

Queensland Rail's Draft Access Undertaking 1

February 2013



|

|

5771767/40

A8375 DocID: [6628796866287968-660595501+](#)

Contents

Preamble	1
Part 1 Application and scope	3
1.1 Duration	3
1.2 Scope	3
1.2.1 Application of this Undertaking	3
1.2.2 Procurement of services other than Access	3
1.2.3 Line diagrams	4
1.3 Consistency and differentiation	4
1.4 Extensions – Capacity Investment Framework	5
1.4.1 Obligation to construct Extensions	5
1.4.2 Funding Agreements	8
1.4.3 Access Conditions	10
1.4.4 Construction, ownership, operation and management of Extensions	11
1.4.5 No restriction	11
1.4.6 Funding Agreement Register	11
1.4.7 Master Plan and capacity extension process	11
1.4.8 Project initiation and process	11
1.4.9 Study Funding principles	12
1.4.10 Preapproval for inclusion in RAB	12
1.4.11 Disputes	13
1.5 Maintenance of the Network	13
Part 2 Negotiation process	14
2.1 Preparing and submitting an Access Application	14
2.1.1 Access Applications	14
2.1.2 Preliminary discussions	14
2.1.3 Publishing and amending templates	14
2.1.4 Preliminary information	15
2.1.5 Response to information request	15
2.1.6 Extension by Queensland Rail	15
2.1.7 Most current information	15
2.2 Confidentiality	15
2.2.1 Obligation to keep Confidential Information confidential	15
2.2.2 Requirement for confidentiality agreement	16
2.2.3 Responsibility for disclosure	16
2.3 Acknowledgment of an Access Application	17
2.3.1 Requests for additional information or clarification	17
2.3.2 Acknowledging Access Applications	17

2.4	Provision of an Indicative Access Proposal	17
2.4.1	Time period for provision of Indicative Access Proposal	17
2.4.2	Inclusions in Indicative Access Proposal	17
2.4.3	Indicative nature	18
2.5	Notification of intent to negotiate	18
2.5.1	Access Seeker to give notice of intent to negotiate	18
2.5.2	Consequence of late notification of intent	19
2.5.3	Extension of time IAP and ITN	19
2.6	Negotiation of an Access Agreement	19
2.6.1	The negotiation period	19
2.6.2	Issues to be addressed in negotiations	20
2.6.3	Negotiation Cessation Notice	22
2.6.4	Negotiation if queue is formed	23
2.7	Access Agreement	25
2.7.1	Access Rights granted under an Access Agreement	25
2.7.2	Access Seekers competing for Access Rights	25
2.7.3	Renewals	31
2.7.4	Development of Access Agreements	33
2.7.5	Execution of Access Agreements	33
2.7.6	Transfer of Access Rights	34
2.8	New Standard Agreements	34
2.9	Prudential requirements	35
2.9.1	Access Seekers must satisfy prudential requirements	35
2.9.2	Requirement to demonstrate satisfaction of prudential requirements	35
2.10	Coal traffic provisions	36
2.10.1	Provisions of the Standard Access Agreement which apply only to coal traffics	36
Part 3	Pricing principles	37
3.1	Pricing objectives	37
3.1.1	Price Differentiation	37
3.1.2	Network utilisation	37
3.2	Pricing limits	38
3.2.1	Applying a Ceiling Revenue Limit	38
3.2.2	Applying a Floor Revenue Limit	38
3.2.3	Determination of Ceiling Revenue Limit	39

3.3	Limits on price differentiation	40
3.4	Revenue adequacy	41
3.5	Reference Tariffs	42
	3.5.1 Application of Reference Tariffs	42
	3.5.2 Review of Reference Tariffs	42
3.6	Rate review provisions	43
3.7	QCA Levy	43
3.8	Mount Isa Renewal	43
	3.8.1 Calculation of Access Charge	43
	3.8.2 Application of Renewal Charges Clause	44
Part 4	Network Management Principles and Operating Requirements Manual	4544
4.1	Network Management Principles	4544
4.2	Operating Requirements Manual	45
	4.2.1 Obligation to comply with Operating Requirements Manual	45
	4.2.2 Amending the Operating Requirements Manual	4645
	4.2.3 Disputes about amendments to Operating Requirements Manual	4746
	4.2.4 Liability	4948
Part 5	Reporting	5049
5.1	Quarterly network train performance reports	5049
	5.1.1 Obligation to publish quarterly report	5049
	5.1.2 Content of quarterly report	5049
5.2	Annual report on negotiation process	5251
	5.2.1 Obligation to publish annual reports	5251
	5.2.2 Content of annual report	5251
5.3	General reporting obligations	5453
	5.3.1 Accuracy	5453
	5.3.2 Information requested by the QCA	5453
	5.3.3 Audit	5554
Part 6	Administrative provisions	5756
6.1	Dispute and complaint resolution process	5756
	6.1.1 Alternative dispute process	5756
	6.1.2 Application of dispute and complaint resolution process	5756
	6.1.3 Resolution by escalation	5756
	6.1.4 Resolution by QCA	5857
	6.1.5 Reporting unresolved disputes and complaints to the QCA	5857

6.2	QCA Decision-making	5958
6.3	Notices	6059
	6.3.1 Form of Notices	6059
	6.3.2 Means of giving Notices	6059
	6.3.3 Effect and receipt of a Notice	6059
	6.3.4 Process service is not affected	6160
6.4	Transitional provisions	6160
6.5	Additional provisions and new standard agreements	6264
Part 7	Definitions and interpretation	6462
7.1	Definitions	6462
7.2	Interpretation	9189
	Schedule A – West Moreton System	949392
	Schedule B – Network Management Principles	124123122
	Schedule C – Access Agreement Principles	134133132
	Schedule D – Regulatory Asset Base	157156155
	Schedule E – Tabulated representations of quarterly and annual report information	172171170
	Schedule F – Standard Access Agreement	176175174
	Schedule G – Preliminary and Additional Information	177176175
	Schedule H – Access Conditions	184183182
	Schedule I – System Master Planning Process	189188187
	Schedule J – Investment Framework Principles	191190189

Preamble

Queensland Rail was incorporated on 11 July 2008 and is a wholly government owned corporation. Queensland 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 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 (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.

Queensland Rail's major businesses include passenger Trains (including inner-city commuter and long distance trains), rail holidays, travel centres and managing access to its rail network for a wide variety of Trains including for agricultural products, passengers, general freight, bulk minerals and coal. The needs of Trains 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 Contract Payments from the Queensland Government. The absence of these Transport Service Contracte Payments would result in large parts of the rail network being commercially unviable.

Queensland Rail competes with road transport for most non-coal Train Services 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 *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (Qld). The 2008 Undertaking’s application to Queensland Rail will be superseded by this Undertaking on its approval by the QCA.

This Undertaking is a voluntary access undertaking in accordance with the provisions 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 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 principles for Access Charges including Reference Tariffs for coal carrying Train Services on the West Moreton System;
- Network Management Principles for the scheduling and prioritisation of Train Services;
- reporting obligations and dispute resolution;
- a Standard Access Agreement for coal carrying Train Services on the West Moreton System; and
- the principles applying to other Access Agreements.

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

Queensland Rail	
Access and Business Strategy	
GPO Box 1429	Phone: (07) 3235 3632
Brisbane QLD 4000	Email: aarf.freight@qr.com.au

Part 1 Application and scope

1.1 Duration

This Undertaking is effective during the Term.

1.2 Scope

~~1.1.1~~ 1.2.1 Application of this Undertaking

- (a) Subject to **clause 1.2.1(b)**~~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; ~~or and~~
 - ~~(C) to any 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 Queensland Rail is the Railway Manager but which is not owned by Queensland Rail or in respect of which Queensland Rail is not entitled to grant rights of access; and~~
 - (ii) 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.

~~1.1.2~~ 1.2.2 Procurement of services other than Access

Unless Queensland Rail otherwise agrees, Access Seekers are responsible for procuring any services other than Access, including Above Rail Services, required for the operation of Train Services.

1.1.31.2.3 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) upon publication be deemed to warrant the accuracy of the online line diagrams;
- ~~(b)~~(c) review and, if applicable, amend the line diagrams (at least every six months) during the Term; ~~and~~
- (d) notify the QCA at no more than six monthly intervals during the Term of any amendments to the line diagrams during that time interval;
- (e) consult all existing Access Holders and Access Seekers in relation to any proposed amendments to the line diagrams;
- (f) update the online line diagrams if the QCA identifies any inaccuracy in them (either due to its own investigations or in response to complaints from Access Holders and Access Seekers);-
- (g) in the event that an Access Holder or Access Seeker raises a dispute about the accuracy of the line diagrams, follow the dispute resolution processes in **clause 6**; and
- ~~(e)~~(h) subject to the outcome of any dispute resolution process, update the online diagrams and notify all Access Holders and Access Seekers as soon as the line diagrams have been updated.

1.3 Consistency and differentiation

- ~~(d)~~(a) This Undertaking will be applied in a manner that is consistent between Access Seekers ~~in the same circumstances~~.
- (b) Queensland Rail will comply with its obligations under the QCA Act (in particular, under sections 100 and 168C of the QCA Act) ~~in relation to not unfairly differentiating between Access Seekers or between Access Holders~~. Consistent with those obligations Queensland Rail will not, and will procure that its Related Parties do not:
 - (i) engage in conduct for the purposes of preventing or hindering an Access Seeker's or Access Holder's Access; or
 - (ii) provide Access to any Related Party which is a Rail Transport Operator on more favourable terms than the terms on which Queensland Rail provides Access to competitors of any Related Party which is a Rail Transport Operator (having regard to all of the terms on, and circumstances in which,

Access is provided including the Access Charges and differences in the Access Rights provided).

- (c) Queensland Rail will ensure that:
- (i) all transactions between Queensland Rail and any Related Party which is a Rail Transport Operator in relation to Access are conducted on an arms-length basis;
 - (ii) all Access Seekers, irrespective of whether they are a Related Party of Queensland Rail or third party:
 - (A) are provided with a consistent level of service; and
 - (B) given an equal opportunity to obtain Access Rights,
- subject to the express provisions of the QCA Act, the TIA and this Undertaking.

1.4 Extensions – Capacity Investment Framework

1.1.41.4.1 Obligation to construct Extensions

- (a) Subject to this **clause 1.4**, Queensland Rail must construct an Extension to the Network if:
- (i) Queensland Rail agrees to fund the Extension;
 - (ii) Access Funders agree to fund the Extension; or
 - (iii) Access Funders and Queensland Rail together agree to fund the Extension.
- ~~(a)~~(b) The provisions of this **clause 1.4** and **Schedule J** – ‘Investment Framework Principles’ will apply to Extensions (provided however that if there is any conflict between the terms of this **clause 1.4** and the terms of **Schedule J**, the terms of this **clause 1.4** will be paramount).
- (c) For clarity, funding for an Extension may be provided by Access Seekers, nominees of Access Seekers or Third Party funders (**‘Access Funders’**).
- ~~(b)~~(d) Subject to **clauses 1.4.21.4.21.4.2** to **1.4.61.4.61.4.6**, if:
- (i) an Extension is necessary to provide the Additional Capacity required to grant Access Rights requested by an Access Seeker; and
 - (ii) Queensland Rail ~~elects (in its absolute discretion) is not willing or able~~ to fund the construction of the Extension, then Queensland Rail is ~~not~~ obliged to construct the Extension if unless all of the following are satisfied (unless otherwise agreed by the parties acting reasonably):
 - (iii) the Access Seeker or other Access Funder:

- (A) agrees to provide funding ~~(in advance)~~ to Queensland Rail on terms and conditions agreed in accordance with clause 1.4.2~~satisfactory to Queensland Rail, for the costs and expenses to be paid or incurred by Queensland Rail in connection with constructing the Extension;~~ and
- (B) satisfies Queensland Rail acting reasonably that it meets the financial capability test ~~to and will~~ provide that funding;
- (iv) Queensland Rail bears no capital cost ~~or risk in relation to~~ constructing, owning, operating or managing of the Extension;
- (v) ~~if required by Queensland Rail,~~ the Access Seeker/Funder or Queensland Rail has obtained or is reasonably likely to will obtain all necessary Authorisations ~~and other~~ consents~~reasonably~~ required for Queensland Rail to construct ion of the Extension;
- (vi) ~~if required by Queensland Rail,~~ the Access Seeker/Funder or Queensland Rail has acquired or procured or is reasonably likely to acquire or procure for Queensland Rail all of the rights and interests in land ~~or any thing that,~~ in Queensland Rail's opinion acting reasonably, are ~~necessary~~reasonably 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;
- (vii) 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 impact on the safety of any person maintaining, operating or using the Network;
 - (D) does not adversely affect existing Access Rights to existing Capacity;
 - (E) complies with Queensland Rail's reasonable engineering, operational and other requirements; and
 - (F) does not adversely affect Queensland Rail's legitimate business interests (and is to be undertaken under a Funding Agreement in

accordance with the provisions of clause 1.4.2~~are otherwise protected~~);

(viii) Access Agreements have been executed with Queensland Rail for the Additional Capacity that is expected to be created by the Extension on terms and conditions consistent with the Access Undertaking. To the extent reasonable and appropriate, such terms and conditions will be based on the approved standard access agreement (if any) for the Train Services to be provided;

(ix) ~~except to the extent expressly agreed otherwise by Queensland Rail (in its absolute discretion)~~, those Access Agreements are or have become unconditional in all material respects except for conditions relating to the construction of the Extension or the creation of the relevant Additional Capacity which (in either case) cannot be satisfied until construction work is completed; and

(x) subject to clause 1.4.2, all construction, funding, operational and other material arrangements ~~relating to~~reasonably required for the Extension (including the matters referred to above) have been entered into by ~~the~~each relevant Access ~~Seeker~~Funder (or, if applicable, ~~the Access Seeker or~~ Access Seeker's Customer) and Queensland Rail (and are or have become unconditional in all material respects except for conditions referred to in clause 1.4.1(e)(viii)) ~~except to the extent expressly agreed otherwise by Queensland Rail (in its absolute discretion)~~.

~~(e)~~(e) For clarity, if Queensland Rail ~~is~~selects not ~~willing or able~~ to fund all or part of the construction of an Extension, then Queensland Rail will:

(i) discuss with the relevant Access Seeker (or that Access Seeker's Customer or other Access Funder) options for that Access Seeker (or that Access Seeker's Customer or other Access Funder) to provide funding for the Extension; and

(ii) ~~use reasonable endeavours to~~ negotiate, on a timely basis, and, if terms are agreed in accordance with clause 1.4.2, enter into arrangements with that Access Seeker or that Access Seeker's Customer or other Access Funder (as applicable) ~~(User)~~ in relation to the funding of the Extension (**Funding Agreement**).

~~(d)~~(f) For clarity, it is acknowledged that:

(i) an Access Funder may fund the Concept Study, Pre-Feasibility Study and Feasibility Study phases of an Extension by execution of a Funding Agreement in accordance with this Undertaking;

- ~~(ii)~~ an Access Funder may fund the capital costs of an Extension by execution of a Funding Agreement in accordance with this Undertaking;
- ~~(i)~~ an Access Seeker or Access Seeker's Customer, will execute an Access Agreement in accordance with this Undertaking.
- ~~(g)~~ Queensland Rail is obliged to extend the Network in accordance with the terms of the relevant Funding Agreement referred to in **clause 1.4.1(f)(ii)** and relevant Access Agreement referred to in **clause 1.4.1(f)(iii)** once those agreements are executed.
- ~~(h)~~ Queensland Rail and each relevant Access Funder must use reasonable endeavours and assist each other to ensure that the requirements for Extension as set out in **clause 1.4.1(d)** are satisfied. Without limiting the foregoing, Queensland Rail will apply for any Authorisation referred to in **clause 1.4.1(d)(v)** and for land tenure or rights referred to in **clause 1.4.1(d)(vi)** where Queensland Rail is the only party who may, or is the most appropriate party to, apply for same;
- ~~(i)~~ An Access Funder must fund all reasonable external expenses directly incurred by Queensland Rail in assisting to ensure that the requirements for Extension as set out in **clause 1.4.1(d)** are satisfied;
- ~~(e)(i)~~ For the purposes of this **clause 1.4**, an Extension does not include works or costs comprising Asset Replacement Expenditure. Additionally, nothing in this **clause 1.4** limits the obligations of Queensland Rail in relation to maintenance of the Network and Asset Replacement Expenditure including as set out in **clause 4**.
- ~~(k)~~ To satisfy the financial capability test for the purposes of **clause 1.4.1(d)(iii)(B)** the Access Funder is required to provide a Bank Guarantee in respect of its commitments under a funding agreement as agreed by Queensland Rail and the Access Funder acting reasonably unless the Access Funder is:
 - ~~(i)~~ an Acceptable Credit Company; or
 - ~~(ii)~~ guaranteed (in a form acceptable to Queensland Rail acting reasonably) by an Acceptable Credit Company.

