developed from time to time by Queensland Rail to comply with such Laws; and
  - (ii) any relevant elements of Queensland Rail's environmental management system and the Operating Requirements Manual,

to be adhered to;

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

**Interface Standards** has the meaning given to that term in the Operating Requirements Manual.



**Interim Take or Pay Notice** has the meaning given to that term in **clause 5.4(b)** of **schedule 3**.

**IRMP** means the interface risk management plan set out in **schedule 4**, as amended from time to time in accordance with **clause 9.2**.

**Land Tenure** has the meaning given in **clause 27.19(a)(i)**.

**Law** includes:

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

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

**Loss** means loss, damage, cost or expense including the costs and expenses of defending or settling any Claim (including legal costs and expenses on a full indemnity basis) whether:

- (a) arising in contract, in tort (including negligence), under any Law or otherwise; or
- (b) present or future, fixed or unascertained, actual or contingent.

**Maintenance Work** means any works involving maintenance, repairs to, renewal, and associated alterations or removal of, the whole or any part of the Network and includes any inspections or investigations of the Network.

**Master Train Plan** or **MTP** has the meaning given to that term in the Access Undertaking.

**Material Change** means:

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

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

**Net Financial Effect** means the net effect in financial terms of a Material Change on Queensland Rail in relation to performing its obligations or exercising its rights under this agreement including any offsetting benefits or adverse effects directly or indirectly connected to the Material Change (and, for clarification, any change in the funding from governments in respect of the

relevant part of the Network for the relevant commodity which is adverse to Queensland Rail shall, to the extent that change affects the financial position of Queensland Rail, be deemed to be an additional cost to Queensland Rail of performing its obligations under this agreement).

**Network** means the rail transport infrastructure (as defined in the TIA) the use of which is taken, pursuant to section 250(1)(b) of the QCA Act, to be a service declared under Part 5, Division 2 of the QCA Act (but excluding any rail transport infrastructure (as defined in the TIA) the use of which is referred to in section 249(2) of the QCA Act).

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

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

**Network Control Directions** means instructions, directions and notifications from time to time issued by Queensland Rail for the purpose of Network Control (including preventing or minimising the effect of a material breach of this agreement).

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

**Network Control System** means the software, databases and systems used from time to time by Queensland Rail in connection with Network Control.

**Network Incident** means any Rolling Stock derailment, Rolling Stock disablement or breakdown, accident, collision or any other unplanned occurrence on the Network which causes or could cause death or injury to any person, damage to property or Environmental Harm or a disruption to or cancellation by Queensland Rail of any Train Movement.

**Network Management Principles** has the meaning given to that term in the Access Undertaking (from time to time) or, if the Access Undertaking ceases to define that term, the network management principles included in the Operating Requirements Manual from time to time.

**Network Participant** means:

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

including:

- (c) the Operator; and

- (d) any person in control of, or operating, any Private Infrastructure that is connected to the Network.

**Nominated Access Rights** has the meaning given in **clause 21.2(a)(i)**.

**Nominated Monthly Train Services** means the number of Train Services for that Train Service Description that the Access Holder is entitled to have operated during any calendar month.

**Notice** has the meaning given in **clause 25.1**.

**Obstruction** means any thing or circumstance (including debris or other things on the Network), which has the potential to cause a disruption to or cancellation by Queensland Rail of Train Services or Train Movements and includes any Network Incident but does not include an Operational Constraint imposed by Queensland Rail.

**Operating Plan** has the meaning given to that term in the Access Undertaking.

**Operating Requirements Manual** has the meaning given in the Access Undertaking.

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

**Operator's Customer** means:

- (a) any person that has a rail haulage agreement or arrangement with the Operator in relation to the Access Rights;
- (b) any consignor of goods to be transported by the Operator; and
- (c) any person with title to, or an interest in, any thing to be transported by the Operator;

provided that if **items 5 and 6 of schedule 1** have been completed and the person whose details are set out in **items 5 and 6 of schedule 1** has executed this agreement, then that person is the "Operator's Customer".

**Operator's Emergency Management Plan** means the emergency management plan, including as amended or replaced from time to time:

- (a) that is developed and maintained by the Operator under **clause 10.1**; and
- (b) for which the Operator has obtained a notice from Queensland Rail, in accordance with **clause 10.1(a)** (and, if applicable, **clause 10.1(d)(iii)**), that Queensland Rail has no objection to that plan (including any amendments).

**Parties** means collectively the parties to this agreement, and **Party** means one of them.

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**Performance Levels** has the meaning given in **clause 6.7(a)**.

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

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

**Present Value** means the present value calculated at a discount rate equal to the Weighted Average Cost of Capital (WACC) (as defined in the Access Undertaking from time to time).

**Private Infrastructure** means rail transport infrastructure (as defined in the TIA), including but not limited to the track, signalling and electrical overhead traction system (if applicable) for which neither Queensland Rail nor Queensland Rail's successors, assignors or subsidiaries is the Railway Manager.

**Proceedings** has the meaning given in **clause 27.8(b)(i)**.

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

**QCA** means the Queensland Competition Authority established under the QCA Act.

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

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

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

- (a) an Operational Constraint;
- (b) a Force Majeure Event (to the extent that the Force Majeure Event prevents Queensland Rail from providing access to the Network in accordance with **clause 2**);
- (c) the derailment of any Train caused primarily by an act or omission of Queensland Rail; or
- (d) any other action by Queensland Rail other than Queensland Rail complying with an obligation in accordance with this agreement, the Access Undertaking or any applicable Law,

except where Queensland Rail's inability to make the Network available for the operation of Train Services in accordance with this agreement is primarily attributable to the Operator or the Access Holder.

**Queensland Rail Emergency Procedures** means Queensland Rail's emergency procedures as set out in the Operating Requirements Manual.

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

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

**Rail Infrastructure Operations** means:

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

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

**Rail Safety Regulator** means the ~~chief executive referred to in~~National Rail Safety Regulator or the ~~TRSA~~.

~~Railway Operator has~~Acting National Rail Safety Regulator appointed under Part 2 Division 2 of the meaning given to that term in the TIA and, for clarity, includes an Access Holder's nominated Operator, RSNL.

**Recipient** has the meaning given in **clause 24.1**.

**Reference Tariff** means a prescribed access charge applicable for a specified Reference Train Service as set out in the Access Undertaking.

**Reference Tariff Provisions** means, to the extent that a Reference Tariff applies to the Train Services, the provisions in the Access Undertaking that either set out that Reference Tariff or are directly or indirectly related to the application or interpretation of that Reference Tariff.