1.4.51.4.2 Funding Agreements

The intent of a Funding Agreement is to have a workable, bankable and credible mechanism for Access Funders to fund Extensions where Queensland Rail elects not to do so. Without limitation to **clauses 1.4.11.4.11.4.4** and **clauses 1.4.31.4.31.4.3** to **1.4.61.4.61.4.6**, a Funding Agreement must, unless otherwise agreed by Queensland Rail and the relevant ~~User~~Access Funder, each acting reasonably:

- (a) be consistent with the terms of this Undertaking including the Investment Framework Principles in Schedule J (provided however that if there is any conflict between the terms of clause 1.4 and the terms of Schedule J, the terms of this clause 1.4 will be paramount);
- (b) ~~not provide for Queensland Rail to obtain a greater return on capital than that included in Access Charges in accordance with this Undertaking~~ be negotiated having reasonable regard to the terms of the SUFA Documents developed or being developed for Aurizon Network so far as relevant to Queensland Rail and the Access Funder;
- (c) result in the transaction being structured in a reasonable way for all parties that does not adversely affect Queensland Rail in respect of ~~tax, duty and accounting treatments~~;
- (d) to the extent agreed by the parties acting reasonably, ensure Queensland Rail's legitimate business interests are protected ~~and not adversely affected~~;
- ~~(e)~~ not result in Queensland Rail bearing any financial cost or risk in relation to constructing, owning, operating or managing of construction of an Extension; ~~or~~
 - ~~(i)~~ as a result of the structure or terms of the Funding Agreement;
- ~~(e)~~(f) require Queensland Rail to use reasonable its best endeavours to ensure that an Extension is:
 - (i) constructed efficiently and in accordance with Prudent Practices taking into account all of the relevant circumstances (including Queensland Rail's relevant and reasonable safety and construction requirements);
 - (ii) operated and managed by Queensland Rail in a manner that is consistent with Queensland Rail's obligations in relation to operation and management of the Network under this Undertaking, ~~but subject to all of the relevant circumstances (including the specific operational and management needs of the Extension and the needs of existing Access Holders)~~; and
- ~~(a)~~ satisfy the requirements set out in clause 1.4.3;
- ~~(g)~~ contain a methodology which ensures that an Access Funder is compensated for an investment in an Extension by receiving an amount equal to the return on and of the capital component of Access Charges derives from all Access Holders utilising the Capacity over the life of the asset in accordance with the Undertaking;
- ~~(h)~~ contain provisions which enable an independent auditor to audit the methodology referred to in clause 1.4.2(g), and returns from time to

time as reasonably required by an Access Funder over the period of the economic life of the relevant asset;

- (i) contain provisions allowing an Access Funder to require Queensland Rail to seek preapproval from the QCA for inclusion of the anticipated costs of construction in the RAB in accordance with **Schedule D** as a precondition to funding; and
- (i) subject to **clause 1.4.2(b)**, contain reasonable provisions including in relation to procurement, project management, project delivery, variations, commissioning, completion, inspection and audit and dispute resolution as agreed by the parties acting reasonably.

1.1.61.4.3 Rebates Access Conditions

- (a) Queensland Rail or an Access Funder (acting reasonably) may agree to the inclusion of Access Conditions in an Access Agreement to mitigate the financial risks associated with a project. The provisions of **Schedule H** will apply in relation to Access Conditions.
- (b) A Funding Agreement must provide for an arrangement whereby, if the User has agreed with Queensland Rail to contribute funds to the construction of an Extension, and contributes funds for that construction, then, to the extent that Queensland Rail receives Access Charges relating to the use of that Extension by Train Services, Queensland Rail will rebate that part of those Access Charges that is a return of, or on, capital expended in relation to that Extension that relates directly to the contribution provided to Queensland Rail by the User in respect of that Extension.
- (c) **clause 1.4.3(a)** does not apply:
- (d) to the extent that an Access Holder who has not contributed to the funding of the Extension uses the Extension but does not directly benefit from the Additional Capacity arising from that Extension—that is, if the Extension had not been constructed, then the Access Holder could still have been granted Access;
- (e) to the extent that Queensland Rail is adversely affected;
- (f) after the time when the rebates paid to the User under **clause 1.4.3(a)**, in aggregate, (but excluding all amounts that are a return on capital rather than a return of capital) equal the User's contributed funds in relation to the relevant Extension; and
- (g) to the extent that compliance with **clause 1.4.3(a)** would have the effect of Queensland Rail not receiving any amount that it is entitled to in relation to:
- (h) owning, operating, managing or investing in the Network (including for maintenance costs); or
- (i) any part of the Network excluding that part of the Network to the extent that it relates directly to the User's funding.

- (j) ~~For clarity, a dispute between an Access Seeker and Queensland Rail in relation to the negotiation of a Funding Agreement is subject to the dispute resolution process under clause Error! Reference source not found.~~

1.4.71.4.4 Construction, ownership, operation and management of Extensions

An Extension which is funded by an entity other than Queensland Rail will be constructed, owned, operated and managed by Queensland Rail in accordance with this Undertaking and the relevant Funding Agreement and Access Agreement unless otherwise agreed ~~or required~~ by Queensland Rail ~~(in its absolute discretion) acting reasonably.~~

1.4.81.4.5 No restriction

Nothing in **clauses 1.4.1, 1.4.21.4.21.4.2** or **1.4.31.4.31.4.3**:

- (a) obliges Queensland Rail to bear ~~anythe -capital~~ cost ~~of or risk in relation to~~ construction~~ng, owning, operating or managing of~~ an Extension if Queensland Rail is not otherwise obliged under the QCA Act or this Undertaking to do so;
- (b) prevents or otherwise restricts Queensland Rail and an Access ~~Seeker~~Funder (in each party's absolute discretion) from entering into arrangements relating to the funding or construction of an Extension necessary to provide Additional Capacity required to grant Access Rights requested by ~~that an~~ Access Seeker; or
- (c) restricts or otherwise limits Queensland Rail's ability to fund and construct Extensions and otherwise invest in the Network (in its ~~absolute-reasonable~~ discretion).

1.4.91.4.6 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 to the QCA including for the purposes of resolving a Dispute under **clause 6**.

1.4.7 Master Plan and capacity extension process

- (a) Queensland Rail will prepare System Master Plans for each main corridorSystem in the Network being at the Approval Date the Western Moreton System, the Mount Isa Line and the North-Coast Line. Queensland Rail willand establish and co-ordinate the activities of a System Planning Forum and a System Customer Group. The provisions of Schedule I (System Master Planning) will apply.

1.4.8 Project initiation and process

- (a) Projects providing Additional Capacity may be initiated if:
 - (i) proposed by Queensland Rail; or

- (ii) _____ requested by an Access Funder.
- (b) _____ An Access Funder may identify a demand for new capacity and request Queensland Rail commence the study process to identify the scope, standard and cost of such a project. Study phases include:

 - (i) _____ Concept Study,
 - (ii) _____ Pre-Feasibility Study
 - (+)(iii) _____ Feasibility Study
- (c) _____ If Queensland Rail elects not to fund all or part of the study phase, an Access Funder will have the right to fund the study phase and Queensland Rail will have an obligation to undertake the study phase as agreed pursuant to the user funding arrangements areas set out in clause 1.4 of the Undertaking.
- (d) _____ If, in Queensland Rail's reasonable opinion, a project being studied does not satisfy ~~s-~~**clause 1.4.1(d)(i)**, Queensland Rail may decide not to proceed to the next study phase in which case it will give written reasons to the Access Funder.-
- (e) _____ If an Access Funder, acting reasonably, believes that Queensland Rail is not undertaking, or is unnecessarily delaying, the relevant study phase required under **clause 1.4.8** then an Access Funder may refer the issue to the QCA under **clause 6.1.4** and if the QCA decides in the Access Funder's favour, Queensland Rail may be required to allow the Access Funder to undertake the relevant study phase and Queensland Rail must provide full cooperation to and any relevant information required by the Access Funder.

1.4.9 Study Funding principles

Queensland Rail will be entitled to reimbursement of reasonable costs in managing and conducting each study phase of a project for Additional Capacity. Efficient study funding costs will be capitalised into the cost of the proposed Extension for the development of Access Charges and the calculation of the relevant methodology required pursuant to **clause 1.4.2(g)**.

1.4.10 Preapproval for inclusion in RAB

Queensland Rail will apply to the QCA for pre-approval of the cost of a proposed Extension in the RAB in accordance with **Schedule D** before execution of a Funding Agreement if:

- (a) _____ the project has progressed through each study phase and there is a completed Feasibility Study report; and
- (b) _____ an Access Funder acting reasonably, requests Queensland Rail to make the application.

Queensland Rail may also apply for such pre-approval if Queensland Rail acting reasonably is of the view that studies are advanced to the stage to satisfy **clause 1.4.10(a)** above.

1.4.11 Disputes

For clarity, any dispute between an Access Funder and Queensland Rail in relation to this **clause 1.4** (including arising in relation to the **Schedule D** referred to in this clause and to the negotiation, or any terms and conditions of, a Funding Agreement) is subject to the dispute resolution process under **clause 6**.

1.5 Maintenance of the Network

- (a) Queensland Rail must carry out maintenance work on the Network such that it maintains the operational integrity of the Network consistent with:
- (i) the Network Management Principles;
 - (ii) the Operating Requirements Manual; and
 - (iii) Access Rights contracted with Access Holders
- so Rail Operators can operate Train Services consistent with their contracted Access Rights.

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.
- (b) Subject to clause 2.1.3, Queensland Rail will publish on its website the application forms for Access Applications (which may identify different requirements for different types of Train Services) and Operating Plan templates.
- (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 discussions

An Access Seeker may request initial meetings with Queensland Rail, prior to submitting an Access Application, to discuss the Access Application and to clarify any matters relating to the negotiation process.

2.1.3 Publishing and amending templates

The following provisions apply to templates to be published on the Queensland Rail website under clause 2.1.1(b):

- (a) the first version of each template for the application forms for Access Applications and each Operating Plan template will be submitted to the QCA for approval and published on Queensland Rail's website once approved;
- (b) any amendment to an approved template may only be made after Queensland Rail reasonably justifies the need for the proposed amendment (and first publishes its reasons on its website) and after Queensland Rail has undertaken reasonable consultation with Access Holders and Access Seekers;
- (c) any dispute in relation to any proposed amendment to a template may be referred by any party for resolution under clause 6;
- (d) if an amendment to a template is made in accordance with this clause 2.1.3, Queensland Rail must publish a marked version of the template (comparing it to the immediately preceding version) on its website and must give notice of the amendment to all Access Seekers and Access Holders; and
- (e) Queensland Rail must report separately each year on the number of disputes arising in relation to the templates for the Access Application

form and the templates for the Operating Plan in accordance with clause 5.2.2.

2.1.32.1.4 Preliminary information

Subject to **clause 2.2.2** Queensland Rail will provide to an Access Seeker Preliminary information[†] related to the Corridor of interest requested by that Access Seeker where the Access Seeker can reasonably demonstrate the need for the information for the purpose of preparing its Access Application.

~~provided that:~~

~~(a) doing so will not breach a confidentiality obligation binding on Queensland Rail; and~~

~~(b) the information is ordinarily and freely available to Queensland Rail.~~

2.1.5 Response to information request

Queensland Rail will use reasonable efforts to make the Preliminary Information available to the Access Seeker within ten (10) Business Days of Queensland Rail receiving the Access Seeker's request if the information contained in the Preliminary Information has been previously compiled, otherwise within twenty (20) Business Days of Queensland Rail receiving the request.

2.1.6 Extension by Queensland Rail

Queensland Rail may extend the time to provide Preliminary Information to an Access Seeker if:

(a) Queensland Rail provides reasonable grounds for the extension to the Access Seeker prior to expiration of the relevant time period under clause 2.1.5; and

(b) the Access Seeker agrees to the extension, such agreement not to be unreasonably withheld.

2.1.7 Most current information

Queensland Rail will use reasonable efforts to ensure that any Preliminary Information provided under clause 2.1.4 will reflect the most current information available to Queensland Rail. Queensland Rail will identify the currency of the Preliminary Information provided.

2.2 Confidentiality

2.2.1 Obligation to keep Confidential Information confidential

(a) Subject to **clause 2.2.1(b)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:

[†] Such as, path length availability, Available Capacity, axle load limitations, maximum speeds, a description of the relevant part of the Network for which Access Rights are sought, infrastructure characteristics, nominated sectional running times and applicable safeworking requirements.

- (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) only be disclosed in accordance with this Undertaking or a confidentiality agreement between the parties.
- (b) A Recipient of Confidential Information is not required to comply with **clause 2.2.1(a)**~~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.
- (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).

2.2.3 Responsibility for disclosure

If a Recipient of Confidential Information discloses all or part of that Confidential Information to:

- (a) the directors, company secretary, officers or employees of the Recipient or a Related Party of the Recipient; or
- (b) the Recipient's solicitors, barristers, accountants, technical consultants or other advisers;

under a Confidentiality Exception, then the Recipient:

- (c) must use its best endeavours to ensure that person keeps the Confidential Information confidential; and
- (d) is responsible for the actions and omissions of that person in relation to the Confidential Information as though those actions and omissions were the Recipient's.

2.3 Acknowledgment of an Access Application

2.3.1 Requests for additional information or clarification

~~Prior to acknowledging an Access Application, Queensland Rail may require the Access Seeker to provide additional or clarified information for the purpose of preparing an Indicative Access Proposal^{seek}:~~

- ~~(a) additional information where Queensland Rail can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal (either because the Access Application did not include the information contained in the relevant approved Access Application template, or because there are special circumstances of the Access Application which result in the additional information being reasonably necessary for Queensland Rail to prepare an Indicative Access Proposal); or~~
- ~~(b) clarification of the information that has been provided in the Access Application.~~

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 clauses 2.6.4 and 2.9.3,~~ 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 clauses 2.6.4 and 2.9.3,~~ Queensland Rail will use reasonable endeavours to provide an Indicative Access Proposal to the Access Seeker:

- (a) within the estimated time period for doing so indicated in the acknowledgement² given under **clause 2.3.22-3.2** ~~if less than 20 Business Days~~; or
- (b) if no such time period is indicated in the acknowledgement, within 20 Business Days after giving the acknowledgment under **clause 2.3.22-3.2** ~~or such longer period as agreed under clause 2.5.3.~~

2.4.2 Inclusions in Indicative Access Proposal

The Indicative Access Proposal will, amongst other things:

² ~~Queensland Rail will only give such a time estimate in an acknowledgement if Queensland Rail considers that it is not reasonable to provide the Indicative Access Proposal within 20 Business Days after giving the acknowledgement.~~

- (a) set out the Rollingstock and Rollingstock Configurations to which the Indicative Access Proposal applies;
- (b) set out a summary of the applicable operating characteristics (e.g. frequency, transit time, commodity carried)
- ~~(a)(c)~~ set out the results of an indicative Capacity Analysis;
- ~~(b)(d)~~ indicate 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 been formed; and
- (e) provide an initial estimate of the Access Charges for the requested Access Rights (including a methodology for calculating the Access Charges) (including an initial estimate, based on the pricing principles set out in Part 3, including advice as to whether Queensland Rail has applied clauses 3.3(b)(i), 3.3(b)(ii)(A) or 3.3(b)(ii)(B) in determining the estimate of the Access Charge and if so:
 - (i) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to Queensland Rail;
 - (ii) the impact that the factor has on the Access Charge; and
 - (iii) how that impact on the Access Charge was determined; and
~~of any applicable rates or other inputs for formulae).~~
- ~~(e)(f)~~ details of the additional information required for Queensland Rail to progress the proposal and develop the Access Charge and terms and conditions for acceptance. Typical information requirements to be addressed are outlined in clause 2.6.2.

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

If an Access Seeker intends to proceed with its Access Application on the basis of the relevant Indicative Access Proposal, it must, subject to **clauses 2.5.2-5.2, and 2.5.3**, give Queensland Rail written notice of its intention to do so 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 or such longer period as agreed under **clause 2.5.3** (if any), Queensland Rail ~~may~~will review the Indicative Access Proposal and either (in its ~~absolute~~reasonable discretion):
- (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~~Part 2 recommences as though the revised Indicative Access Proposal was given to the Access Seeker under **clause 2.4.4**; and
 - (ii) the Access Seeker must comply with this **clause 2.5** in relation to that revised Indicative Access Proposal.
- (c) 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 or such longer period as agreed under **clause 2.5.3** (if any), then Queensland Rail may (in its ~~absolute~~reasonable discretion) reject the relevant Access Application by giving notice of that rejection to the Access Seeker.

2.5.3 Extension of time IAP and ITN

Queensland Rail may extend the period of time for providing an Indicative Access Proposal under **clause 2.4.1(b)**, and an Access Seeker may extend the time for giving a notice of intention to proceed under **clause 2.5.2(a)** and/or **clause 2.5.2(c)** respectively if:

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

2.6 Negotiation of an Access Agreement

2.6.1 The negotiation period

- (a) Subject to **clause 2.5.2** and to **clause 2.6.4**, 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 2.6.12-6.1(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) Queensland Rail giving the Access Seeker a notice under **clause 2.7.5(a)(iv)(A)2.7.5(a)(iv)(A)2.7.6(a)(iv)(A)**;
 - (C) the Access Seeker notifying Queensland Rail that it no longer wishes to proceed with its Access Application;
 - (D) 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);
 - (E) Queensland Rail giving the Access Seeker a Negotiation Cessation Notice; and
 - (F) the occurrence of any other event or circumstance where negotiations cease in accordance with this Undertaking.
- (c) Queensland Rail is not obliged to continue negotiations with an Access Seeker after the Negotiation Period for the relevant Access Application has ceased.

2.6.2 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) subject to **clause 2.2.2**, Queensland Rail will provide to the Access Seeker Aadditional iinformation relevant to the negotiations, as requested by the Access Seeker (acting reasonably). ~~provided that:~~
 - ~~(A) doing so will not breach a confidentiality obligation binding on Queensland Rail; and~~
 - ~~(B) the information is ordinarily and freely available to Queensland Rail;~~

- (ii) in order to analyse the impacts and requirements of the operations proposed by the Access Seeker, the Access Seeker must:
 - (A) prepare, and submit to Queensland Rail, a draft Operating Plan³ 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;
- (iii) the parties must jointly:
 - (A) undertake an Interface Risk Assessment⁴; and
 - (B) after the Interface Risk Assessment is completed, develop an IRMP;
- ~~(b)(iv)~~ the Access Seeker must 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;
- (v) provide the Access Charge for the requested Access Rights (including a methodology for calculating the Access Charge) based on the pricing principles set out in Part 3, including advice as to whether Queensland Rail has applied clauses 3.3(b)(i), 3.3(b)(ii)(A) or 3.3(b)(ii)(B) in determining the Access Charge and if so:
 - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to Queensland Rail;
 - (B) the impact that the factor has on the Access Charge; and
 - (C) how that impact on the Access Charge was determined.

³ 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.

⁴ Queensland Rail will publish on its website indicative information, standards and requirements ~~for~~ that the Interface Risk Assessment and IRMP ~~must be consistent with~~. 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 to by the parties may cover additional safety and/or Rolling Stock issues and associated controls depending on the circumstances of the particular operation.

~~Queensland Rail will provide a methodology for calculating the Access Charges (including any applicable rates or other inputs for formulae);~~

- ~~(i)~~(vi) Queensland Rail will provide a Capacity Analysis to the Access Seeker;
- ~~(ii)~~(vii) Queensland Rail will provide a detailed description of the relevant Train Service Entitlement and the initial timetable;
- ~~(iii)~~(viii) 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
- ~~(iv)~~(ix) Queensland Rail will provide the other terms comprising the Access Agreement.

(b) During the Negotiation Period, Queensland Rail will, if relevant, also negotiate the terms of a separate arrangement with the Access Seeker for the connection of Private Infrastructure to the Network. If a Standard Rail Connection Agreement has been approved pursuant to clause 6.5, the parties will enter into an agreement on the same terms subject to any amendments as agreed by the parties.

2.6.3 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 (**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 that~~ the Access Seeker will comply with the terms and conditions of an Access Agreement in a material way including due to any reasonable likelihood of not being able to satisfy the prudential requirements in clause 2.9.1; or
 - (B) the Access Seeker has no genuine intention of obtaining, or has no reasonable likelihood of using, the Access Rights requested; ~~or~~
 - ~~(C) the Access Application is frivolous in nature;~~
 - ~~(iii) Queensland Rail (acting reasonably) is not satisfied, at any time, that the Access Seeker meets the prudential requirements set out in clause 2.9.1; or~~

- (iv)(iii) the Access Seeker fails to comply with the dispute resolution process under **clause 6.16-4** (including any outcome of that dispute resolution process).
- (b) In forming an opinion referred to in **clause 2.6.3(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; and
 - (ii) the speed and timeliness of the Access Seeker in conducting its negotiations.
- (c) If Queensland Rail gives a Negotiation Cessation Notice to an Access Seeker, then the Access Seeker must, on request by Queensland Rail (in its absolute-reasonable discretion), pay and, if paid by Queensland Rail, reimburse, Queensland Rail its reasonable costs incurred in negotiations with the Access Seeker.

2.6.4 Negotiation if queue is formed~~Frivolous requests for Access~~

- (a) If Queensland Rail has established a queue in accordance with clause 2.7.2(c), Queensland Rail has no obligation to negotiate with an Access Seeker other than the Access Seeker whose Access Application is first in the queue and only in respect of the Access sought by that Access Application. In this instance, the Negotiation Period will commence from the time the Access Seeker is notified by Queensland Rail that it is first in the queue, unless Queensland Rail and the Access Seeker had commenced negotiating towards an Access Agreement prior to the formation of the queue in which case:

 - (i) if the Access Seeker is first in the queue once it is formed the Negotiation Period will commence from the time the Access Seeker provided Queensland Rail notification of its intent pursuant to clause 2.5.1; and
 - (ii) if the Access Seeker is not first in the queue once it is formed the Negotiation Period will commence from the time the Access Seeker provided Queensland Rail notification of its intent pursuant to clause 2.5.1 but the Negotiation Period will be put on hold until the Access Seeker is notified by Queensland Rail that it is first in the queue.

- ~~(b) If Queensland Rail has established a queue in accordance with **clause 2.7.2(c)**, Queensland Rail may negotiate with any Access Seeker in that queue, but Queensland Rail is only obliged to do so if:~~
- ~~(i) at that time, Queensland Rail can provide the requested Access Rights to the Access Seeker within three (3) years; and~~
 - ~~(ii) were Queensland Rail to execute an Access Agreement with that Access Seeker, Queensland Rail's ability to provide Access Rights to any Access Seeker earlier in the queue would not be adversely affected.~~
- ~~(c) Where negotiations have commenced and progressed to a significant extent with the first Access Seeker in a queue and Queensland Rail subsequently changes the order of the queue in accordance with **clause 2.7.2(e) – (h)** such that the Access Seeker is no longer first in the queue Queensland Rail will:~~
- ~~(i) notify the Access Seeker of this fact in accordance with **clause 2.7.2(i)**, and give the Access Seeker 20 Business Days within which to demonstrate to Queensland Rail's satisfaction that it should regain first position in the queue; and~~
 - ~~(ii) advise the Access Seeker who is first in the queue following the reordering of the queue that their Negotiation Period has been put on hold pending the other Access Seeker's attempt to satisfy the requirements of paragraph (i) above.~~
- ~~(d) If the Negotiation Period ceases in accordance with **clause 2.6.1(b)(ii)** and the Access Seeker was in a queue established by Queensland Rail in accordance with **clause 2.7.2(c)**, the Access Seeker will be removed from the queue.~~

~~Without limitation to **clause 2.6.3**, if, prior to the start of the Negotiation Period, Queensland Rail (acting reasonably) considers the relevant Access Application is frivolous in nature, Queensland Rail may reject that Access Application and, if it does so, is not obliged to comply with this Undertaking in relation to that Access Application.~~

~~2.6.5 Rail safety and other considerations for passengers~~

~~-If:~~

- ~~(a) Queensland Rail considers:~~
- ~~(i) (not acting arbitrarily) that 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; or~~

- ~~(ii) (acting reasonably) that the use of any proposed Access Rights sought by an Access Seeker may adversely affect the operation of passenger trains in the Metropolitan Region;~~
 - ~~(b) Queensland Rail and the Access Seeker (both acting in good faith) have discussed Queensland Rail's concerns in relation to the matters in paragraphs (a)(i) or (ii) (as applicable) and after those discussions paragraph (a) continues to apply;~~
 - ~~(c) Queensland Rail (acting reasonably) does not consider that any measures can reasonably and practicably be implemented by Queensland Rail or the Access Seeker to avoid, or mitigate to Queensland Rail's reasonable satisfaction, those adverse affects; 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 refuse to enter into an Access Agreement with the relevant Access Seeker⁵.~~

2.7 Access Agreement

2.7.1 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.

2.7.2 Access Seekers competing for Access Rights

- (a) If:
 - (i) two or more Access Seekers have applied for Access Rights; and
 - (ii) the grant of Access Rights to one or more of those Access Seekers would result in Access Rights not being able to be granted to the other Access Seekers,
- then Queensland Rail will:
- (iii) notify each of those Access Seekers as soon as practicable after it becomes aware of that circumstance; and
 - (iv) subject to **clauses 2.7.2(b) to (n) 2.7.3(b) and (c) and clause 2.7.4**, Access Rights will be allocated to the first Access Seeker with whom Queensland Rail can negotiate and execute an acceptable Access Agreement. 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.~~prioritise Access~~

⁵ ~~For example, Queensland Rail may refuse to enter into an Access Agreement for non-passenger Train Services that are proposed to stop or operate immediately adjacent to stations or platforms at a time when the station or platform is or may be in use by passenger Train Services or passengers for Train Services.~~

~~Seekers for the grant of Access Rights based on how favourable an Access Agreement with each Access Seeker is likely to be to Queensland Rail (as assessed by Queensland Rail in its absolute discretion) — with the most favourable being given the highest priority for the grant of Access Rights.~~

- ~~(b) If, at any time, two or more Access Seekers have applied for Access with respect to mutually exclusive Access Rights, each of the Access Seekers who has received an Indicative Access Proposal with respect to those mutually exclusive Access Rights will be advised, either in accordance with **clause 2.4.2(d)** or **clause 2.7.2(iii)** that there is one or more other Access Seeker seeking to negotiate for mutually exclusive Access Rights. Failure to give such notification will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by Queensland Rail provided that Queensland Rail has acted in good faith.~~
- ~~(c) Queensland Rail will identify whether it is possible for one or all of the Access Seekers seeking to negotiate for mutually exclusive Access Rights to modify their requirements in order to allow all Access Applications to be accommodated. If Queensland Rail cannot identify a way in which all Access Applications can be accommodated, or if one or more of the Access Seekers does not want to change their Access Application, and as a result there are still two or more Access Seekers seeking to negotiate for mutually exclusive Access Rights, each of whom have notified Queensland Rail, in accordance with **clause 2.5**, of their intention to progress their Access Application on the basis of the arrangements outlined in the Indicative Access Proposal, Queensland Rail will form a queue to determine which Access Seeker will be allocated the mutually exclusive Access Rights.~~
- ~~(d) The order of a queue established in accordance with **clause 2.7.2(c)** will initially be based upon the date on which Queensland Rail received the relevant Access Applications, so that the Access Application received by Queensland Rail at the earliest time is first in the queue, and the Access Application received next by Queensland Rail is second in the queue, and so on,~~
- ~~(e) Once formed, Queensland Rail may change the order of a queue where:~~

 - ~~(i) the Negotiation Period for an Access Seeker has ceased in accordance with **clause 2.6.1(b)(ii)**;~~
 - ~~(ii) Queensland Rail reasonably considers that the commercial performance of Below Rail Services is better served, as described in **clauses 2.7.2(f)** and **2.7.2(g)**, by allocating Access to an Access Seeker who is in the queue but not first in the queue;~~

- (iii) two or more of the Access Applications relate to the same traffic type (for example, coal traffic) and specific principles are included in this Undertaking for the allocation of Capacity for that traffic type, in which case Queensland Rail may change the order of the queue in accordance with those specified principles; or
- (iv) Queensland Rail receives a new Access Application and this is added to an existing queue for mutually exclusive Access Rights.
- (f) Queensland Rail will assess the ability of Access Seekers to contribute to the commercial performance of Below Rail Services by comparing the net present value (“NPV”) of contribution to the Common Costs of providing the Rail Transport Infrastructure for the total haul for the different traffics subject to the different Access Applications in the queue. In determining the NPV of contribution to the Common Costs of providing the Rail Transport Infrastructure for the total haul of a particular traffic, Queensland Rail will include 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 to the particular traffic (for example, Access Charges from another Train Service or combination of Train Services, or Transport Service Contract Payments). If a traffic presents an NPV of contribution to the Common Costs that is 2% or more higher than the NPV of contribution to Common Costs for another traffic in the queue, and the first traffic is the subject of an Access Application lower in the queue than the second traffic, Queensland Rail may move the Access Application relating to the first traffic so that it is above the Access Application relating to the second traffic in the queue. If Queensland Rail, in assessing the NPV of contribution to Common Costs of different traffics subject to different Access Applications under this **clause 2.7.2(f)**, took into account a contribution from other sources of revenue that would reduce or be eliminated as a consequence of Queensland Rail not providing Access to the particular traffic:

 - (i) on request by any Access Seeker adversely affected by that assessment, Queensland Rail must provide the Access Seeker with a copy of the reasons for the assessment; and
 - (ii) in the event of a Dispute, the onus is on Queensland Rail to demonstrate to the QCA’s satisfaction that a reduction or elimination of the other sources of revenue would reasonably be expected to occur as a consequence of Queensland Rail not providing Access to the particular traffic.
- (g) Where a queue contains multiple Access Applications for coal carrying Train Services from different mines within the West Moreton System, as between those Access Applications, Queensland Rail will

place a later Access Application seeking an Access Agreement term of at least ten (10) years in the queue ahead of an earlier Access Application seeking a term of less than ten (10) years if the Access Seeker for the later Access Application is ready and willing to execute an Access Agreement that is consistent with a Standard Access Agreement.

- (h) In the circumstances covered by **clauses 2.7.2(e)(ii) and (iii)**, Queensland Rail may change the order of the queue in the manner specified in **clauses 2.7.2(f) and 2.7.2(g)** above without removing any Access Seeker from the queue.
- (i) Queensland Rail will notify each Access Seeker who has an Access Application in a queue of any change to the position of their Access Application in the queue and the reason/s for that change.
- (j) An Access Seeker may only assign its position in a queue to another party where:
 - (i) that party is an operator and the Access Seeker has entered into an agreement with that operator to provide the Train Services and wishes that operator to hold the Access Rights;
or
 - (ii) that party has acquired the whole or a substantial part of the assets of the Access Seeker.
- (k) Where mutually exclusive Access Rights are sought by two or more Access Seekers who are competing in order to provide Train Service/s under a rail haulage agreement with the same Customer for the same service (in other words, the Access Rights sought relate to the same traffic task) ("**Competing Applications**"), and there is insufficient Available Capacity to satisfy any one of the Competing Applications as well as one or more other Access Applications for mutually exclusive Access Rights, then provided all of the Access Seekers have notified Queensland Rail of their intention to progress their Access Applications on the basis of the arrangements outlined in the Indicative Access Proposal, Queensland Rail will form a queue to determine which Access Seeker will be allocated the mutually exclusive Access Rights. The formation and operation of the queue will be no different than otherwise would be the case under this **clause 2.7.2** except for the following:
 - (i) subject to **clause 2.7.2(k)(iii)** below, the Competing Applications will be collectively positioned in the queue as though they were a single application;
 - (ii) the date of the Competing Applications, for the purposes of the queue, will be deemed to be that of the earliest of the Competing Applications; and

- (iii) where the Competing Applications are first in the queue, Queensland Rail will commence negotiations with each of the Access Seekers and progress those negotiations to a stage where Queensland Rail has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and both parties accepting a Standard Access Agreement (if applicable) or otherwise an access agreement consistent with the summary of the standard terms and conditions outlined in **schedule C**. An Access Agreement will be negotiated and executed with the Access Seeker who demonstrates to Queensland Rail's reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s for the Customer for which the Access Rights are sought, and that the Customer is agreeable to the execution of the Access Agreement with that Access Seeker.
- (l) Where mutually exclusive Access Rights are sought by two or more Access Seekers with Competing Applications and **clause 2.7.2(k)** does not apply, Queensland Rail will commence negotiations with each of the Access Seekers and progress those negotiations to a stage where Queensland Rail has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and both parties accepting a Standard Access Agreement (if applicable) or otherwise an access agreement consistent with the summary of the standard terms and conditions outlined in **schedule C**. An Access Agreement will be negotiated and executed with the Access Seeker who demonstrates to Queensland Rail's reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s for the Customer for which the Access Rights are sought, and that the Customer is agreeable to the execution of the Access Agreement with that Access Seeker.
- (m) Disputes concerning positions in a queue or any other aspect of Queensland Rail's management of a queue may be referred to the QCA under **clause 6.1.4** for resolution. In the event of such a Dispute, Queensland Rail will not implement any change to any Access Seeker's position in the queue unless and until the Dispute is resolved in favour of such a change in position.
- ~~(b)(n)~~ Queensland Rail will expand the Capacity of the Rail Transport Infrastructure in order to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker where Queensland Rail reasonably considers that, in respect of the Capacity expansion, the expected net additional Below Rail revenue, less any expected costs associated with the expansion, is sufficient to