**Reference Train Service** means a notional Train service described in the Access Undertaking in respect of a Reference Tariff and conforming to certain criteria, including carrying a specified commodity type, operating between specified geographical areas and conforming to specified technical characteristics, operational characteristics and contract terms and conditions.

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

**Relinquished Access Rights** means the Available Capacity (as defined in the Access Undertaking) that is created as a result of a relinquishment by the Operator of Nominated Access Rights in accordance with **clause 21.2**.

**Relinquishment Date** has the meaning given in **clause 21.2(a)(iii)**.

**Relinquishment Fee** means a fee:

- (a) which, unless the Parties (each acting reasonably) agree otherwise, is equivalent to 80 per cent of the Present Value of the aggregate of the Take or Pay Charges that would have been payable on and from the Relinquishment Date until the end of the Term if the relevant Access Rights were not relinquished and the Operator did not use those Access Rights; and
- (b) if, prior to the Relinquishment Date, Queensland Rail has granted access rights (with effect on or after the Relinquishment Date) to a third party (including a Transferee) (**New Access Holder**) under an access agreement using the Relinquished Access Rights, adjusted to offset an amount equivalent to the Present Value of the aggregate of the take or pay charges, under that access agreement, payable by the New Access Holder:
  - (i) that are directly attributable to that part of the access rights granted to the New Access Holder derived solely from the Relinquished Access Rights;
  - (ii) for all or part of the same period as that used to calculate the amount under **paragraph (a)**; and
  - (iii) calculated assuming the New Access Holder does not use the relevant access rights,

provided that if this calculation would result in an amount less than zero, then the fee equals zero.

**Repeated Breach** means an event or circumstance where:

- (a) Queensland Rail has given to the Operator at least two notices to remedy a material breach of a particular provision of this agreement;
- (b) each notice referred to in **paragraph (a)** relates to a separate breach of the particular provision;
- (c) the Operator commits a further breach of the particular provision; and
- (d) all of the breaches happened within a period of 12 months.

**Rolling Stock** means rolling stock (as defined under the [TRSA RSNL](#)) that operates on or uses Track.

**Rolling Stock Operator** has the meaning given to that term in the RSNL and, for clarity, includes an Access Holder's nominated Operator.

**RSNL** means the Rail Safety National Law (Queensland) as defined in the *Rail Safety National Law (Queensland) Act 2017 (Qld)*.

**Safety Standards** has the meaning given to that term in the Operating Requirements Manual.

**Safeworking Procedures** has the meaning given to that term in the Operating Requirements Manual.

**Scheduled Time** means the time at which a Train Service has been scheduled by Queensland Rail to operate on the Network as detailed in the Train Schedule or as modified or varied by Queensland Rail from time to time on the day of operation in accordance with the Network Management Principles.

**Scheduled Train Path** means a Train Path that has been scheduled by Queensland Rail in a Train Schedule.

**Security** has the meaning given in **clause 17.1(a)**.

**Security Amount** has, subject to **clause 17.3**, the meaning given in **item 11** of **schedule 1**.

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

**Sublease** means:

- (a) the sublease of the Head Lease between the State of Queensland (represented by the Department of Transport and Main Roads) (as sublessor) and Queensland Rail (as sublessee) for all or part of the land on which the Network is located; and
- (b) any tenure or other right to that land which replaces all or part of that sublease from time to time and entitles Queensland Rail to operate, and provide access to, the Network.

**Subsequent Agreement** means an access agreement between Queensland Rail, the Access Holder and a Subsequent Operator relating to the operation of any of the Train Services in the same terms as this agreement (unless otherwise agreed by the Access Holder and Queensland Rail) which reflects, in **schedule 1** to that agreement, particulars applicable to the relevant Subsequent Operator and which reflects, in **schedule 2** to that agreement, the Access Rights which the Access Holder wishes to allocate to that Subsequent Operator and includes any further changes required pursuant to **clause 4.2**.

**Subsequent Operator** means any Accredited ~~Railway~~Rolling Stock Operator nominated by the Access Holder other than the Initial Operator.

**Take or Pay Charges** means that part of the Access Charges calculated as "TP" in accordance with **schedule 3**. *[Note: Where a Reference Tariff does not apply to the setting of Access Charges, this definition must be checked against what the Parties agree to include in **schedule 3**.]*

**Tenure Requirements** has the meaning given in **clause 27.19(b)(ii)**.

**Term** means the term of this agreement as determined in accordance with **clause 1**.

**Termination Date** means the earlier of:

- (a) the latest End Date; and
- (b) the termination of this agreement in accordance with its provisions (including **clauses 15** and **8.5(c)(iv)(B)**, **20.5(c)**, and **20.7** as applicable) or any Law.

**Third Party Works** means any works, maintenance of any thing or other activities (including design, construction, testing and commissioning activities) undertaken or required to be undertaken on, over or under the land on which the Network is located:

- (a) by or on behalf of an Authority;
- (b) which Queensland Rail must permit in accordance with any Law or direction from an Authority;
- (c) by or on behalf of a third party who wants and is entitled under any Law to install and operate services or other infrastructure on, over or under that land; or
- (d) which Queensland Rail is required to permit either in accordance with the Sublease or because Queensland Rail's rights under the Sublease are subject to the rights of a third party to install and operate services or other infrastructure on, over or under that land.

~~for~~**For** clarity, Third Party Works does not include any works or maintenance of any thing or other activities (including design, construction, testing and commissioning activities) undertaken in connection with or relating to the provision of the Access Rights and the operation of Train Services.

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

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

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

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

**Train Movement** means the operation of a Train on the Network by the Operator or any other Network Participant.

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

**Train Schedule** means the train diagrams, yard schedules, terminal schedules and any other form of train timetable, plan or schedule prepared by Queensland Rail in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Network.

**Train Service** means a Train operating on the Network in accordance with this agreement (including the Train Service Description) and, in **schedule 3**, a Train Service is a one way Train Service – that is, the journey from the origin to



the destination is one Train Service, and the return journey from the destination to the origin is a second Train Service.

**Train Service Description** means the details set out in **schedule 2**.

**Transfer** has the meaning given in **clause 21.2(a)(ii)**.

**Transferee** has the meaning given in **clause 21.2(a)(ii)**.

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

**Urgent Possession** means a Possession:

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

other than an Emergency Possession.

**Year** means, as applicable:

- (a) the period from the Commencement Date to the next 30 June;
- (b) a 12 month period during the Term subsequent to the period in **paragraph (a)** of this definition (subject to **paragraph (c)** of this definition); and
- (c) if the Termination Date is not 30 June, the period from (and including) 1 July immediately preceding the Termination Date and ending on the Termination Date.