~~commercially justify the required expenditure. is required to do so under **clause 1.4.**~~

- ~~(e) For the purpose of **clause 2.7.2(a)(iv)**, Queensland Rail's assessment of how favourable an Access Agreement is likely to be will be based on:~~
- ~~(i) the Access Charges that are expected to arise from the Access Agreement;~~
 - ~~(ii) the cost and risk to Queensland Rail of providing Access Rights in accordance with the Access Agreement;~~
 - ~~(iii) the ability of the Access Seeker to satisfy and to continue to satisfy the prudential requirements set out in **clause 2.9.1**;~~
 - ~~(iv) the term of the Access Agreement; and~~
 - ~~(v)(i) any other effects that entering into the Access Agreement may have on Queensland Rail's financial and risk position.~~
- ~~(d) If:~~
- ~~(i) **clauses 2.7.2(a)(i)** and **(ii)** are satisfied;~~
 - ~~(ii) Queensland Rail and each of the relevant Access Seekers is ready and willing to execute an Access Agreement; and~~
 - ~~(iii) in Queensland Rail's opinion (acting reasonably):~~
 - ~~(A) it is not possible to determine which of the proposed Access Agreements is the most favourable to Queensland Rail based on the criteria set out in **clause 2.7.2(a)(iv)**; or~~
 - ~~(B) each of the proposed Access Agreements is equally favourable to Queensland Rail based on the criteria set out in **clause 2.7.2(a)(iv)**,~~
- ~~then Queensland Rail will, subject to **clauses 2.7.3(b)** and **(c)** and **clause 2.7.4**, enter into an Access Agreement with the Access Seeker whose Access Application was received by Queensland Rail first.~~
- ~~(e) If Queensland Rail believes (acting reasonably) in the circumstances and at the time that compliance with **clause 2.7.2(c)** was required, that it was acting in compliance with **clause 2.7.2(c)** in entering into an Access Agreement, then Queensland Rail is not in breach of this Undertaking, and is not liable to any person (including any Access Seeker), in relation to or as a result of that entry into an Access Agreement, even if it is subsequently alleged that Queensland Rail did not comply with **clause 2.7.2(c)**.~~
- ~~(f)(o) If Queensland Rail rejects an Access Application under this **clause 2.7.2**, then Queensland Rail will provide feedback to the Access Seeker who lodged the Access Application in the form set out in~~

~~schedule D so as to indicate where any of the matters referred to in schedule D applied in relation to that rejection.~~

2.7.3 Renewals

- (a) In this ~~clause 2.7.32-7.3~~, a **Renewal Access Seeker** means, concerning an Access Agreement with an Access Holder:
- (i) the Access Holder, where the Access Holder has no Customer;⁶ or
 - (ii) the person⁷ whom the Customer nominates in writing to Queensland Rail (**Customer Nominee**), where the Access Holder has a Customer.
- (b) 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 ~~use reasonable endeavours to~~ notify:
- (i) the Access Holder for that Access Agreement;
 - (ii) that Access Holder's Customer (if any); and
 - (iii) the relevant Customer Nominee (if any),
- of Queensland Rail's receipt of that Access Application, as soon as reasonably practicable after receiving it.
- (c) Despite any other provision in this Undertaking to the contrary and subject to ~~clause 2.7.3(d)2-7.3(d)~~, Queensland Rail ~~may will~~ not execute an Access Agreement with the Access Seeker referred to in **clause 2.7.3(b)** until:
- (i) the negotiations with the Renewal Access Seeker have ended in accordance with this Undertaking; or
 - (ii) nine months after the date on which ~~the Renewal Access Seeker submits to~~ Queensland Rail ~~gave the relevant notices Access Application~~ under **clause 2.7.3(b)2-7.3(bd)(ii)**, ~~(subject to any extension of time agreed in accordance with clause 2.6.1(b)(ii)(D) which will apply).~~
- whichever happens first.
- (d) ~~Clause 2.7.3(c)2-7.3(e)~~ only applies where:
- ~~(i) Queensland Rail has given a notice under clause 2.7.3(b);~~

⁶ For example, where the mine operator who uses the Access Rights to transport coal from its mine is the Access Holder.

⁷ The Customer may nominate itself, the existing Access Holder or any other person. This opportunity to nominate the person who can lodge a Renewal will give the Customer added flexibility concerning, for example, directly holding Access Rights or changing Operators at the end of an Access Agreement's term.

- ~~(ii)(i)~~ the relevant existing Access Agreement concerns Train Services for which there is an applicable Reference Tariff and to Mount Isa Bulk Train Services;
- ~~(iii)(ii)~~ the relevant Renewal Access Seeker's Access Application (**Renewal Application**):
- (A) was submitted to Queensland Rail not more than three years and not less than two years before the expiry of the existing Access Agreement:
- ~~(1) no later than 20 Business Days after Queensland Rail gave the notice under clause 2.7.3(b); and~~
- ~~(2) no less than two years before the expiry of the relevant Access Agreement;~~
- (B) is for new Access Rights equivalent to all or part of the Access Rights under the existing Access Agreement for the existing mine which has the benefit of the existing Access Agreement or a Replacement Mine for use of substantially the same Train Paths (including for the same origin and destination) and which commence on that Access Agreement's expiry; and
- (C) is for a term at the election of the Renewal Access Seeker of the lesser of:
- (1) at least the period for which the Access Seeker referred to in **clause 2.7.3(b)2.7.3(b)** is seeking Access Rights but to a maximum of 10 years; or
- (2) the remaining life of the relevant ~~coal~~ 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) clause 2.7.3(d)(ii)(C)(2)Error! Reference source not found.~~ has not previously applied for any past Renewal Application in connection with the relevant Access Rights, unless Queensland Rail agrees otherwise; **and**.⁸
- ~~(iv) the new Access Agreement is on terms which are consistent with the relevant standard access agreement (in the case of Reference Train Services) or access agreement principles in~~

⁸ Unless Queensland Rail agrees otherwise, **clause 2.7.3(c)2.7.3(e)** is only intended to operate once where a Renewal Application is for the remaining life of a ~~coal~~ mine. Any subsequent Renewal Application concerning the relevant Access Rights does not have the benefit of **clause 2.7.3(c)2.7.3(e)**. In those instances, the Access Seeker for that Renewal Application will be treated on the same basis as any other Access Seeker.

schedule C (in the case of non-reference tariff train services) (provided that if a standard access agreement has been approved for such services the new Access Agreement is in terms consistent with that standard access agreement); and

~~(iv)(v)~~ in the case of Mount Isa bulk mineral train services, the Renewal Access Seeker accepts tariffs consistent with the renewal pricing principles as set out in **clause 3.9**.

~~(e)~~ For the avoidance of doubt, when a Renewal Application is submitted the queuing provisions (**clauses 2.6.4 and 2.7.2**) do not apply.

~~(e)~~ Nothing in this **clause 2.7.3** 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.

~~2.7.4~~ **Contracting Available Capacity or Additional Capacity**

~~Queensland Rail is not obliged to enter into an Access Agreement if:~~

~~(a) the Network does not, in Queensland Rail's opinion, have sufficient Available Capacity to meet the Access Seeker's request for Access Rights; and~~

~~(b) Queensland Rail has not agreed to provide Additional Capacity to meet the Access Seeker's request for Access Rights.~~

~~2.7.5~~ **2.7.4 Development of Access Agreements**

Unless otherwise agreed between Queensland Rail and the Access Seeker, an Access Agreement must be consistent with:

- (a) this Undertaking;
- (b) the terms of a Standard Access Agreement applicable to the relevant type of Train Service; or
- (c) if there is no applicable Standard Access Agreement, the principles in **schedule ~~Error! Reference source not found.~~CC** (provided that those principles do not limit the matters which may be included in an Access Agreement).

~~2.7.6~~ **2.7.5 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,

then:

- (iii) both Queensland Rail and the Access Seeker must use reasonable endeavours to execute the Access Agreement as soon as practicable provided that Queensland Rail is not

required to execute the Access Agreement before the Access Seeker; and

- (iv) if the Access Seeker does not execute that Access Agreement within 20 Business Days after receiving Queensland Rail's offer (or such longer period as agreed by Queensland Rail under clause 2.7.5(c)), Queensland Rail may (in its absolute reasonable discretion):
 - (A) withdraw its offer by notice in writing to the Access Seeker; and
 - (B) cease negotiations with that Access Seeker.

(b) 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.

(c) Queensland Rail and an Access Seeker may agree a different time from within which to execute an Access Agreement if:

- (i) the party seeking the extension provides the other party with reasonable grounds for the proposed time frame prior to the date the Negotiation Period would otherwise expire; and
- (b)(ii) the other party agrees to the proposed time frame, such agreement not to be unreasonably withheld.

2.7.7.6 **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 and with the prior written consent of Queensland Rail (not to be unreasonably withheld).

2.8 New Standard ~~Access~~ Agreements

- (a) The QCA may give Queensland Rail a notice, in accordance with clause 6.5, requiring it to submit ~~a~~ proposed standard access agreements and/or a proposed Standard Rail Connection Agreement that is:
 - ~~(i) for a specified type of Train Service not covered by a Standard Access Agreement; and~~
 - ~~(ii) consistent with this Undertaking and the principles contained in **schedule C**;~~

~~(Proposed Standard Access Agreement), if the QCA has a reasonable expectation that this is warranted on the basis of there being sufficient interest from Access Seekers and after taking into account each of the matters set out in section 138(2)(a) to (h) of the QCA Act.~~
- ~~(b) For the purpose of this **clause 2.8**:~~

- ~~(i) a notice given by the QCA under **clause 2.8(a)** will be treated as if it were an initial undertaking notice given by the QCA under the QCA Act;~~
- ~~(ii) a Proposed Standard Access Agreement submitted by Queensland Rail to the QCA in accordance with this **clause 2.8** will be treated as though it was a draft access undertaking submitted under the QCA Act in response to an initial undertaking notice; and~~
- ~~(iii) Queensland Rail and the QCA will act in accordance with the provisions of the QCA Act as though this were the case.~~
- ~~(c) For clarity, after a Proposed Standard Access Agreement is approved by the QCA in accordance with this **clause 2.8** this Undertaking will apply as though it were amended to include the Proposed Standard Access Agreement as a Standard Access Agreement.~~

2.9 Prudential requirements

2.9.1 Access Seekers must satisfy prudential requirements

An Access Seeker must at all times satisfy the following prudential requirements namely:

- (a) the Access Seeker must not be Insolvent;
- (b) 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:
 - (i) this Undertaking (or the 2008 Undertaking);
 - (ii) any agreement with Queensland Rail; or
 - (iii) any agreement under which access to Private Infrastructure has been provided to the Access Seeker or a Related Party of the Access Seeker; and
- (c) 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).

2.9.2 Requirement to demonstrate satisfaction of prudential requirements

- (a) Queensland Rail may, at any time, require an Access Seeker to 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 2.9.1**.

~~(b) Queensland Rail and an Access Seeker may agree a different time from within which an Access Seeker must satisfy the prudential requirements set out in **clause 2.9.1**:~~

- ~~(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 2.9.2(a)** expiring; and~~
- ~~(ii) Queensland Rail agrees to the proposed time frame, such agreement not to be unreasonably withheld.~~

~~**2.9.3 Consequence of failing to satisfy prudential requirements**~~

~~Despite any other provision of this Undertaking, if the Access Seeker cannot satisfy the prudential requirements referred to in **clause 2.9.1** to Queensland Rail's satisfaction (acting reasonably), then Queensland Rail may refuse to commence negotiations, or may cease negotiations, with that Access Seeker.~~

2.10 Coal traffic provisions

2.10.1 Provisions of the Standard Access Agreement which apply only to coal traffics

- ~~(a) For the purposes of clarity the following provisions of the Standard Access Agreement only apply to coal traffics (as at the Approval Date):~~

~~**Note: Queensland Rail to complete also noting recommendations relating to the Standard Access Agreement, that is, to adopt the 2010 AN terms.**~~

Part 3 Pricing principles

3.1 Pricing objectives

3.1.1 Price Differentiation

In developing Access Charges Queensland Rail will apply the pricing principles set out in this Part 3. In the event of a conflict between these pricing principles, Queensland Rail will apply the pricing principles in the following order of precedence (from highest to lowest):

- (a) Limits on Price Differentiation (Clause 3.3):
- (b) Pricing Limits (Clause 3.2):
- (c) Network Utilisation (Subclause 3.1.2):
- (d) Revenue Adequacy (Clause 3.4).

~~3.1.1 Revenue adequacy~~

~~Queensland Rail is entitled to earn revenue from providing Access, including from Access Charges and Transport Service Payments, that is at least enough to:~~

- ~~(a) fully recover all Efficient Costs; and~~
- ~~(b) provide a return on the value of assets and investment commensurate with the regulatory and commercial risks involved.~~

~~If Queensland Rail earns revenue in excess of this, 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 potentially insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers, then:
 - (i) Queensland Rail may (consistent with the principles set out in **clauses 3.1 to 3.3.3**) 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 3.2.33-2.3** 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

3.2.1 Applying a Ceiling Revenue Limit

Queensland Rail in setting the methodology, rates and other inputs for calculating Access Charges for an Access Seeker's proposed Train Services 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

- (a) Subject to **clause 3.2.2(b)3-2-2(b)**, Queensland Rail may (in its ~~absolute-reasonable~~ discretion) set the methodology, rates and other inputs for calculating Access Charges for an Access Seeker's proposed Train Services such that, over the Evaluation Period, the Expected Access Revenue from any one of those Train Services or any combination of those Train Services falls below the Floor Revenue Limit for that Train Service or combination of Train Services, as applicable.
- (b) For the purposes of **clause 3.2.2(a)3-2-2(a)**, Queensland Rail must only exercise the discretion under **clause 3.2.2(a)3-2-2(a)** where:
 - (i) Queensland Rail receives Transport Service **Contract** Payments for any part of the Network that will be used by the Access Seeker's proposed Train Services;
 - (ii) after taking into account the relevant Transport Services **Contract** Payments the Expected Access Revenue would not fall below the Floor Revenue Limit; and

- (iii) the methodology, rates and other inputs for calculating the relevant Access Charges includes a mechanism that allows Queensland Rail to vary the Access Charges from time to time in response to any decrease in the relevant Transport Service Contract Payments.

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 Contract 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:

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

where:

- AV_o** is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with **clause 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_t** 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_t** is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;
- M_t** is the Efficient 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; and

AV_n is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with **clause 3.2.3(c)**, at the end of the Evaluation Period.

WACC has the meaning given to that term in **clause 7.17.4**.

- (b) For the purposes of determining the variables under **clause 3.2.3(a)**, the assumed traffic task resulting from the Train Services(s) over the Evaluation Period is the forecast, as reasonably determined by Queensland Rail, for the traffic task resulting from the Train Service(s) over the Evaluation Period (including making allowance for any changes in traffic task that are expected to result from the commencement of projects that impact significantly on the traffic task).
- (c) The value of assets used in **clause 3.2.3(a)** is determined using a methodology to be approved by the QCA. ~~the Depreciated Optimised Replacement Cost methodology.~~

3.3 Limits on price differentiation

- (a) Queensland Rail may differentiate the methodology, rates and other inputs for calculating Access Charges between Access Seekers or between Access Seekers and Access Holders in accordance with this **clause 3.3**.
- (b) The methodology, rates and other inputs for calculating Access Charges formulated by Queensland Rail for an Access Seeker may vary from:
 - (i) an applicable Reference Tariff to reflect differences in the cost and risk to Queensland Rail of providing Access to ~~that Access Seeker~~ the relevant Train Service compared to cost and risk of providing Access to the basis on which the relevant Reference Tariff was determined Train Service; or
 - (ii) if there is no applicable Reference Tariff for the relevant Train Service type, the methodology, rates and other inputs for calculating Access Charges for other Access Seekers or Access Holders in respect of a Train Service seeking to transport or transporting the same commodity in the same

~~geographical area with similar characteristics~~ to that Access Seeker's proposed Train Service⁹ on a unit rate basis, either:

- (A) ~~on a unit rate basis~~ to reflect differences in the cost and risk to Queensland Rail of providing Access ~~to~~ for that Train Service Access Seeker compared to ~~the other Train Services of that type~~ Access Seekers or Access Holders; and
- (B) over time to reflect:
- ~~(1)~~ changes that result in Queensland Rail no longer being able to commercially provide Access to Train Services in that geographic area at the current Access Charges (for example, changes in relevant Transport Service Payments);
- ~~(2)~~(1) changes in the cost and risk to Queensland Rail of providing Access;
- (2) changes in relevant Transport Service Contract Payments, where such changes have the result that Queensland Rail can no longer commercially provide Access to Train Services in that specified geographic area at the current Access Charges;
- ~~(3)~~ Changes in Market Circumstances; or
- ~~(3)~~ changes in circumstances that have had, or may have, a material effect on the ability or willingness of Access Holders or Access Seekers to pay Access Charges or proposed Access Charges; or
- (4) limitations on Available Capacity in accordance with **clause 3.1.2(b)**,
- ~~over time.~~

3.4 Revenue adequacy

Queensland Rail is entitled to earn revenue from providing Access, including from Access Charges and Transport Service Contract Payments that is sufficient to:

- (a) fully recover all Efficient Costs; and

⁹ Queensland Rail will determine whether the characteristics of Train Services are similar having regard to all relevant matters including the geographical area within which the Train Services operate, the origin and destination of the Train Services, the duration and quality of the Train Path including arrival and departure times of the day and week, the nature of the Rolling Stock and Train Configuration, characteristics of the Train Services, the commodity transported or transport service and the duration and terms of the relevant Access Agreement.