## 28.2 Construction

Unless expressed to the contrary, in this agreement:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (e) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation, a government or statutory body or authority and any other entity recognised by law;

- (ii) a person includes the person's legal personal representatives, successors, permitted assignees and persons substituted by novation;
- (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (v) a right includes a benefit, remedy, discretion or power;
- (vi) conduct includes:
  - (A) a benefit, remedy, discretion, authority or power; and
  - (B) any omission and any representation, statement or undertaking, whether or not in writing;
- (vii) time is to local time in Brisbane;
- (viii) a month is a reference to a calendar month;
- (ix) "\$" or "dollars" is a reference to Australian currency;
- (x) this or any other document includes this agreement or that other document, as applicable, as novated, varied or replaced and despite any change in the identity of the Parties or, for another document, the parties to that document;
- (xi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
- (xii) this agreement includes all schedules and annexures to it;
- (xiii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this agreement; and
- (xiv) an Authority includes:
  - (A) any successor to, or replacement of, that Authority;
  - (B) any re-constitution or re-naming of that Authority; and
  - (C) any other Authority who is transferred any of the powers of functions of that Authority;
- (g) if the date on or by which any act must be done under this agreement is not a Business Day, the act must be done on or by the next Business Day;
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;

- (i) if a term used in this agreement has the meaning given to that term, or as defined, under any legislation, then:
  - (i) that term has the meaning given, or as defined, under that legislation from time to time; and
  - (ii) where that legislation ceases to define that term, the meaning given to that term in this agreement is the last meaning given to that term under the relevant legislation; and
- (j) if there is any inconsistency:
  - (i) between matters contained in a schedule to this agreement and other provisions of this agreement that are not contained in a schedule, then those other provisions of this agreement prevail; or
  - (ii) between matters contained in the Access Undertaking and this agreement, the provisions of this agreement prevail.

### 28.3 **Headings**

Headings do not affect the interpretation of this agreement.

## Schedule 1- Reference schedule

1	<b>Access Holder</b>	[insert name] ABN [insert] of [insert]
2	<b>Access Holder's particulars for Notices</b>	Delivery address: [insert] Postal address: [insert] Facsimile: [insert] Email:.....[insert] Attention: [insert]
3	<b>Operator</b>	[insert name] ABN [insert] of [insert]
4	<b>Operator's particulars for Notices</b>	Delivery address: [insert] Postal address: [insert] Facsimile: [insert] Email [insert] Attention: [insert]
5	<b>Operator's Customer</b>	[Note: If the Operator's Customer is a Party to this agreement, then complete items 5 and 6 in the same format as for Items 3 and 4. If the Operator's Customer is not a Party to this agreement, then do not insert details in items 3 and 4.]
6	<b>Operator's Customer's particulars for Notices</b>	
7	<b>Commencement Date</b>	[insert date of execution by Parties]
8	<b>End Date</b>	[insert date when access will cease to be available]
9	<b>Compliance Date</b>	[insert date when compliance with clause 8.4(a) should be completed]
10	<b>Commitment Date</b>	[insert date when access is to be available]
11	<b>Security Amount</b>	<del>[the Security Amount for the Operator is to be equal to the deductible for any one Loss as specified in clause 16] or [the Security Amount for the Access Holder is to be an amount equal to 12 weeks' at least six months' Access Charges]</del>
12	<b>Initial details for the</b>	<b>Representative for Obstructions</b>

	<p><b>Operator's representatives</b></p>	<p>Name:  Position:  Phone:  Mobile:  Facsimile:  Email:</p> <p><b>Representative for loading of Train Services</b></p> <p>Name:  Position:  Phone:  Mobile:  Facsimile:  Email:</p> <p><b>Representative for Operational Meetings</b></p> <p>Name:  Position:  Phone:  Mobile:  Facsimile:  Email:</p> <p><b>Representative for Contractual Meetings</b></p> <p>Name:  Position:  Phone:  Mobile:  Facsimile:  Email:</p> <p><b>Representative for Document Control</b></p> <p>Name:  Position:  Phone:  Mobile:</p>
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		Facsimile: Email:
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## Schedule 2 – Train Service Description

The details for the Train Service Description are as follows:

<b>Origin</b>	
<b>Destination</b>	
<b>Average Haul Distance</b>	
<b>Traffic Task / Commodity</b>	
<b>Dwell Times<sup>6</sup></b>	
<b>Accredited Railway Operator(s)</b>	[insert each Accredited Railway Operator who has been nominated to operate some or all of the Train Services and identify the relevant Train Services which each Accredited Railway Operator has been nominated to operate.]
<b>Applicable Network</b>	The part of the Network to be used by the Train Services is described in the train route acceptance in Attachment 3 of this <b>schedule 2</b> .
<b>Rolling Stock and Train Configuration</b>	The details for the Rolling Stock and Train Configuration to be used for the Train Services are set out in the train route acceptance in Attachment 3 of this <b>schedule 2</b> .
<b>Train Service Levels</b>	The description of the Train Service levels is set out in Attachment 1 of this <b>schedule 2</b> .
<b>Special Operating Requirements</b>	The special operating requirements of the Train Service are set out in Attachment 2 of this <b>schedule 2</b> .
<b>Storage</b>	The Train Services do not include the storage of Trains (whether short or long term) on the Network except short term storage as agreed, from time to time, between the Parties (in each Party's

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<sup>6</sup> A dwell time is the time period from when the Train Service arrives at a specified point on its journey until it has completed all relevant activities and is ready to depart from that point and has advised the relevant Network Controller accordingly.

	absolute discretion).
<b>Differences from the relevant Reference Train Service</b>	<p>The Train Services must only differ from the Reference Train Service as follows:</p> <ul style="list-style-type: none"> <li>• [insert];</li> <li>• [insert]; and</li> <li>• in accordance with any other differences as expressly set out in this agreement.</li> </ul> <p><i>[Note: Only use where a Reference Tariff applies to set the Access Charges. In all other circumstances this row can be deleted or the words above can be replaced with "Not Applicable".]</i></p>
<b>Dangerous Goods</b>	[insert]
<b>Stowage</b>	<i>[If any part of the relevant Network is not available, stowage will be provided for the Operator's Rolling Stock at mutually agreed locations taking into consideration the Operator's maintenance requirements, depot locations and crew accessibility i.e. walkways]</i>



## (A) Attachment 1 – Train Service levels

*[insert relevant Train Services levels including daily, weekly, monthly and/or annual description of Train Services and other details relevant to the preparation of the Master Train Plan, including section run times.]*

*[Note: If a Train Service is only a one way Train Service for the purposes of this description, then this should be specifically referred to in the description.]*

## (B) Attachment 2 – Special operating requirements

### 1 Provisioning locations

The provisioning locations for Train Services are:

- (a) [insert]; and
- (b) any other locations as agreed with Queensland Rail (in its absolute discretion),

except that if a Network Incident or delay occurs that affects more than one Train Service, the provisioning locations will be as agreed between the Parties (acting reasonably) for agreed Train Services and an agreed time period.