(b) provide a return on the value of assets and investment commensurate with the regulatory and commercial risks involved.

If Queensland Rail earns revenue in excess of this, then Queensland Rail (acting reasonably) may seek to reduce Transport Service Contract Payments rather than Access Charges.

3.4.3.5 Reference Tariffs

3.4.13.5.1 Application of Reference Tariffs

- (a) 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) If Queensland Rail formulates an Access Charge for an Access Seeker's proposed Train Services based on a Reference Tariff, then Queensland Rail is taken to have complied with **clauses 3.13.4** and **3.23.2**.

3.4.23.5.2 Review of Reference Tariffs

- (a) ~~Subject to clause 3.4.2(b), s~~**Schedule** ~~Error! Reference source not found.~~**AA** specifies the period for which a Reference Tariff is effective and how the Reference Tariff may be reviewed during this period.
- ~~(b) Without limitation to clause 3.4.2(a):~~
 - ~~(i) Queensland Rail will, prior to 30 June 2013 (or such later date as approved by the QCA), review the Reference Tariffs and submit to the QCA proposed new Reference Tariffs that are to take effect from 1 July 2013 (including, if Queensland Rail wishes to do so, a determination or review, as applicable, of the asset value for the West Moreton System for the purpose of developing the Reference Tariffs);~~
 - ~~(ii) if Queensland Rail does not submit proposed new Reference Tariffs in accordance with clause 3.4.2(b)(i), then Queensland Rail will be taken to have submitted the Reference Tariffs under this Undertaking as the proposed new Reference Tariffs; and~~
 - ~~(iii) for the purpose of this clause 3.4.2(b):~~
 - ~~(A) Queensland Rail's submission of proposed new Reference Tariffs under this clause 3.4.2(b) will be treated as if it were a draft access undertaking submitted by Queensland Rail under the QCA Act in response to an initial undertaking notice given by the QCA;~~
 - ~~(B) Queensland Rail and the QCA will act in accordance with the provisions of the QCA Act as though this were the case; and~~

~~(G)(A) for clarity, after new Reference Tariffs are approved by the QCA in accordance with this clause 3.4.2(b) this Undertaking will apply as though it were amended to replace the Reference Tariffs with those new Reference Tariffs with effect on and from 1 July 2013.~~

3.53.6 Rate review provisions

Queensland Rail or an Access Seeker may require 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:

- (a) the cost and risk to Queensland Rail of providing Access;
- (b) (if a Reference Tariff applies to the Train Service type) the applicable Reference Tariff (including any matters under ~~schedule Error! Reference source not found.AA~~); and
- (c) (if no Reference Tariff applies to the Train Service type) the methodology, rates and other inputs for calculating Access Charges offered to other Access Seekers in respect of a Train Service with similar characteristics to that Access Seeker's proposed Train Service.¹⁰

3.63.7 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.

3.73.8 Maintenance of Regulatory Asset Base

Queensland Rail will maintain the Regulatory Asset Base in accordance with ~~schedule AA~~Schedule DD.

3.9 Mount Isa Renewal

3.9.1 Calculation of Access Charge

The Access Charge for a Renewal Access Seeker on the Mount Isa System is to be limited to no more than the aggregate of:

¹⁰ Queensland Rail will determine whether the characteristics of Train Services are similar having regard to all relevant matters including the geographical area within which the Train Services operate, the origin and destination of the Train Services, the duration and quality of the Train Path including arrival and departure times of the day and week, the nature of the Rolling Stock and Train Configuration, characteristics of the Train Services, the commodity transported or transport service and the duration and terms of the relevant Access Agreement.

- (a) The Access Charge agreed between Queensland Rail and the Renewal Access Seeker in the expiring argument for the first year of that agreement as increased by the Annual Inflation Rate plus 2 percentage points per year of the existing agreement; and
- (b) The normal regulatory return determined in a manner consistent with **clause 3.2.3** on incremental capital expenditure incurred to increase capacity on the Mount Isa System including:
 - (i) expenditure on infrastructure specifically built for the Access Holder's Train Services; and
 - (ii) a reasonable allocation of incremental capital expenditure for all services on or directly relating to the Mount Isa System,

provided however that the accumulation of the maximum renewal price for an existing agreement in accordance with paragraphs (a) and (b) above will start from the Approval Date of this undertaking.

3.9.2 Application of Renewal Charges Clause

Clause 3.9.1 applies notwithstanding any other provision of this Undertaking.

Part 4 Network Management Principles and Operating Requirements Manual

4.1 Network Management Principles

- (a) Queensland Rail will:
 - (i) perform scheduling, Train Control and associated services; and
 - (ii) provide Capacity related information to Access Holders, in accordance with the Network Management Principles¹¹ and subject to the terms of each Access Holder's Access Agreement.
- (b) 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.
- ~~(c)~~ Queensland Rail will, subject to the Network Management Principles, manage the scheduling of train plans, including the MTP and DTP, to optimise the use of the Network from time to time.
- ~~(e)(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 Operating Requirements Manual

4.2.1 Obligation to comply with Operating Requirements Manual

- (a) An Access Agreement executed during the Term may include provisions requiring Queensland Rail and the relevant Access Holder to comply with the Operating Requirements Manual, in performing obligations or exercising rights under that Access Agreement.
- ~~(b)~~ Queensland Rail must make the Operating Requirements Manual available to Access Seekers and Access Holders.
- ~~(b)(c)~~ This clause 4.2 applies equally to the Operating Requirements Manual and any related operational documents including but not

¹¹ For clarity, the Network Management Principles are set out in **schedule** Error! Reference source not found..

limited to those documents listed in clause 10 of the Operating Requirements Manual.

4.2.2 Amending the Operating Requirements Manual

(a) Queensland Rail may amend the Operating Requirements Manual from time to time.

~~(a)~~(b) **Clauses 4.2.2(c)4.2.2(e) to 4.2.2(e)4.2.2(e)** do not apply to amendments made to the Operating Requirements Manual by Queensland Rail:

- (i) (not acting arbitrarily) on safety grounds;
- (ii) in response to a Material Change; or
- (iii) if required for the purposes of Queensland Rail implementing a change to the assets, equipment, facilities, infrastructure, processes, procedures or systems used for the purposes of any train management system (including, for example, a Train Control system or a train protection system) where Queensland Rail (acting reasonably) implements the change for the purpose of improving safety, network capabilities, network capacity or system reliability (or a combination of any of these).

~~(b)~~(c) If in Queensland Rail's opinion (acting reasonably) the proposed amendment to the Operating Requirements Manual will materially adversely affect an Access Holder then Queensland Rail will only amend the Operating Requirements Manual after:

- (i) notifying the Access Holder of the proposed amendment; and
- (ii) providing the Access Holder with a reasonable opportunity to discuss the proposed amendment with Queensland Rail.

~~(c)~~(d) A notice issued by Queensland Rail under **clause 4.2.2(c)4.2.2(e)** must include details of:

- (i) the proposed amendment including the proposed implementation date;
- (ii) the period during which the Access Holder may discuss the proposed amendment with Queensland Rail; and
- (iii) the date by which the Access Holder may lodge with Queensland Rail any submission in respect of the proposed amendment.

~~(d)~~(e) Without limiting the matters that Queensland Rail must consider when deciding whether to proceed with any proposed amendment, Queensland Rail must consider any submissions from an Access Holder.

- ~~(e)~~(f) If Queensland Rail amends the Operating Requirements Manual, Queensland Rail must:
- (i) notify all Access Holders, ~~and~~ Access Seekers, Operators and their major Customers of the amendment and specify the date on which the amendment will take effect; and
 - (ii) in specifying the date on which the amendment will take effect, allow a reasonable period as determined by Queensland Rail, being not less than ten Business Days, for each Access Holder who is reasonably likely to be affected by the amendment to amend its processes, procedures and plans to comply with the amended Operating Requirements Manual, except where Queensland Rail requires immediate compliance for safety reasons.
- (g) If Queensland Rail amends the Operating Requirements Manual in accordance with this **clause 4.24.2**, the Operator must bear its own costs of implementing the proposed amendments including the equipping of Rolling Stock with new or additional equipment or making any other modification to Rolling Stock.
- ~~(f)~~(h) If a proposed amendment to the Operating Requirements Manual causes (or would cause) a significant net material financial impact of 1% or greater to an Operator then Queensland Rail must compensate the Operator commensurate with any adverse financial impact.

4.2.3 Disputes about amendments to Operating Requirements Manual

- (a) This **clause 4.2.34.2.3** does not apply to amendments made to the Operating Requirements Manual by Queensland Rail:
- ~~(i)~~ ~~on safety grounds;~~
 - ~~(ii)~~(i) if required pursuant to a Material Change; or
 - ~~(iii)~~(ii) if required for the purposes of Queensland Rail implementing a change to the assets, equipment, facilities, infrastructure, processes, procedures or systems used for the purposes of any train management system (including, for example, a Train Control system or a train protection system) where Queensland Rail (acting reasonably) implements the change for the purpose of improving safety, network capabilities, network capacity or system reliability (or a combination of any of these).
- (b) Subject to **clause 4.2.3(a)4.2.3(a)**, if:
- (i) Queensland Rail amends the Operating Requirements Manual; and
 - (ii) an Access Holder ~~considers disputes~~ that ~~an~~ amendment to the Operating Requirements Manual ~~Unfairly Differentiates~~,

then the Access Holder may, within 20 Business Days after being given notice of the amendment by Queensland Rail under **clause 4.2.2(f)(i)**:

- (iii) give Queensland Rail a notice setting out details of the dispute including ~~the grounds for the disputed~~ **demonstrating that the amendment Unfairly Differentiates**; and
 - (iv) subject to this **clause 4.24.2**, refer the matter to the QCA to be resolved as if it was a dispute that was required to be determined under **clause 6.1.4** and as though the Access Holder was an Access Seeker.
- (c) Subject to the final determination of a dispute referred to the QCA under **clause 4.2.3(b)4.2.3(b)**, an amendment to the Operating Requirements Manual **required on urgent safety grounds** takes effect from the date specified under **clause 4.2.2(f)4.2.2(f)** and the exercise by an Access Holder of a right under **clause 4.2.3(b)4.2.3(b)** does not affect the implementation of the amendment and the Operating Requirements Manual is deemed to have been amended on an interim basis pending the final determination of the dispute.
- (d) If and to the extent that ~~it is finally determined in respect of~~ a dispute referred to the QCA under **clause 4.2.3(b)4.2.3(b)** ~~is decided in favour of the Access Holder, that the amendment Unfairly Differentiates~~, then Queensland Rail may, at its election, either:
- (i) specify a date on which the amendment will lapse and implement reasonable transitional arrangements; or
 - (ii) where the determination indicates how the amendment may be varied ~~so that it does not Unfairly Differentiate~~, vary the amendment consistent with that determination.
- (e) Nothing in this **clause 4.2.34.2.3** restricts or otherwise limits the rights of an Access Holder or Queensland Rail to refer a dispute about whether any amendment to the Operating Requirements Manual Unfairly Differentiates to a court provided that:
- (i) the dispute was first referred to, and determined by, the QCA; and
 - (ii) proceedings are commenced within 20 Business Days after the QCA's determination of that dispute.
- (f) For clarity:
- (i) for a dispute in relation to whether any amendment to the Operating Requirements Manual Unfairly Differentiates, the Access Holder bears the onus of proving that it does Unfairly Differentiate; and
 - (ii) if court proceedings in respect of the dispute are not commenced within the time period referred to in **clause**

~~4.2.3(e)(ii)~~~~4.2.3(e)(ii)~~, then the QCA's determination is final and binding on Queensland Rail and Access Holders.

4.2.4 Liability

- (a) If Queensland Rail believes (acting reasonably and in good faith) in the circumstances and at the time that compliance with this **clause 4.24.2** was required, that it was acting ~~in compliance with this clause 4.2 on urgent safety-related amendments~~ in amending the Operating Requirements Manual, then Queensland Rail is not in breach of this Undertaking, and is not liable to any person (including any Access Seeker or Access Holder), in relation to or as a result of amending the Operating Requirements Manual (including on an interim basis) or the due implementation and observance of an amendment to the Operating Requirements Manual (whether on an interim or final basis), even if it is subsequently alleged that Queensland Rail did not comply with this **clause 4.24.2** or that the amendment Unfairly Differentiates.
- ~~(b)~~ An Access Agreement may provide that Queensland Rail has no liability (on any basis whatsoever including in negligence) to the Access Holder in relation to or as a result of amending the Operating Requirements Manual (including on an interim basis) or the due implementation and observance of an amendment to the Operating Requirements Manual (whether on an interim or final basis) where Queensland Rail believes (acting reasonably and in good faith) in the circumstances and at the time that compliance with this **clause 4.24.2** was required, that it was acting in compliance with this **clause 4.24.2** in amending the Operating Requirements Manual.

Part 5 Reporting

5.1 Quarterly network train performance reports

5.1.1 Obligation to publish quarterly report

- (a) Subject to **clause 6.4(c)6.4(e)**, within 20 Business Days after the end of each Quarter in the Term, 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 5.1.15.1.1** will:

- (a) contain the following information:
 - (i) a comparison of the information described in **clauses 5.1.2(a)(ii)5.1.2(a)(ii)** to **5.1.2(a)(viii) 5.1.2(a)(vii)** in relation to the subject Quarter and, subject to **clause 6.4(b)6.4(b)**, the four preceding Quarters;
 - (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 Railway 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 Railway Operator; and
 - (C) where that cancellation occurred for any other reason;
 - (v) the number of major reportable incidents, 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 Region); and
 - (vii) the most recent measure of Track quality, in the subject Quarter (if any), for the Network measured by a quality index with component measures including gauge, top, twist and versine; and
 - (viii) the number of complaints by Access Holders in connection with any of the following:
 - (A) the Operating Requirements Manual or related operational documents;
 - (B) an Interface Risk Management Plan;
 - (C) any environmental investigation and/or risk management negotiation process or report created pursuant to **clause 2.6.2**;
 - (D) a Rolling Stock authorisation; and
 - (vii)(E) the application of the Network Management Principles.
- (b) the information referred to in **clauses 5.1.2(a)(ii)5-1-2(a)(ii) to 5.1.2(a)(v)5-1-2(a)(v) and clause 5.1.2(a)(viii)**, will be limited to, and aggregated by, Train Services operated in the following sections of the Network:
- (i) the West Moreton Reporting Area;

- (ii) the Mt Isa Reporting Area;
- (iii) the North Coast Reporting Area; and
- (iv) the Network outside the West Moreton Reporting Area, the Mt Isa Reporting Area and the North Coast Reporting Area.

~~(iv)~~ — In addition to the information referred to in clauses 5.1.2(a)(ii) to 5.1.2(a)(viii) a quarterly report must also contain information which outlines the cause or causes of any significant changes in operating performance identified in the quarterly report.

Schedule ~~Error! Reference source not found.EE~~ sets out a tabular representation of the information referred to ~~clauses 5.1.2(a)(ii)5.1.2(a)(ii) to 5.1.2(a)(viii)(vii)~~ and ~~(b)(b)~~ in respect of a Quarter. However, schedule ~~Error! Reference source not found.EE~~ does not alter or otherwise affect the operation or interpretation of this ~~clause 5.15-1~~, the information requirements for quarterly reports or the format or style of quarterly reports.