### 1 [insert]

[insert other requirements – for example, exit and entry points, shunting areas]

## (C) Attachment 3 – Train route acceptance

- 1 Applicable Network  
[insert]
- 2 Rolling Stock and Train Configuration  
[insert]

## Schedule 3 – Calculation of Access Charges and other charges

[Note: The contents of this schedule 3 are only applicable where the Reference Tariff applies to set the Access Charges. Where the Reference Tariff does not apply in relation to the Access Charges, the contents of this schedule 3 will need to be replaced with terms negotiated by the Parties.]

### 1 Access Charge Inputs

- (a) The Access Charge Inputs (as at the Commencement Date) to apply for specific Train Services are as set out below.

	Origin			
	Destination			
Access Charge Inputs	Variable rate (\$/1000gtk)	AT <sub>1(W)</sub>		
	Fixed rate (\$/Train Path)	AT <sub>2(W)</sub>		
	Variable rate (\$/1000gtk)	AT <sub>1(M)</sub>		
	Fixed rate (\$/Train Path)	AT <sub>2(M)</sub>		
	QCA Levy <sup>7</sup> (\$/Net Tonne)	QL		
		<i>Locomotive Weight (t)</i>		94.5
	<i>Wagon Weight (Unloaded) (t)</i>		15.2	
	<i>Wagon Weight (Loaded) (t)</i>		63	

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<sup>7</sup> The QCA Levy is a fee imposed by the QCA on the beneficiaries of the QCA's regulatory services. This levy will be reviewed and endorsed by the QCA annually.

[Note: The Locomotive Weight and Wagon Weights shown above are based on the Reference Train Service. If the relevant Train Service differs from the Reference Train Services those number may be different too.]

Miscellaneous services <sup>8</sup>	Access Charge Input
	Miscellaneous service rate (\$/tkm <sup>9</sup> )
<b>Unscheduled repositioning of Rolling Stock within the Applicable Network described in schedule 2.</b>	
<b>All other such relocations and movements</b>	

- (b) The Access Charge Inputs will be varied or escalated in accordance with **clauses 2 and 3 of this schedule 3 and clause 18**, as applicable.

## 2 CPI escalation

### 2.1 Calculation of CPI escalation where a Reference Tariff applies

Where a Reference Tariff continues to apply to the Train Services after the Commencement Date, the Access Charges will be escalated under this agreement in the same manner as that Reference Tariff is escalated from time to time under the Access Undertaking.

### 2.2 Calculation of CPI escalation where no Reference Tariff applies

- (a) This **clause 2.2** only applies where a Reference Tariff ceases to apply in relation to the Train Services.
- (b) The Access Charge Inputs (other than the QCA Levy), and any other charges or rates expressed in this agreement as being subject to escalation, will escalate on each 1 July during the Term (**Escalation Date**), in accordance with the following formula:

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

<sup>8</sup> For clarity, a miscellaneous service to which the miscellaneous service rates apply will be treated as a special type of ad hoc train service for the purposes of this agreement including the application of the Network Management Principles and are comprised in 'Ad Hoc Train Services' as referred to under the Network Management Principles.

<sup>9</sup> Where tkm is a reference to train kilometre – that is, each kilometre or part thereof travelled on the Network by the Train(s) or Rolling Stock involved. For example, if the relevant miscellaneous service rate is \$X/tkm and the total tkm for in respect of those miscellaneous services is 1000, then the relevant charge will be X multiplied by 1000.

where:

**ACI<sub>n</sub>** means the amount of the relevant Access Charge Input (or other charge or rate) that commences to apply on the relevant Escalation Date;

**ACI<sub>n-1</sub>** means the amount of the relevant Access Charge Input (or other charge or rate) applicable immediately prior to the relevant Escalation Date;

**CPI<sub>n</sub>** means the CPI for the Quarter which commenced six months prior to the relevant Escalation Date;

**CPI<sub>n-1</sub>** means the CPI for the Quarter which commenced 18 months prior to the relevant Escalation Date.

- (c) If:
- (i) the basis of assessment of the CPI is altered in a material way; or
  - (ii) the CPI ceases (or is likely to cease) to be:
    - (A) published; or
    - (B) published at sufficiently regular intervals for the purpose of the calculation in **clause 2.2** of this **schedule 3**,

then a Party may notify the other Parties that the CPI is required to be replaced.

- (d) After a notice is given in accordance with **clause 2.2(c)** of this **schedule 3**:
- (i) the Parties will negotiate ~~in good faith~~ for the purpose of agreeing to vary or replace the CPI; and
  - (ii) if the Parties fail to agree within 30 days after that notice is given, then the matter must be referred to an Expert for determination in accordance with **clause 19.3**.
- (e) For clarity, if the Parties reach agreement, or the Dispute is resolved, after the relevant Escalation Date, the Parties agree to retrospectively adjust any Access Charges (or other relevant amounts) invoiced since that date to be consistent with that agreement, or the resolution of the Dispute, in accordance with **clause 6.6**.

### 3 Variation of QCA Levy

Queensland Rail may, from time to time, vary the Access Charge Input for the QCA Levy by giving notice in writing to the Access Holder of that variation. However, that Access Charge Input must only be varied by Queensland Rail if the QCA:

- (a) requires a change in the QCA Levy;
- (b) has approved a different allocation of the QCA Levy amongst different types of train services; or
- (c) otherwise approves that variation.