5.2 Annual report on negotiation process

5.2.1 Obligation to publish annual reports

- ~~(a)~~ Subject to ~~clauses 6.4(b)6-4(b)~~ and ~~(d)(d)~~, within four 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**.
- ~~(a)(b)~~ Queensland Rail will use reasonable endeavours to ensure that the information contained in each annual report is accurate.
- ~~(b)(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(a)** will contain the following information for the relevant Year:

- ~~(a)~~ the number of requests for information received in accordance with ~~clause 2.1.43 and the average time (in Business Days) taken by Queensland Rail to provide that information;~~
- ~~(a)(b)~~ the number of instances of Preliminary Information provided to Access Seekers under clause 2.1.5 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;
- ~~(b)(c)~~ the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in **clause 2.3.2**;
- ~~(e)(d)~~ for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the

applicable timeframe nominated in **clause 2.3.2.3.2**, the average delay (in Business Days) by Queensland Rail to acknowledge the Access Applications;

- ~~(d) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in **clause 2.4.1**;~~
- ~~(e) the number and percentage of Access Applications received in accordance with this Undertaking for which a time estimate within which an Indicative Access Proposal would be provided to the Access Seeker was provided in an acknowledgement notice given under **clause 2.3.2**;~~
- ~~(e) for those 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. but that have not been provided within the applicable timeframe nominated in **clause 2.4.1**, the average delay (in Business Days) by Queensland Rail to provide the Indicative Access Proposals;~~
- (f) the number of disputes that are:
 - (i) referred to the dispute resolution process under **clause 6.16.1**; and
 - ~~(ii)~~ (ii) referred to the dispute resolution process under **clause 6.16.1** and determined in favour of the Access Seeker; and
 - ~~(iii)~~ (iii) referred to the dispute resolution process in relation to the Access Application form and the Operating Plan templates published under **clause 2.1.3**;
- (g) the number and percentage of Access Applications in relation to which Queensland Rail has given a Negotiation Cessation Notice in accordance with **clause 2.6.3**;
- (h) the number of Access Agreements executed by Queensland Rail; and
- (i) 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)~~ (iv) more than 12 months.

- (j) for each system with a Reference Tariff:
 - (i) maintenance costs of each system and the scope of any maintenance undertaken compared with the maintenance forecasts used to develop the relevant tariff;
 - (ii) operating expenditure, compared with the forecasts used to develop the relevant tariff;
 - (iii) capital investment and a roll-forward of its regulatory asset base;
 - (iv) system volumes (categorised by type of traffic).
- (k) for each system with no Reference Tariff (which, where a system includes multiple corridors will be categorised and aggregated according to each particular corridor):
 - (i) Maintenance costs of the system and scope of maintenance performed;
 - (ii) Operating costs of the system;
 - (iii) The capital investment in the previous financial year and expected capital investment over one and five years;
 - (iv) Volumes, in Train Paths, nt and gtk (categorised by commodity (where appropriate));

Schedule [Error! Reference source not found.EE](#) sets out a tabular representation of the information referred to in this **clause 5.2.2** in respect of a relevant Year. However, **schedule [Error! Reference source not found.EE](#)** does not alter or otherwise affect the operation or interpretation of this **clause 5.2**, the information requirements for annual reports or the format or style of annual reports.

5.3 General reporting obligations

5.3.1 Accuracy

- (a) Queensland Rail will use reasonable endeavours to ensure the reports referred to in **clauses [5.15-4](#) and [5.25-2](#)** are accurate.
- (b) If, in Queensland Rail's opinion, there is a material error in a report published or provided under **clauses [5.15-4](#) or [5.25-2](#)**, then it will, as soon as reasonably practicable, take the steps it considers reasonable to correct that error.

5.3.2 Information requested by the QCA

- (a) Subject to **clause [5.3.2\(b\)](#)~~5.3-2(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 5.3.2(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 5.3.2(a)** by the day stated in the request unless it has a reasonable excuse for non-compliance.

5.3.3 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 5.15.1** or **5.25.2** is inaccurate in a material way or that Queensland Rail may have failed to comply with the Undertaking or the QCA Act (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 or QCA Act (as applicable).
- (b) Where the QCA has instructed Queensland Rail to obtain an audit under **clause 5.3.3(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 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 5.3.3(b)(iii)** will consist of a proposed work program for the execution of the 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 5.3.3(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**) specifying only whether:

- (1) , in the opinion of the auditor, the information contained in the quarterly report or annual report (as applicable) released by Queensland Rail under **clause 5.15-4** or **5.25-2** (as applicable) is materially inaccurate and, in the opinion of the auditor, whether Queensland Rail may have failed to comply with the Undertaking or the QCA Act (if applicable); 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.

(d) The QCA may publicly release an Audit Statement, but not an Audit Report and may publicly release, subject to any restrictions on release of Confidential Information, sufficient information on the audit process and conclusions as would, allow Access Holders, Access Seekers and other interested parties to understand how the auditor's conclusion was reached.

Part 6 Administrative provisions

6.1 Dispute and complaint resolution process

6.1.1 Alternative dispute process

(a) Nothing in this ~~clause 6.16.4~~ 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 6.16.4~~.

(b) If an Access Seeker and Queensland Rail agree on a different dispute resolution process or timeframe pursuant to ~~clause 6.1.1(a)~~ then:

(i) the different process and timeframe will be binding on the parties and, subsequent to making an agreement under ~~clause 6.1.1(a)~~, a party may not seek to change the dispute process or alter or challenge the outcome of the dispute except in the case of manifest error; and

(ii) in a case of manifest error, a party may request that the QCA consider the determination or other result of the process referred to in ~~clause 6.1.1(a)~~.

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 ~~or an Access Funder~~ 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 6.16.4~~; 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 6.16.4~~.

(b) 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)~~~~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\(a\)](#)~~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\(b\)](#)**~~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\(a\)](#)**~~6.1.3(a)~~ and **[\(b\)](#)**~~(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, then:
- (i) either the Access Seeker or Queensland Rail (or both of them) may give an access dispute notice (as defined in the QCA Act) to the QCA; and
 - (ii) the Dispute will be resolved in accordance with Division 5, Part 5 of the QCA Act.
- (b) If a Dispute is referred to the QCA for arbitration in accordance with Division 5, Part 5 of the QCA Act, the QCA must:
- (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.

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 [6.16.4](#)**;
- (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)(i)**,

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 ~~a party Queensland Rail~~ (including to require ~~Queensland Rail a party~~ 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 or this Undertaking;
 - (iii) the QCA had jurisdiction to make the Decision under this Undertaking;
 - (iv) the QCA was authorised to make the Decision under this Undertaking;
 - (v) the QCA's Decision 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)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)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 6.26-2**, all parties Queensland Rail and the QCA agree that Queensland Rail the party affected by the Decision may seek an order suspending the operation of the Decision and a stay of any proceedings under the Decision.
- (d) This **clause 6.26-2** 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 (**Notice**) relating to this Undertaking 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, when the sender receives an automated message confirming delivery or four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first,

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 6.36-3** 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 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 Undertaking are deemed to be Done and, as applicable, continue under this Undertaking as though the Matter was Done under this Undertaking to the extent that this Undertaking provides for equivalent Matters to be Done.
- (b) Subject to clause 6.4(e), 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 Undertaking in respect of that same type of report.
- (c) 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 subject to clause 6.4(e).

- (d) 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 subject to clause 6.4(e).
- (e) For any system for which Queensland Rail is required to create a report pursuant to clause 5.2.2(k) or 5.2.1(i), Queensland Rail must create a report or reports (as the case may be) in accordance with the requirements of this Undertaking using 1 July 2013 as the first day of the reporting period. For clarification the first report will include:
 - (i) actual maintenance costs and scope;
 - (ii) changes to the regulatory asset base; and
 - ~~(d)~~(iii) system volumes.

6.5 Additional provisions and new standard agreements

- (a) The QCA may give Queensland Rail a notice requiring it to amend the Undertaking to include new provisions and incorporate new standard agreements for the following if the QCA has a reasonable expectation that these provisions and/or agreements are warranted to accommodate requests from Access Seekers or Access Holders or are otherwise reasonably required for the purposes of this Undertaking, being to provide:
 - (i) provisions, and implement appropriate arrangements for, ring fencing information from a Related Party which is a Rail Transport Operator, if Queensland Rail enters into competition with any third party Rail Transport Operator;
 - (ii) revised Capacity and Investment framework provisions, standard study funding agreement(s) and a standard user funding agreement;
 - (iii) Standard Access Agreement(s) (including, for example a split access agreement), for a specified type of Train Service whether or not the Train Service is covered by a Standard Access Agreement and/or a Standard Rail Connection Agreement, in either case, in terms consistent with this Undertaking including the principles in **schedule C**;
 - (iv) provisions for new reference tariff or tariffs;
 - (v) provisions for cyclic traffic similar to those in Queensland Rail's 2008 access undertaking.
- (b) For the purpose of this **clause 6.5**:
 - (i) a notice given by the QCA under **clause 6.5(a)** will be treated as if it were an initial undertaking notice given by the QCA under the QCA Act;

- (ii) the new provisions or any new agreement submitted by Queensland Rail to the QCA in accordance with this **clause 6.5** will be treated as though it was a draft access undertaking submitted under the QCA Act in response to an initial undertaking notice; and
- (iii) Queensland Rail and the QCA will act in accordance with the provisions of the QCA Act as though this were the case. Without limiting the foregoing, relevant provisions of Division 7 of Part 5 of the QCA Act will apply including to lodging of the relevant document in response to the notice given under **clause 6.5(a)**, consideration and approval by the QCA, factors affecting approval, publication, submissions and period for approving the document.
- (c) If Queensland Rail fails to lodge new provisions and/or new agreements in accordance with this clause, or if the new provisions or new agreements as submitted are not approved by the QCA, the QCA may prepare and approve new provisions and/or new agreements as the QCA considers appropriate.
- (d) For clarity, after the provisions and/or agreement are approved by the QCA in accordance with this **clause 6.5** this Undertaking will apply as though it were amended to include the relevant provisions and/or agreement.

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-substantially attributed directly to an Access Holder (or its Nominated Railway 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-Train 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:

~~(d) the non-exclusive right to use utilisation of a specified section of the Network for the purposes of operating Train Services.; and~~

~~(e) for non-passenger Train Services, excludes the right to use those parts of the Network provided for the benefit of passengers or passenger Train Services including:~~

~~(i) stations and platforms used predominantly for passengers or passenger Train Services; and~~

~~(ii) yards and associated facilities used to stage, maintain or store Rolling Stock used for passenger Train Services;~~

Acceptable Credit Company means a company that currently holds:

(a) a long-term credit rating of at least 'A' or better from Standard & Poor's credit rating service; or

(b) a long-term credit rating of at least 'A3' or better from Moody's credit rating service.

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:

- (a) prepared in writing using the current Queensland Rail application form for the relevant type of Train Service; and
- (b) that includes:
 - ~~(i) all of the information required to fully and properly complete the application form (including under clause 2.3.1); and~~
 - ~~(ii) all additional or clarified information required by Queensland Rail (for example, under clause Error! Reference source not found.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 Conditions means conditions that mitigate Queensland Rail's or an Access Funder's exposure to the financial risks associated with providing Access for an Access Seeker's proposed Train Services.

Access Funder has the meaning given to that term in **clause 1.4.1(c)**.

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;

Accredited means accredited (including exempted from the requirement to be accredited) in accordance with Part 5 of the TRSA;

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

Additional Information means that information that is to be provided by Queensland Rail to an Access Seeker during the Negotiation Period as set out in **schedule G**, excluding any information that is provided as part of the Preliminary Information, but only to the extent required either by the Access Seeker or as part of the Access Agreement.

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

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;

Annual Inflation Rate means the annual percentage increase in the CPI from one financial year to the next.

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

Approved Capital Expenditure means all capital expenditure accepted into the Regulatory Asset Base by the QCA in accordance with **clause 02.4(a)** of **schedule A**;

Asset Replacement Expenditure – Expenditure on capital required to maintain the Existing Capacity of the Network (for example, the replacement of life expired or obsolete assets) and including expenditure required for replacement of components of the Network which have been damaged, lost or destroyed and which are necessary for the continued efficient operation of the relevant Network.

Audit Statement has the meaning given to that term in **clause 5.3.3(b)(viii)(A)**;

Audit Report has the meaning given to that term in **clause 5.3.3(b)(viii)(B)**;

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;

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~~ substantially 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 provision and management of the Network, including:

- (a) the construction, maintenance and renewal of Network assets; and
- (b) the network management services required for the safe operation of Train Services on the Network including:

- (i) Train 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;

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 and Extensions required to grant the requested Access Rights (including an outline of the investigations and works in relation to undertaking the Extensions and indicative estimate of the cost of and timing for such investigations and works),

which provides a basis for the negotiation of an Access Agreement;

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

Ceiling Revenue Limit has the meaning given to that term in clause [3.2.33-2.3](#);

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;

- (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 this Undertaking; or
- (h) a change in the application or interpretation of this Undertaking resulting from a decision of a court or other Authority;

Change to Credit means:

- (a) a change in the rate, or basis of calculation, of; or
- (b) 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
- (c) any change in the funding or other support received by Queensland Rail from any Authority in relation to any relevant part of the Network;

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

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)(b)** of this definition, to comply with any Law requiring Queensland Rail to provide a passenger Train Service with access to the Network; or
- (d) without limitation to **paragraphs (b)(b)** and **(c)(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 provision of the Network by Queensland Rail that are not Incremental Costs for any particular Train Service;

Concept Assessment Study means a study that:

- (a) identifies a possible technical solution;
- (b) enables a preliminary assessment of the potential costs, benefits and risk involved in providing the capacity required in respect of a potential Extension;

- (c) unless otherwise agree by Queensland Rail and an Access Seeker, includes an indicative assessment of:
 - (i) project objectives;
 - (ii) broad cost estimate of the potential solution with a +/- 50% accuracy;
 - (iii) preliminary financial analysis;
 - (iv) preliminary risk assessment; and
 - (v) indicative timeframes for the development and delivery of the project;
- (d) includes a Pre-Feasibility Study execution plan, including a proposed scope, budget, duration and deliverables;
- (e) includes a written report on the outcome of the analysis and the reasons for the selection(s) made and the preliminary scope, cost and program details of the selected alternatives.

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 Recipient knows or ought to know that the information is confidential;
- (b) the information is by its nature confidential; ~~or~~
- (c) at the time of the disclosure to the Recipient, the information is marked or otherwise indicated as confidential when disclosed; ~~or~~
- ~~(e)~~(d) information or data is collected by the Recipient during the performance of an Access Agreement and disclosure of the information by the Recipient might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement,

excluding information that:

- ~~(d)~~(e) was in the Recipient's lawful possession prior to the disclosure; or
- ~~(e)~~(f) 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)**~~2.2.1(b)(i)~~; or
- (b) any disclosure or use of Confidential Information:

- (i) to the extent necessary to:
 - (A) the Recipient's directors, officers or employees; or
 - (B) the directors, officers or employees of a Related Party of the Recipient;
- (ii) to the extent required or compelled by any Law;
- (iii) to the extent necessary for the conduct of any legal proceedings (including any dispute resolution process under this Undertaking or the QCA Act);
- (iv) to the extent required under any stock exchange listing requirement or rule;
- (v) to the Rail Safety Regulator or the QCA;
- (vi) 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);
- (vii) 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);
- (viii) to the Recipient's banker, financier or other financial institution, to the extent required for the purpose of a bona fide sale or 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;
- (ix) if Queensland Rail is the Recipient, to the shareholding Ministers (as defined in the *Government Owned Corporations Act 1993* (Qld)) of Queensland Rail;
- (x) for the purpose of facilitating Train Control Directions where the disclosure of information is by Queensland Rail in the usual course of undertaking Train Control;
- (xi) by any person involved in clearing an incident or emergency that is preventing or affecting the operation of Train Services on the Network;
- (xii) by Queensland Rail for the purpose of responding to, managing or clearing an incident or emergency that is preventing or affecting, or is likely to prevent or affect, the operation of Train services on the Network; or
- ~~(xiii) by Queensland Rail in the course of providing feedback on an unsuccessful Access Application under clause 2.7.2(e);~~

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

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any claim in tort;
- (c) any loss of profits, loss of production, loss of 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, as a consequence of fraud 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;

Competing Applications has the meaning given to it in **clause 2.7.2(k)**.

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

Corridor means a subset of a System that is utilised by some (or one), but not all, Access Holders (for example, a branch line).

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) a person that the Access Holder or Access Seeker is providing or intending to provide Train Services (as an Operator) for or on behalf of, and for the purpose of providing such Train Services, the Access Seeker or Access Holder is acquiring or has acquired Access Rights; and
- (b) in **schedule [Error! Reference source not found.](#)**
 - (i) any person that has a rail haulage agreement or arrangement with the Access Holder in relation to the Access Rights;
 - (ii) any consignor of goods to be transported by the Access Holder;

- (iii) any person with title to, or an interest in, any thing to be transported by the Access Holder; and
- (iv) any other person directly or indirectly benefitting from, or for whom the Access Holder operates, the Train Services;

Customer Nominee has the meaning given to it in **clause 2.7.3(a)(ii)**;

Customer Specific Branch Line means an Extension that when constructed will connect an Access Holder or Customer's single loading facility to the Rail Infrastructure Network.

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)**;

~~**Depreciated Optimised Replacement Cost** means the value of assets determined as follows:~~

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

~~**DEHP** means the Department of Environment and Heritage Protection or other department from time to time responsible for the administration of the EP Act.~~

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 (or becomes available) 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) or during the performance of an Access Agreement;

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

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

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;

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 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 serious 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 less than five Business Days after the detection of the serious fault;

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

- (a) a Change in Law, Change to Credit or 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, for Reference Tariffs specified in **schedule Error! Reference source not found.A**, 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;

EP Act means the *Environmental Protection Act 1994 (Qld)*.