## 4 Calculation of invoice for access

### 4.1 Invoice calculations

The amount of the invoice for charges payable by the Operator to Queensland Rail under this agreement for a relevant month is calculated in accordance with the following formula:

$$TC = AC \times (1 + GST) + G$$

where:

**TC** is the total amount of charges payable by the Operator for the relevant month;

**AC** is the sum of VCM, FCM, VCW, FCW and QCAL for each Train Service for the relevant month and, if the relevant month is:

- (a) the last month of the Year; or
- (b) the month in which this agreement has expired or terminated,

TP;

**FCM** is the fixed charge component for the relevant Train Service calculated by the formula:

$$AT_{2(M)} \times rtp_{(M)}$$

where:

**rtp<sub>(M)</sub>** has the meaning given to that term in the Access Undertaking in relation to the relevant Train Service (or, where a Reference Tariff ceases to apply in relation to the Train Services, as last defined in the Access Undertaking); and

**AT<sub>2(M)</sub>** is the amount specified as such in **clause 04** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

**VCM** is the variable charge component for the relevant Train Service calculated by the formula:

$$AT_{1(M)} \times \frac{gtk_{(M)}}{1000}$$

where:

**gtk<sub>(M)</sub>** is the gross tonne kilometres for the relevant Train Service calculated in accordance with **clause 5.2** of this **schedule 3** relating to the Metropolitan **NetworkSystem**; and

**AT<sub>1(M)</sub>** is the amount specified as such in **clause 04** of this **schedule 3** for the relevant Train Service applicable for the

relevant month as escalated, or varied, from time to time in accordance with this agreement;

**FCW** is the fixed charge component for the relevant Train Service calculated by the formula:

$$AT_{2(w)} \times rtp_{(w)}$$

where:

**rtp<sub>(w)</sub>** has the meaning given to that term in the Access Undertaking in relation to the relevant Train Service (or, where a Reference Tariff ceases to apply in relation to the Train Services, as last defined in the Access Undertaking); and

**AT<sub>2(w)</sub>** is the amount specified as such in **clause 04** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

**VCW** is the variable charge component for the relevant Train Service calculated by the formula:

$$AT_{1(w)} \times \frac{gtk_{(w)}}{1000}$$

where:

**gtk<sub>(w)</sub>** is the gross tonne kilometres for the relevant Train Service calculated in accordance with **clause 5.2** of this **schedule 3** relating to the West Moreton **NetworkSystem** (as defined under the Access Undertaking or, where that term ceases to be defined in the Access Undertaking, as last defined in the Access Undertaking); and

**AT<sub>1(w)</sub>** is the amount specified as such in **clause 04** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

**QCAL** is the QCA Levy component for the relevant Train Service which is calculated by the formula:

$$QL \times nt$$

where:

**QL** is the amount specified as such in **clause 04** of this **schedule 3** for the relevant Train Service applicable for the relevant month as varied from time to time in accordance with this agreement; and

**nt** is the net tonnes for the relevant Train Service calculated in accordance with **clause 05.3** of this **schedule 3**;



**TP** will be calculated in accordance with the principles outlined in Schedule D of the Access Undertaking. TP will only be determined and charged where the revenue that Queensland Rail earns in relation to Reference Train Services in a Year is less than the Approved Ceiling Revenue Limit (as defined in the Access Undertaking) for that Year.

If the Approved Ceiling Revenue Limit has been reached then even if the Access Holder has not operated a level of Train Services commensurate with its Access Rights, no take or pay charge is due.

If the Approved Ceiling Revenue Limit has not been reached then TP is the take or pay charge for the relevant Year which is the greater of zero and the amount calculated by the formula except that no amount of TP is payable which would cause the Approved Ceiling Revenue Limit to be breached:

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

where:

**AT<sub>1(M)</sub>**, **AT<sub>2(M)</sub>**, **AT<sub>1(W)</sub>** and **AT<sub>2(W)</sub>** are the amounts specified as such in **clause 04** of this **schedule 3**, as escalated, or varied, from time to time in accordance with this agreement, for the relevant Train Service as applicable on the last day of the relevant Year;

**gtk<sub>(M)</sub>** and **gtk<sub>(W)</sub>** are the average gross tonne kilometres for the relevant Train Services calculated in accordance with **clause 5.2** of this **schedule 3** in relation to the Metropolitan **NetworkSystem** and West Moreton **NetworkSystem** (as defined under the Access Undertaking or, where that term ceases to be defined in the Access Undertaking, as last defined in the Access Undertaking) respectively; and

**NTNO** is the amount calculated by the formula:

$$NTNO = TSEY - TSOY - TSQRCY$$

where:

**TSEY** is the number of Train Services that the Operator was entitled to operate for the Year under this agreement;

**TSOY** is the number of Train Services that the Operator operated for the Year under this agreement; and

**TSQRCY** is the number of relevant Train Services which failed to operate for the Year under this agreement due to a Queensland Rail Cause;

**GST** is the rate of GST (expressed as a decimal) applicable at the time the supply is made; and

**G** is the sum of any other amount due and payable under this agreement not calculated in AC above including, but not limited to:

- (A) charges for any additional GST;
- (B) payments for interest (if any is payable);
- (C) payments for ad-hoc train services and miscellaneous services; and
- (D) any Adjustment Charges (as defined in the Access Undertaking) and any other adjustments (positive or negative).

#### **4.2 Effects of interim take or pay notices**

For the avoidance of doubt, if Queensland Rail has issued one or more Interim Take or Pay Notices (as defined in **clause 5.4**), then the amounts paid pursuant to those notices will be subtracted from the Yearly take or pay charges otherwise charged to the Access Holder in accordance with this **clause 4**.

## **5 Interpretation**

### **5.1 Train Services operate in the period in which they commence to operate**

For the purposes of **clause 4.1** of this **schedule 3**, a Train Service is taken to have operated in the month or a Year in which it commenced operation from its origin even if that Train Service does not reach its destination until the next month or Year.

### **5.2 Gross tonne kilometres**

- (a) The gross tonnes (**gt**) for a Train Service is calculated as the sum of:
  - (i) where **gtk** is being calculated under **clause 4.1** for the purpose of:
    - (A) **VCW** or **VCM**, the maximum gross mass as specified in the Network Control System for each locomotive comprised in the Train Service; or
    - (B) **TP**, the Locomotive Weight (as set out in **clause 1(a)** for the Train Service) multiplied by the number of locomotives comprised in the Train Service;
  - (ii) except where **clause 5.2(a)(iii)** applies, the Wagon Weight (Loaded) (as set out in **clause 1(a)** for the Train Service) multiplied by the number of wagons comprised in the Train Service (for clarity, an empty or partly loaded wagon in a Train Service will be treated as a loaded wagon);

- (iii) if the Train Service is operated empty (after unloading at its destination), the Wagon Weight (Unloaded) (as set out in **clause 1(a)** for the Train Service) multiplied by the number of empty wagons comprised in the Train Service; and
  - (iv) for all other Rolling Stock, the maximum gross mass specified in the Network Control System for each item of such Rolling Stock comprised in the Train Service.
- (b) For the purpose of **clause 5.2(a)**, the number of wagons comprising a Train Service will be no less than the number of wagons:
- (i) set out in the Train Service Description for that Train Service; or
  - (ii) where no number of wagons is set out in the Train Service Description, for the Reference Train Service relating to the relevant Reference Tariff as set out in the Access Undertaking.
- (c) The gross tonne kilometres (**gtk**) for a Train Service is determined as the multiple of the gt for the Train Service and the distance travelled in kilometres by the Train Service.

[Note: This standard access agreement is based on a train loading at an origin and travelling to a destination where it is unloaded. Modified provisions will be needed in circumstances where, for example, a train loads at its origin and then travels to an intermediate destination where it is either partially unloaded or further loaded before travelling on to its final destination and unloading.]

### 5.3 Net tonnes

The net tonnes (**nt**) for a Train Service is equal to the gt for the Train Service calculated in **clause 5.2(a)** of this **schedule 3** less the sum of:

- (a) the Locomotive Weight (as set out in **clause 1(a)** for the Train Service) multiplied by the number of locomotives comprised in the Train Service;
- (b) the difference between Wagon Weight (loaded) and the Wagon Weight (unloaded) (each as set out in **clause 1(a)** for the Train Service) multiplied by the number of wagons comprised in the Train Service and expressed as a positive number; and
- (c) for all other Rolling Stock, the tare mass specified in the Network Control System for each item of such Rolling Stock comprised in the Train Service.

### 5.4 Interim take or pay notices

- (a) Queensland Rail may, from time to time, give the Access Holder a statement of the accrued Take or Pay Charge liability in respect of a particular period. If such a statement is given, Queensland Rail and the Access Holder will meet, or otherwise discuss that statement, ~~in good faith~~ to seek to agree the accrued Take or Pay Charge liability in respect of that period.

- (b) Queensland Rail may, from time to time, give the Access Holder a notice under this **clause 5.4(a)** that states the accrued Take or Pay Charge liability in respect of a particular period (**Interim Take or Pay Notice**).
- (c) If the Access Holder wishes to dispute any matter set out in an Interim Take or Pay Notice, then any Dispute Notice to be given by the Access Holder under **clause 19** of this agreement must be given within ten Business Days (or such longer period as agreed by Queensland Rail) after the relevant Interim Take or Pay Notice was given to the Access Holder. Where the Access Holder does not give a Dispute Notice within that time period, the Access Holder is taken to reject the matters in the relevant Interim Take or Pay Notice as incorrect.
- (d) Where an Interim Take or Pay Notice is disputed under **clause 5.4(c)** and that dispute has been finally resolved in a way that requires amendments to that Interim Take or Pay Notice, then Queensland Rail will give the Access Holder an amended Interim Take or Pay Notice (to replace the original Interim Take or Pay Notice) that is consistent with the resolution of the dispute.
- (e) Where two or more Interim Take or Pay Notices relate in whole or part to the same period:
  - (i) if there is any inconsistency between those Interim Take or Pay Notices in respect of that period, then the most recent Interim Take or Pay Notice prevails to the extent of that inconsistency; and
  - (ii) if there is no inconsistency between those Interim Take or Pay Notices in respect of that period, then the Access Holder has no right to dispute the accrued Take or Pay Charge liability for that period under any of those Interim Take or Pay Notices except to the extent that the Access Holder still has a right to dispute the earliest of those Interim Take or Pay Notices under **clause 5.4(a)** (including where the Access Holder has already commenced such a dispute).

## Schedule 4 – Interface Risk Management Plan

*[Note: Insert initial IRMP as agreed during the negotiation process with the access seeker and/or Operator.]*

# Schedule 5

## 1 Performance Levels

- (a) The Performance Levels are to be reported on by Queensland Rail pursuant to **clause 6.7** of this agreement as follows:
- (i) Contracted Versus Scheduled Versus Actual Train Service Consumption by the Operator and the Access Holder;
  - (ii) the Network Availability Days for the track utilised by this agreement for the Operator and the Access Holder;
  - (iii) the planned and unplanned network maintenance undertaken by Queensland Rail across track utilised by this agreement;
  - (iv) Queensland Rail's planned and actual track closures across track utilised by this agreement and the performance of actual track closures with Queensland Rail reporting on the percentage of track closures commenced and returned to daily services within the planned timeframe;
  - (v) the Sectional Run Time Performance for the Train Services operated under the agreement by the Operator and the Access Holder;
  - (vi) the Below Rail Transit Time Performance for the Train Services operated under the agreement by the Operator and the Access Holder;
  - (vii) the Forecast Versus Scheduled Versus Actual GTKs hauled under the agreement by the Operator and the Access Holder;
  - (viii) the number of Train Services cancelled during the month;
  - (ix) the number of Train Services cancelled during the month which are not rescheduled; and
  - (x) a list of speed restrictions in place at the end of each month (including when such restriction was applied, the speed and the start and finish locations).

### 1.2 Agreed Performance Levels

[to be inserted when agreed pursuant to **clause 6.7** of this agreement]

### 1.3 Agreed Reporting Regime

[to be inserted when agreed pursuant to **clause 6.7** of this agreement]

## 1.4 Definitions

**Sectional Run Time (SRT) Performance:** this KPI measures Queensland Rail's reliability where actual SRTs are assessed against SRTs contained in the access agreement.

**Below Rail Transit Time (BRTT) Performance:** this KPI measures Queensland Rail's reliability where actual BRTTs are assessed against SRTs as contained in this access agreement for the relevant sections of the network.

**Contracted Versus Scheduled Versus Actual Train Service Consumption:** this KPI measure an Access Holder's and an Operator's consumption of Train Services and allows, if relevant, for the tracking of the Access Holders Take or Pay liability. Actual Train Service consumption is assessed against contracted Train Service. The contracted Train Services should identify and deduct those Train Services that were cancelled as a result of Queensland Rail Causes and Force Majeure Events.

**Availability Days:** this KPI measures Network availability where the number of days the network was actually made available to deliver full contractual Train Services is assessed against the target number of days that is required to deliver full Train Services.

**Forecast Versus Scheduled Versus Actual GTKs:** this KPI measures contract performance where actual GTKs are assessed against the forecast GTKs provided for in the agreement.