Escalation Date means each 1 July in each year;

Evaluation Period means:

- (a) for an individual Train Service, the expected duration of the proposed Access Rights in respect of that Train Service; and
- (b) for a combination of Train Services, the lesser of:
 - (i) the expected duration of the longest proposed Access Rights in respect of any one of those Train Services; and
 - (ii) 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)(v)(b)(i)** of this definition does not apply, current applicable Access Charges, except as provided in **clause 3.1.2(b)(iii)3.1.2(b)(iii)**;

Extension includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the Network (excluding Private Infrastructure);

Extension Process means the process described in ~~paragraphs 47–51~~18-22 of Schedule J.

Feasibility Study means a study with the following scope of work:

- (a) Detailed assessment of technical and operating requirements of the preferred Extension solution;
- (b) Additional survey and geotechnical investigations to support the level of design and cost accuracy commensurate with the nominated procurement strategy;
- (c) detailed design of the proposed Extension solution to a level commensurate with the nominated procurement strategy;
- (d) independent design verification, if required by the Access Funders;
and that results in a written report on the outcome of the analysis, decisions and specifications referred to above (with reasons, where applicable) that includes:
- (e) the project objectives (which must include a functional specification);
- (f) a report setting out the scope of work that:
 - (i) defines an optimised project configuration that would provide the target capacity for an Extension in accordance with the

- capacity requirements specified as part of the Feasibility Study scope of works;
- (ii) provides a detailed cost estimate with a +/-10% level of accuracy (or a lower accuracy where appropriate for larger projects and agreed with the Access Funders);
- (iii) Detailed design and construction project schedule that includes time tolerances and project budget with a +/-10% level of accuracy (or a lower level of accuracy where appropriate for larger projects and agreed with the Access Funders);
- (iv) Probabilistic risk assessment analysis to establish the basis of project contingency.
- (v) financial evaluation, including estimated impact on the Reference Tariff (determined in accordance with the Undertaking);
- (vi) a fully developed procurement methodology and report on previously conducted construction market approaches; and developed project management plan which includes:
 - (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

First Escalation Date means 1 July 2012~~4~~;

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) 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;

~~and, where the affected party is an Access Holder, excludes any cause, event or circumstance in connection with any right to access or use Private~~

~~Infrastructure that is necessary in order to enter or exit the Network or otherwise operate the Train Services in accordance with the Access Holder's Access Agreement (including any failure by the Access Holder to obtain and maintain such rights, any exercise or performance of such rights and any inconsistency between such rights and the Access Holder's Access Agreement);~~

Funding Agreement has the meaning given in **clause ~~1.4.1(e)(ii)~~1.4.1(e)(ii)**;

Funding Agreement Register has the meaning given in **clause ~~1.4.6(a)~~1.4.6(a)**;

Funding User means a User which has entered a User Funding Agreement with ~~QR Network~~Queensland Rail.

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, product, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Service;

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;

Information Pack means the information set out in clause 1, part A of Schedule G and relevant to the Corridor to which Access is sought.

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 Enhancement means new ~~Rail Infrastructure~~Network or a modification to existing ~~Rail Infrastructure~~Network.

Infrastructure Service Providers means those parties who provide maintenance, construction and other related services in respect of the Network and parties that are affected by the availability of access to the Network or modifications to the MTP or DTP including operators of rail and port facilities;

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 Assessment means an assessment to:

- (a) identify, to the extent reasonably practicable, all Interface Risks;
- (b) assess the likelihood and consequences of those Interface Risks occurring and any factors relevant to the management of those Interface Risks; and
- (c) nominate suitable control mechanisms to manage the Interface Risks within a risk management framework;

Interface Risks means all risks to the safety of persons or property or to the environment¹² arising from the interaction between the Access Seeker's or Access Holder's proposed operations and any one or more of:

- (a) the Network;
- (b) operations on the Network (including those of other Rail Transport Operators 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),

provided that a reference to operations in this definition includes railway operations as defined in the TRSA;

Interface Standards means Queensland Rail's minimum requirements or standards relating to the interface between a Train and the Network (including to maintain agreed operating parameters – for example, axle load) with which the applicable Rolling Stock and Train Configurations must comply in order to operate on the Network;

Investment Framework means the principles set out in ~~this sSchedule...~~ J

IRMP means an interface risk management plan:

- (a) identifying the Interface Risks associated with the Access Seeker's or Access Holder's proposed operations; and
- (b) specifying the control measures agreed between Queensland Rail and the Access Seeker or Access Holder (as the case may be) to manage those Interface Risks to an acceptable level, including:
 - (i) the standards, procedures and systems relevant to the management of the Interface Risks;
 - (ii) the relevant Interface Standards;
 - (iii) requirements for monitoring, awareness, competence and complaint handling;
 - (iv) the audit, inspection and review regime; and
 - (v) the particular party responsible for implementing each element of the IRMP; and
- (c) which satisfies the requirements for an interface agreement between rail transport operators under the TRSA and the requirements under all other Laws relevant to the management of Interface Risks,

¹² 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).

provided that a reference to operations in this definition includes railway operations as defined in the TRSA;

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 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 Operator for the Train Service has notified the relevant Train 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, including where such scheduled times remain unchanged from week to week;

~~**Margin** means a rate of 4.77%, being the difference between the WACC as at the Approval Date and the risk free rate component of the WACC, expressed as a positive value;~~

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 2.9.1(b)**~~2.9.1(b)~~:

- (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 Region means that part of the Network bounded to the north by (and including) Nambour station and to the west by (and including) Rosewood;

Mixed Goods Train Service means any Train Service that is not a Unit Train Service;

Mt Isa Bulk Train Services means a Unit Train Service which utilises the Mt Isa Line;

Mt Isa Line 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 and Corridors comprised in that part of the Network.

Mt Isa Reporting Area means that part of the Network defined as the Mt Isa Line 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 2.6.3(a)**;

Negotiation Period has the meaning given to that term in **clause 2.6.1(b)2.6.1(b)**;

~~(e)~~**Network** means the rail transport infrastructure (as defined in the TIA)¹³; 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);¹⁴

Network Management Principles means the principles set out in schedule Error! Reference source not found.B;

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 Error! Reference source not found.A**;

Nominated Railway Operator means, for an Access Holder, an 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;

¹³ For example, rail transport infrastructure includes, amongst other things, bridges, cuttings, platforms, tunnels etc.

¹⁴ In this definition, a term defined in the QCA Act has the meaning given to that term in the QCA Act.

Nominated Unloading Facility means an unloading facility specified for a nominated Reference Train Service in **clause 2.2(b)** of **schedule [Error! Reference source not found.A](#)**;

North-Coast Line 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 and Corridors comprised in that part of the Network;

North-Coast Reporting Area means ~~that part of those parts of~~ the Network ~~defined as the North-Coast Line, 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;

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;

Operating Plan means an operating plan setting out how the proposed Train Services are to be operated and which is consistent with the operating plan template as published by Queensland Rail in accordance with clause 2.1.3 on its website from time to time; information, standards and requirements published by Queensland Rail on its website for such operating plans;

Operating Requirements Manual means the document entitled “Operating Requirements Manual” as last submitted by Queensland Rail to the QCA on or prior to the Approval Date, as amended from time to time by Queensland Rail under **clause [4.24.2](#)**;

Operational Constraint means any temporary or permanent constraint on the operation or use of any part of the Network imposed by Queensland Rail 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 means a person who operates or will operate Rolling Stock on the Network;

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

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 with the following scope of work:

- (a) confirmation of project objectives, including a functional specification of scope and standard for the proposed Extension;
- (b) Identification and assessment of all possible technical solutions to deliver the required Capacity, taking into account the full supply chain.
- (c) assessment of technical and operating requirements of the Extension;
- (d) dynamic Capacity Analysis of all alternatives identified in paragraph (b) above based on the most recent Capacity Analysis undertaken by Queensland Rail;
- (e) survey and geotechnical investigations to support the level of design and cost accuracy;
- (f) Identification of a single preferred expansion solution to be studied in detail during the Feasibility Study phase;
- (g) High level value engineering assessment of the preferred solution to lower the total cost of ownership, after allowing for risk, of the proposed Extension;
- (h) a written report on the outcome of the analysis, decisions and specifications referred to above (with reasons, where applicable) that includes:
 - (i) evaluation of all of the project configuration alternatives that would provide the Capacity requirements of the proposed Extension;
 - (ii) preliminary risk assessment of the proposed Extension, including the alternatives identified in paragraph (b) above;
 - (iii) selects the project configuration alternative for the capacity in paragraph (h)(i) that has the lowest total cost of ownership, after allowing for risk;
 - (iv) analyses the technical and economic feasibility of the preferred alternative and identifies the reasons why it is preferred over the alternatives;
 - (v) design and construct project schedule for the proposed Extension that includes time tolerances and project budget with a +/-20% level of accuracy;
 - (vi) identifies potential benefits, including capacity, maintenance and operating benefits of the proposed Extension;
 - (vii) identifies the basis of design, estimate and schedule.
 - (viii) details of any variation to the budgeted costs to undertake the Pre-feasibility Study; and
 - (ix) a Feasibility Study execution plan, including a proposed scope, budget, duration and deliverables.

Preliminary Information means the information that Queensland Rail is required to provide to an Access Seeker, to the extent requested by the Access Seeker, where the scope of such information is set out in **schedule G**.

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 Queensland Rail is not the Railway Manager;

Proposed Standard Access Agreement has the meaning given to that term in clause 2.8(a);

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 Reference Train Service, is that amount specified as such for that Reference Train Service in **schedule [Error! Reference source not found.A](#)**;

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 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:

~~(d)~~**(a)** a Planned Possession, Urgent Possession or Emergency Possession;

~~(e)~~**(b)** a Force Majeure Event affecting Queensland Rail;

~~(f)~~**(c)** the derailment of any Train caused ~~solely~~ **substantially** by an act or omission of Queensland Rail; or

~~(g)~~**(d)** any other action by Queensland Rail other than Queensland Rail complying with an obligation in accordance with this Undertaking, any applicable Law or the relevant Access Agreement,

except where Queensland Rail's inability to do so is ~~in any way~~ **solely** attributable to the Operator, another Rail Transport Operator (other than Queensland Rail) or any other person;

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);

Rail Safety Regulator means the chief executive referred to in the TRSA;

Part 8 Rail Transport Infrastructure means rail transport infrastructure as defined in the TIA for which Queensland Rail or a related party of Queensland Rail is the Railway Manager;

Rail Transport Operator 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),
including:
 - (c) the relevant Access Holder (and its Nominated Railway Operator);
and
 - (d) any person in control of, or operating, any Private Infrastructure;

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 or collects 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) or during the performance of an Access Agreement;

Reference Tariff means a prescribed Access Charge applicable for a specified Reference Train Service, set out in **schedule Error! Reference source not found.A**, the purpose of which is to provide information to Access Seekers as to the likely level of Access Charge for Train Services of a similar type as the specified Reference Train Service (as amended, replaced, varied or escalated in accordance with this Undertaking from time to time);

Reference Train Service means a notional Train Service described in **clause 2.12.4 of schedule Error! Reference source not found.A** 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;

Regulatory Asset Base means the asset value for the West Moreton System accepted by the QCA for the purpose of developing Reference Tariffs for coal carrying Train Services, as maintained by Queensland Rail in accordance with [clause 3.83-8](#).

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

Renewal Application has the meaning given to it in [clause 2.7.3\(d\)\(ii\)](#);

Replacement Mine means a mine:

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

Review Event means a material change in circumstances:

- (a) 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 55](#) of [schedule Error! Reference source not found.A](#);

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

rtp means the number of reference Train Paths that are taken to be used by the relevant Train Service calculated in accordance with [clause 7\(b\)\(i\)7\(b\)\(i\)](#) of [schedule Error! Reference source not found.A](#);

Safety Management System means a system developed by Queensland Rail to manage all risks associated with the provision of the Network and safe management of Train operations on the Network, including specifically those risks identified in any Interface Risk Assessments, and which forms a basis upon which Queensland Rail is accredited under Part 5 of the TRSA as a rail infrastructure manager (as defined in the TRSA).

System means any of the following:

- (a) [the Mt Isa Line;](#)

(b) the North-Coast Line;

(c) the West Moreton System; or

~~Part 9~~(d) the Metropolitan Region.

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 [Error! Reference source not found.F](#)**;

Standard Rail Connection Agreement means a pro forma connection agreement the QCA may approve pursuant to **clause 6.5**.

SUFA Documents means a standard access user funding agreement and related documents developed or being developed for Aurizon Network as more particularly described in the Position Paper issued by the QCA on 22 May 2014;

Take or Pay Charge means a charge or other amount payable ~~pursuant 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 Reference Train Service is calculated as set out in to~~ **clause 44** of **schedule [Error! Reference source not found.A](#)**);

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

Terminating Date means the earlier of:

- (a) 30 June 2017; and
- (b) 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;

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 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;

Train Control Directions means instructions, directions and notifications from time to time issued by Queensland Rail for the purpose of Train 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);

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

Train Movement means the operation of a Train on the Network by a Rail Transport Operator;

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 the operation of a Train on the Network between a specified origin and a specified destination;

Train Service Entitlement means an Access Holder's entitlement under an Access Agreement to operate a specified number and type of Train Services over the 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;

Transport Service ~~Contract~~ 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;

~~**Undertaking Risk Free Rate** means the rate calculated:~~

- ~~(a) — by averaging the yield on a five year Commonwealth Government Bond over a 20 trading day period ending as close as practicable to but not later than the date that Queensland Rail offers an Access Agreement to an Access Seeker; and~~
- ~~(b) — in accordance with:
 - ~~(i) — the methodology used by the QCA to determine the yield on such a Commonwealth Government Bond; or~~~~

- ~~(i) where paragraph (b)(i) of this definition does not apply, the methodology agreed between Queensland Rail and the QCA (acting reasonably) from time to time for the purpose of this definition;~~

~~**Unfairly Differentiates** means unfairly differentiates between Access Holders in providing Access in a way that has a material adverse effect on the ability of one or more of the Access Holders to compete with other Access Holders;~~

Unit Train Service means a Train Service that carries a single commodity;

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 Operator for the Train Service has notified the relevant Train 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;

User Funding Agreement means an agreement by which a User agrees to provide funding to ~~QR Network~~Queensland Rail for the development of Infrastructure Enhancements.

User Funded Extension means an Extension, the costs of which are to be wholly or partly funded by Users pursuant to User Funding Agreements.

WACC means the weighted average cost of capital which:

- as at the Approval Date, means a rate of 6.93% nominal post-tax; ~~and;~~
- ~~(c) after the Approval Date, means a rate equivalent to the Undertaking Risk Free Rate plus the Margin;~~

West Moreton Reporting Area means the area defined as the West Moreton System;

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

Year means the period of 12 months commencing 1 July.

7.2 Interpretation

~~(d)~~(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 “\$” means a reference to Australian currency;
 - (B) a person includes the person’s legal personal representatives, successors, permitted assignees and persons substituted by novation;

~~(C)~~ — ~~constructing includes all associated activities such as designing, installing, procuring and commissioning;~~

~~(D)~~(C) an Extension includes any part of that Extension;

~~(E)~~ — ~~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;

~~(F)~~(D) time is to local time in Brisbane;

~~(G)~~(E) a month is a reference to a calendar month;

~~(H)~~(F) subject to **clause 7.2(a)(vii)(G)7.2(a)(vii)(H)**, a Part, Clause or Schedule is a reference to the corresponding Part or Clause found in **Part 1Part 4** to **Part 7Part 7** of this Undertaking or Schedule to this Undertaking as amended or replaced from time to time;

~~(I)~~(G) 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 1Part 4** to **Part 7Part 7** of this Undertaking;

~~(J)~~(H) 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;

~~(K)~~(I) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and

~~(L)~~(J) 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; and

(x) if there is any inconsistency between matters contained in a Schedule or the Preamble and **Part 1Part 4** to **Part 7Part 7** of this Undertaking, the provisions in **Part 1Part 4** to **Part 7Part 7** of this Undertaking prevail.

~~(e)~~(b) Headings do not affect the interpretation of this Undertaking.

~~(f)~~(c) To the extent that Queensland Rail's obligations under this Undertaking are or become inconsistent with Queensland Rail's

obligations under **any** Law, this Undertaking does not apply to the extent of that inconsistency.

~~(g)~~ ~~_____ 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.~~

~~(h)~~(d) _____ 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).

~~(i)~~(e) _____ 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.

Schedule A – West Moreton System

West Moreton System Reference Tariff

1 Term

The Reference Tariffs set out in this Schedule are effective from 1 July 2013 until the Terminating Date.