**Executed** as an agreement.

**Executed by Queensland Rail** )  
**Limited** by its duly authorised officer in )  
the presence of: )

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

.....  
Name of Officer (print)

**Executed by [Insert name of Access** )  
**Holder]** )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

**Executed by [Insert name of** )  
**Operator]** )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

**[Note: If the Operator's Customer is not a Party to the agreement, then the execution block above should be deleted.]**



# Schedule I –Extension Access Principles

## 1 Undertaking Premises

- (a) Queensland Rail cannot be forced to fund an Extension other than in accordance with this Undertaking or the provisions of the Act regarding the determination of access disputes.
- (b) Queensland Rail should not be able to exploit its monopoly power.
- (c) Where Queensland Rail has elected, at their option, not fund an Extension, an:
  - (i) Access Seeker should have the right to fund an Extension to create the Additional Capacity required to accommodate its Access Application; or
  - (ii) Access Holder should have the right to fund an Extension to create the Additional Capacity to remedy or replace sections of the network damaged or destroyed by a Force Majeure Event;
  - (iii) Access Holder should have the right to fund an Extension to increase the Capacity in a System.

## 2 Undertaking Coverage

- (a) Queensland Rail will undertake all Extensions of the Network under the auspices of this Undertaking and the QCA Act such that Queensland Rail will provide even-handed dealing with all Access Seekers, Access Funders and Access Holders.
- (b) Access Charges in respect of Access Rights which are able to be provided as a result of an Extension will be determined in accordance with the pricing rules incorporated in this Undertaking unless Queensland Rail and an Access Funder agree an alternative approach is appropriate in the circumstances.
- (c) The QCA has the role of making binding arbitration determinations in relation to access disputes between Queensland Rail and an Access Funder arising from negotiations on or under Extension and Funding Agreements (unless otherwise agreed).

## 3 Access Funder Rights and Responsibilities

- (a) The Access Funder, at their option, can elect to
  - (i) undertake each Extension Stage with the assistance of Queensland Rail so that the Extension complies with the **clause 1.4** of the Undertaking;

- (ii) require Queensland Rail to undertake each Extension Stage so that the Extension complies with the **clause 1.4** of the Undertaking; or
  - (iii) execute separate Funding Agreements with Queensland Rail for each Extension Stage.
- (b) Unless otherwise agreed between the parties, the Access Funder is required to fund all of Queensland Rail's costs related to the Extension including, but not limited to:
  - (i) providing assistance to the Access Funder to develop the scope, standard and cost of the Extension at each stage of the Extension project
  - (ii) undertaking an Extension study or investigation on behalf of the Access Funder at each stage of the Extension project
  - (iii) constructing and commissioning an Extension.
- (c) Subject to **clause 6**, the Access Funder will absorb all costs incurred by the Access Funder that relate to the Extension and are assessed by the QCA (in accordance with **clause 1.4.6** of the Undertaking) to be inefficient or not prudently incurred.

## 4 Queensland Rail Rights and Responsibilities

- (a) Queensland Rail, at the request of an Access Funder, and in accordance with **clause 1.4.2(c)** of the Undertaking, will promptly:
  - (i) provide the Access Funder with all reasonably required information on the Extension;
  - (ii) provide a first draft contract to underpin negotiations of a Funding Agreement; and
  - (iii) subject to executing a Funding Agreement in accordance with **clause 1.4.3(b)** of the Undertaking and as relevant to the Extension Stage being funded:
    - (A) provide all project assistance that is reasonably required by an Access Funder to develop an Extension to the required study standard;
    - (B) apply for any Authorisation, land tenure or land rights required for the Extension; and
    - (C) construct, commission and own the Extension.
- (b) No additional fees or on-costs may be charged by Queensland Rail in respect of the Extension unless there are additional costs or risks assumed by Queensland Rail which Queensland Rail would not have assumed but for the Extension. Queensland Rail must act reasonably in

calculating any additional costs or risks and must provide reasonably satisfactory justification for the additional costs and/or risks.

## 5 Extension Stages

- (a) Queensland Rail should collaborate with Access Funders in relation to key matters affecting the cost and timing of the Extension, including, but not limited to, project scope, standard, approvals, procurement strategy, cost, construction and timing.
- (b) Prior to the execution of a study Funding Agreement in relation to a Concept Study, Pre-feasibility Study, or Feasibility Study (as applicable), the:
  - (i) Access Funder and Queensland Rail (each acting reasonably) must agree the scope of works to be delivered by Queensland Rail at the relevant study stage; and
  - (ii) Queensland Rail must provide an Access Funder with
    - (A) an estimate of the reasonable Extension Costs it expects to incur during the relevant Extension Stage;
    - (B) project controls to manage the timing and cost risks in the Funding Agreement; and
    - (C) a timetable for the completion of the scope of works.
- (c) Following the execution of a study Funding Agreement for a Concept Study, Pre-feasibility Study, or Feasibility Study (as applicable), Queensland Rail must expeditiously assist, investigate and/or undertake the studies for that Extension Stage that are funded by an Access Funder and report variations to the agreed timetable.
- (d) Prior to the execution of a Funding Agreement in relation to the construction and commissioning Extension Stage:
  - (i) The Access Funder should be given the opportunity to collaborate with Queensland Rail in relation to key matters affecting the cost and timing of the Extension, including but not limited, project scope, standard, cost, procurement strategy, construction, and timing; and
  - (ii) the Access Funder and Queensland Rail, both acting reasonably, must agree;
    - (A) the Extension project scope to be delivered by Queensland Rail in constructing and commissioning the Extension;
    - (B) the procurement strategy to provide that the Extension project complies with the prudence tests contained in schedule E of the Undertaking;
    - (C) the estimated cost of the construction project;

- (D) the project timetable for the commissioning of the Extension;
- (E) the inclusion of appropriate project controls and/or contract terms for the Access Funder to manage the timing and cost risks in constructing and commissioning the Extension;
- (F) construction, operational, and other material arrangements reasonably required for the construction of the Extension; and
- (G) rights of inspection and audit in relation to each party's compliance with the Funding Agreement.

## 6 Full Economic Benefit Transfer

- (a) The capitalised cost of an Extension will include all costs expended by the Access Funder on the Extension in accordance with the Undertaking.
- (b) The capitalised cost of an Extension will be used to calculate the full economic benefit that is to be transferred from Queensland Rail to the Access Funder over the economic life of the Extension, regardless of whether or not the Access Funder remains an Access Holder over that time period.
- (c) The full economic benefit derived by Queensland Rail as a result of the capital contribution comprises:
  - (i) an amount equal to the return on and of the capital component of Access Charges from any Access Holders that utilise the Capacity created by an Access Funder's contributed asset (with Queensland Rail being entitled to receive an amount equal to the components of Access Charges based on managing, maintaining and operating the network and their contribution to the capital cost of the Extension); and
  - (ii) any tax or other financial benefit accruing to Queensland Rail as legal owner of the Rail Transport Infrastructure covered by the Access Funding Condition, where the risks have been transferred to the Access Funder as a result of the Access Funding Condition.
- (d) Unless otherwise agreed by the Access Funder, the Funding Agreement should be such that Queensland Rail receives no benefit (tax or cash flow) from the Access Funder's contributed asset, with Queensland Rail retaining only the portion of Access Charges related to its operating and maintenance costs.
- (e) For clarity, where the Access Charges from the contributed asset are not sufficient to cover both the return to the Access Funder, and the operating and maintenance costs for that section of the network, Queensland Rail should only be obliged to return the amount it has received from Access Charges net of the operating and maintenance costs in any given year (with Access Holders that continue to use the

relevant Rail Transport Infrastructure receiving priority over Access Holders that have ceased using it, where Access Charges are not sufficient to cover all returns of capital).

## 7 Multiple and Subsequent Access Funders

- (a) If a number of Access Funders fund an Extension, the Access Funders should have the right to contract for Access Rights for the Additional Capacity up to the proportion of the funding that they provided at the commencement of the Extension. Any uncontracted Additional Capacity would then be available for contracting as per the terms of the Undertaking.
- (b) Where an Extension has been, or is being, funded by an Access Funder (**First Party**) and a subsequent party lodges an Access Application for Access Rights that were, or are being, created as a result of that funding by the First Party (**Subsequent Party**), Queensland Rail will:
  - (i) take into account advice from the First Party to determine, acting reasonably, whether to apply similar funding requirements in its negotiations with the Subsequent Party;
  - (ii) require the Subsequent Party to execute a Funding Agreement to share responsibility in respect of part of the funding originally borne by the First Party where it is reasonable for the Subsequent Party to do so; and
  - (iii) re-negotiate the terms of the First Party's Funding Agreement to reflect the fact that the Subsequent Party is sharing the responsibility that was originally borne by the First Party, if paragraph (ii) above applies.
- (c) For the purposes of determining whether this clause applies to a Subsequent Party, a Subsequent Party will be deemed to use the funded Extension, if the Subsequent Party's Train Service would have required Additional Capacity if the funded Extension had not been built.

## 8 Funding Agreement Terms and Conditions

### 8.1 Allocation of Contract Risks

- (a) The identification, allocation and management of risks should be balanced and contract risks should be allocated to the party best placed to manage the risk.
- (b) An appropriate balancing of risks in a Funding Agreement should recognise the following risk positions of the parties in an Extension undertaken:
  - (i) a Funding Agreement is only required if Queensland Rail elects, at its option, to not fund an Extension;

- (ii) apart from funding an Extension, an Access Funder has to comply with the Undertaking; and
- (iii) the Undertaking gives Queensland Rail responsibility for:
  - (A) approving the efficient scope and standard of an Extension;
  - (B) efficiently constructing and owning the Extension; and
  - (C) operating and maintaining the Network, inclusive of the Extension; and
- (c) A balancing of risks in a Funding Agreement should provide appropriate project controls for the Access Funder to manage the cost and timing risks that it has accepted in funding an Extension to accommodate its request for Access.

## **8.2 Security**

- (a) As per **clause 1.4.1(b)(iii)** of the Undertaking, Queensland Rail may require the Access Funder to provide a bank guarantee in support of its commitments under a Funding Agreement.
- (b) Any required bank guarantee should reflect the cash flow risk that Queensland Rail has taken on in the Extension and may provide the ability for Queensland Rail to issue 3-6 month 'cash calls' in advance to cover Queensland Rail's costs during construction of the Extension.
- (c) Where an Access Funder defaults on a cash call, Queensland Rail is entitled to
  - (i) require some form of security deposit equivalent to its financial exposure, where the default was not attributable to a legitimate Dispute; and
  - (ii) stop all construction activities until the default has been remedied.
- (d) An Access Holder paying a cash security deposit should be credited with interest on the security at a market-based rate for as long as it is held by Queensland Rail.
- (e) The Access Funder shall not be entitled to commence Train Services specified in the Access Agreement unless and until all provisions of the Funding Agreement are completed or complied with. Queensland Rail will use all reasonable endeavours to facilitate the Access Funder's completion or compliance with such provisions.

## **8.3 Infrastructure Management**

Queensland Rail is responsible for the management, operation and control of the Extension during construction and commissioning, in accordance with the Undertaking.

## **8.4 Insurance**

Insurances are to be effected by the parties to appropriately provide for the relevant insurance risks in the construction of the Extension.

## **8.5 Indemnities and Liabilities**

Each party is liable for, and is required to release and indemnify each other for, all claims in respect of personal injury, death or property damage caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of that party or its staff.

## **8.6 Limitation of Liability**

- (a) The liabilities of the parties for default shall be limited as agreed in the Funding Agreement.
- (b) The Funding Agreement will specify the circumstances in which each party has a claim against the other party for delays in the Extension project caused by breach of the Funding Agreement or negligence by the other party.
- (c) Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim.

## **8.7 Default, suspension and termination**

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

## **8.8 Force Majeure Event**

- (a) The obligations of either party (other than an obligation to pay monies outstanding) will be suspended where by reason of a Force Majeure Event that party is delayed in, or prevented from, carrying out its obligations under the Funding Agreement.
- (b) The Funding Agreement will provide for a process that might result in termination of the Funding Agreement if circumstances of a prolonged Force Majeure Event prevent the performance by a party of its obligations.

## **8.9 Assignment**

On commissioning of the Extension, the Access Funder may assign the whole of its Economic Benefit Transfer calculated in accordance with **clause 6**, under the Funding Agreement to another person, with the prior written consent of Queensland Rail (such consent not to be unreasonably withheld).

## **8.10 Representation and warranties**

The Funding Agreement may set out representations and warranties given by both the Access Funder to Queensland Rail and Queensland Rail to the Access Funder.

## **8.11 Confidentiality**

The Funding Agreement must not prevent an Access Funder from referring any issue, regardless of confidentiality, to the QCA for review in accordance with the dispute resolution processes under the QCA Act and Undertaking (as applicable).

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## **8.12 Material Change**

- (a) Extension Costs may need to be adjusted to reflect the net impact of any material change where such material change results in a variation to the net cost of Queensland Rail performing its obligations under the Funding Agreement.
- (b) A material change will be defined in the Funding Agreement and should be limited to changes in taxes, laws or approvals and are to be assessed on a case-by-case basis in consultation with the Access Funder.