2 Reference Train Service

2.1 Description of Reference Train Service

The description of the Reference Train Service for the Reference Tariffs set out in this Schedule is as follows:

- (a) **(Commodity)** The Reference Train Service carries only bulk coal.¹⁵
- (b) **(Geographic scope)** The Reference Train Service operates on the rail corridor directly connecting a specified Nominated Loading Facility in the West Moreton System or Metropolitan Region, and a specified Nominated Unloading Facility.¹⁶
- (c) **(Characteristics)** Each Reference Train Service:
 - (i) has a maximum Train length, including the locomotives, of 675 metres¹⁷;
 - ~~(ii) has two locomotives and 41 wagons;~~
 - ~~(iii)~~(ii) 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 table¹⁸;
 - ~~(iv)~~(iii) utilises only diesel traction;
 - ~~(v)~~(iv) complies with the maximum speeds permitted on the Nominated Infrastructure as specified in the relevant Information Pack by Queensland Rail;

¹⁵ In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

¹⁶ Diagrams showing the location of the Nominated Loading Facilities and the Nominated Unloading Facilities are included in the Information Pack for the West Moreton System will be provided by Queensland Rail to Access Seekers on request.

¹⁷ 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).

¹⁸ 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.

- (vi)(v) complies with the agreed Interface Standards applicable to the Nominated Infrastructure;
- (vii)(vi) 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)(vii) operates in accordance with nominated sectional running times specified in the relevant Information Pack by Queensland Rail for that Reference Train Service;
- (ix)(viii) has a Loading Time that does not exceed the relevant time specified in **clause 2.2(a)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)(ix) has an Unloading Time that does not exceed the relevant time specified in **clause 2.2(b)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)(x) operates with-as an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
- (xii)(xi) 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 any Additional Capacity;
- (xiii)(xii) utilises bottom dump wagons with the “KWIK DROP” door operating mechanism suitable for use on the West Moreton System or Metropolitan Region; and
- (xiv)(xiii) utilises measures to minimise coal spillage and/or leakage en route that are reasonable, having regard to the practices existing at the Approval Date.

~~(d) — **(Dangerous Goods)** The Reference Train Service does not carry any Dangerous Goods.~~

~~(e)(d) **(Below Rail Services)** The Reference Train Service:~~

- ~~(i) does not include any Above Rail Services such as the carrying out of any provisioning, inspection, testing and maintenance of Rollingstock, or storage, marshalling, shunting or other relocation of Rollingstock; and 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)~~(e) **(Conditions of Access)** The Reference Train Service will operate in accordance with the terms and conditions of a Standard Access Agreement applicable to coal carrying Train Services in the West Moreton System or Metropolitan Region.

~~(g)~~(f) **(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 Tariffs

3.1 Calculation of the Reference Tariffs

(a) The applicable Reference Tariff for a Reference Train Service will be calculated as follows:

~~(i) for a Reference Train Service that uses the Nominated Loading Facility at Ebenezer:~~

$$\left(AT_1 \times \frac{gtk}{1000} \right) + (QCALevy \times nt)$$

~~(ii) for a Reference Train Service that uses a Nominated Loading Facility at Jondaryan (New Acland), Macalister (Wilkie Creek), Ebenezer or Columboola (Cameby Downs):~~

$$\left(AT_1 \times \frac{gtk}{1000} \right) + (AT_2 \times rtp) + (QCALevy \times nt)$$

where:

AT₁ is the variable part of the Reference Tariff that is levied on a gross tonne kilometre basis specified as such under **clause 3.1(e)3.4(e)** for the relevant Reference Train Service;

AT₂ is the fixed part of the Reference Tariff that is levied on a reference Train Path basis specified as such under **clause 3.1(e)3.4(e)** for the relevant Reference Train Service,

provided that the above calculation is subject to the addition from time to time of any applicable Adjustment Charge (including, if necessary, on a pro rata basis with other Reference Train Services that have the same origin and destination and Access Holder and are run during the same billing period, as the relevant Reference Train Service) and any applicable Take or Pay Charge.

- (b) For the purposes of the calculation under **clause 3.1(a)3.4(a)**, the amounts of AT₁, AT₂, the QCA Levy, any Adjustment Charge and any Take or Pay Charge are GST exclusive. An Access Charge calculated based on a Reference Tariff will have an amount for GST added to it, in accordance with the provisions of the applicable Access Agreement.
- (c) For the purposes of this **schedule Error! Reference source not found.A**, 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)3.4(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) The amount of the Reference Tariff inputs are as follows:
 - (i) for a Reference Train Service to or from the Nominated Loading Facility at Ebenezer:

Reference Tariff Input	\$
AT ₁	22.22 14.29
AT₂	98.18
QCA Levy	0.02720

- (ii) for a Reference Train Service to or from a Nominating Loading Facility at Jondaryan (New Acland), Macalister (Wilkie Creek) or Columboola (Cameby Downs):

Reference Tariff Input	\$
AT ₁	11.117.15
AT ₂	5,449.783,608.31
QCA Levy	0.02720

3.2 Escalation of Reference Tariffs

- (a) Each Reference Tariff input specified in **clause 3.1(e)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:

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

where:

- AT_n** means the value of the relevant Reference Tariff input to apply after escalation;
- AT_{n-1}** 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)3-1(e)**;
- CPI_n** means the CPI for the Quarter which commenced six months prior to the Escalation Date for which the variable AT_n is being determined; and
- CPI_{n-1}** means the CPI for the Quarter which commenced 18 months prior to the Escalation Date for which the variable AT_n is being determined.
- (b) Queensland Rail will publish the escalated inputs of the Reference Tariff 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 inputs of a Reference Tariff, Queensland Rail will correct the error so that the relevant inputs of the Reference Tariff are escalated in accordance with **clause 3.2(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 2.1** of this **schedule 3**,

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 revenue that Queensland Rail is entitled to earn in relation to Reference Train Services includes Take or Pay Charges in accordance with this **clause 4**.
- (b) 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) The amount of the Take or Pay Charges for a Take or Pay Period will be the amount which is 80% of the amount calculated for that Take or Pay Period as follows:

$$\left(\left(AT_1 \times \frac{gtk}{1000} \right) + AT_2 \right) * NTNO$$

where:

AT₁ and AT₂ are the Reference Tariff inputs applicable on the last day of that Take or Pay Period;

gtk is the average gtk for the relevant Train Services calculated using a nominal payload as determined by Queensland Rail (acting reasonably); and

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 will not be less than zero and Queensland Rail's revenue (including Take or Pay charges) will not exceed the target revenue in 4(e).

- (d) When invoicing Take or Pay Charges, Queensland Rail will also include information on how the Take or Pay Charge was determined.

- (e) System Allowable Revenues (in 2013-2014 dollars)

<u>Year</u>	<u>System Allowable Revenue (West Moreton System)</u>	<u>System Allowable Revenue (Metropolitan Region)</u>
<u>2013-14</u>	<u>38,790,965</u>	<u>18,101,748</u>
<u>2014-15</u>	<u>38,790,965</u>	<u>18,101,748</u>
<u>2015-16</u>	<u>38,790,965</u>	<u>18,101,748</u>
<u>2016-17</u>	<u>38,790,965</u>	<u>18,101,748</u>

~~(d)~~(f) System Allowable Revenues in **clause 4(e)** will automatically escalate annually on each Escalation Date commencing on the First Escalation Date in accordance with the formula in **clause 3.2(a)** and Queensland Rail will publish the escalated revenues along with the information published pursuant to **clause 3.2(b)**.

5 Variation of Reference Tariffs

5.1 Obligation to submit a variation

- (a) Queensland Rail:
- (i) 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 System or Metropolitan Region; 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; or
 - (B) 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:

~~(i)~~ The QCA does not approve a variation of a Reference Tariff submitted by Queensland Rail; or

~~(a)~~(ii) it has failed to submit a variation of a Reference Tariff under **clause 5.1(a)(ii)(A)5.1(a)(ii)(A)** in respect of an Endorsed Variation Event.

~~(b)~~(c) The QCA may grant Queensland Rail an extension of the time for submitting, or resubmitting, a variation of a Reference Tariff if:

- (i) Queensland Rail requests an extension of time; and
- (ii) the extension of time is reasonable or necessary.

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 5.5** 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)5-4(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 System or Metropolitan Region; and
 - (iv) if the variation is submitted under **clause 5.1(a)(ii)(A)5-4(a)(ii)(A)**, 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)5-4(a)(i)**, that the variation is consistent with the Undertaking;

- (ii) for a variation submitted in respect of an Endorsed Variation Event or Review Event (**Event**):
 - (A) the Event has occurred;
 - (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:
 - (1) is consistent with the change in the cost resulting from or that will result from the Event; and
 - (2) reflects the impact of the relevant Event on the financial position of Queensland Rail (including the impact of incremental maintenance and incremental capital costs).
- (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)5-4(e)**.

- (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)5-4(e)(ii)**; or
 - (ii) developed by the QCA under **clause 5.25-2**,
 - (iii) if the QCA is satisfied that the variation of the Reference Tariff:
 - (A) is consistent with the matters specified under **clause 5.4(a)** (provided that for the purposes of so applying **clause 5.4(a)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)5-1(a)**); and
 - (B) if **clause 5.4(e)(i)5-4(e)(i)** applies, is consistent with the relevant notice given by the QCA under **clause 5.4(c)5-4(e)**.
- (f) If the QCA refuses to approve a variation to a Reference Tariff that was resubmitted under **clause 5.4(c)(ii)5-4(e)(ii)**, the QCA will give Queensland Rail a notice in writing stating the reasons for its refusal.

(g) For the purposes of this **clause 5**:

- (i) A variation of a Reference Tariff submitted by Queensland Rail or developed by the QCA in accordance with this **clause 5** must include a review of System Allowable Revenue and System Forecast to the extent applicable to that variation; and
- ~~(a)(ii) The QCA in approving a variation of a Reference Tariff must also approve the corresponding variation of the applicable System Allowable Revenue and System Forecast.~~

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; 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 the amount (**Adjustment Amount**) which is the sum of:

- (iii) the aggregate of the differences, for each relevant 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 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 Tariffs or the variation of Reference Tariffs referred to in **clause 6.1(a)(i)6-1(a)(i)** or **(ii)(ii)** on and from the Effective Date; and

- (iv) the aggregate of the interest calculated in accordance with **clause 6.1(b)6-1(b)** in respect of the amount of each difference comprising the amount calculated in accordance with **clause 6.1(a)(iii)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 Amount (subject to the provisions of this Undertaking).

- (b) The interest referred to in **clause 6.1(a)(iv)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)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)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 (and subject to **clause 6.2(a)**); 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 to the QCA proposed Adjustment Charges.

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; and
 - (iii) the billing period(s) in respect of which the Adjustment Charges will be applied,if the proposed Adjustment Charges (excluding any interest component) are reasonable to recover or reimburse, as applicable, any under or over recovery of Access Charges that relate to each Access Holder and, where **clause 6.1(b)(iii)(B)6.1(b)(iii)(B)** applies, the QCA is satisfied that Queensland Rail has acted reasonably in selecting an appropriate equivalent rate in accordance with that provision.
- (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 of 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)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)6.4(b)**.
- (e) Queensland Rail must comply with an approval of the QCA given in accordance with **clause 6.4(a)6.4(a)** or **(d)(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

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)6.4(a)** or **(d)(d)** by the relevant Access Holder including that:

- (a) 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
- (b) 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 Variations to Reference Train Service

- (a) A varied Access Charge will be applicable to a Train Service that:
 - (i) varies from the Reference Train Service characteristics specified in **clauses 2.1(c)2.1(e)** to **(d)(d)**; or
 - (ii) operates under terms and conditions with agreed variations from the requirements of **clauses 2.1(e)2.1(e)** and **(f)(f)**,

but otherwise satisfies the nominated Reference Train Service description, so that the varied Access Charge varies from the applicable Reference Tariff due to differences in cost or risk to Queensland Rail of providing Access for that Train Service compared to the Reference Train Service.

(b) Where a Train Service differs from the Reference Train Service due to it not complying with **clause 2.1(c)(vii)**, then Queensland Rail will, unless otherwise agreed with the QCA, quote an Access Charge that varies from the Reference Tariff by applying the following principles:

(i) the number of reference Train Paths used by the proposed Train Service will be determined as follows:

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

where:

A is the maximum number of Reference Train Services at full utilisation; and

B is the maximum number of the proposed Train Services at full utilisation;

provided that if:

(A) the maximum number of proposed Train Services at full utilisation exceeds the maximum number of Reference Train Services 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; ~~and~~

(ii) the maximum number of Train Paths available for a Reference Train Service and for the proposed Train Service will be determined using a readily available simulation package; ~~and-~~

~~(ii)~~ (iii) in accordance with **clause 2.4.2(e)** or **2.6.2(a)(iv)** of the Undertaking (as applicable), Queensland Rail will advise the Access Seeker how it has determined the value of rtp.

~~Schedule A~~ Schedule D

~~Regulatory Asset Base~~

~~1 Maintenance of Regulatory Asset Base~~

~~1.1 Roll forward principles~~

~~On an annual basis, Queensland Rail will roll forward the asset values in its 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 9.1**; and~~
- ~~(e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with **clause 8.2**.~~

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

~~(a) The value of assets contained in the 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 Depreciated Optimised Replacement Cost of additional sections of the Network incorporated into the West Moreton System;~~

~~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; or~~

~~(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.~~

1.3 Capital expenditure report

~~(a) Unless otherwise agreed between Queensland Rail and the QCA, Queensland Rail will, within four 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 the 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 9.2(b)**.~~

~~(c) Information provided to the QCA under this **clause 8.3** (including in response to a request under **clause 9.2(b)**):~~

~~(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 kept confidential and not published by the QCA except to the extent that Queensland Rail agrees otherwise.~~

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 9.1**, has accepted the capital expenditure into the 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 8.1**, subject to **clause 8.2**, 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 Macalister and Macalister to Columboola.~~

~~(b) Information provided to the QCA under this **clause 8.4**:~~

- ~~(i) will be accompanied by a statement signed by Queensland Rail's Chief Executive Officer confirming that information is, in all material respects, correct;~~
- ~~(ii) must be kept confidential and not published by the QCA except to the extent that Queensland Rail agrees otherwise; and~~
- ~~(iii) must be based on the roll forward principles in **clause 8.1**.~~

~~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 the Regulatory Asset Base if that capital expenditure:~~
 - ~~(i) is or has been accepted as:~~
 - ~~(A) prudent in scope in accordance with **clause 10**;~~
 - ~~(B) prudent in the standard of works in accordance with **clause 11**; and~~
 - ~~(C) prudent in cost in accordance with **clause 12**; and~~

~~(ii) has been incurred and either the capital expenditure project has been commissioned or formally discontinued.~~

~~(b) The QCA must notify Queensland Rail in writing if it accepts capital expenditure into the Regulatory Asset Base.~~

~~(c) If the QCA is considering refusing to accept all or part of any capital expenditure into the 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, within 20 Business Days after being given that draft decision (or such longer period as agreed by the QCA), 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 the 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 10 to 12** in relation to a capital expenditure project at any time, then this does not affect its right to seek any such acceptance under **clauses 10 to 12** 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 the Regulatory Asset Base.~~

2.2 Assessing prudence of capital expenditure

For the purposes of **clauses 10, 11 and 12**:

~~(a) the QCA must:~~

~~(i) in assessing whether capital expenditure is prudent:~~

~~(A) only consider information available, or reasonably available, to Queensland Rail at the time of making the investment decision; and~~

~~(B) as it considers necessary, 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 9.2(a)(ii)**; and~~

~~(ii) give Queensland Rail a notice of any determination that it makes under **clauses 10, 11 or 12** (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 10, 11 or 12** (as applicable) within 45 Business Days after receiving the request from Queensland Rail to make such a determination under **clauses 10, 11 or 12** (as applicable);~~

~~(c) Queensland Rail must respond to a request by the QCA under **clause 9.2(b)** within 30 Business Days after receiving that request; and~~

~~(d) if the QCA has not notified Queensland Rail of any determination that it is required to make under **clauses 10, 11 or 12** (as applicable) within 45 Business Days after:~~

~~(i) where the QCA has not made a request under **clause 2.2(b)**, receiving a request from Queensland Rail under **clauses 10, 11 or 12** (as applicable) to make such a determination; or~~

~~(ii) where the QCA has made a request under **clause 9.2(b)**, receiving additional information from Queensland Rail reasonably required to make any determination under **clauses 10, 11 or 12** (as applicable) as requested by the QCA;~~

~~then the QCA is taken to have made a determination to accept Queensland Rail's 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, 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) If **clause 10.2(a)** does not apply or acceptance is not sought or obtained under **clause 10.2(a)**, Queensland Rail, an Access Seeker, an Access Holder or a Customer may request the QCA's acceptance of the scope of a capital expenditure project as prudent in accordance with **clause 10.2(c)**.~~

~~(c) If a request is made under **clause 10.2(b)**, 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 10.2(d)**, 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 10.2(c)(i)** does not apply, reasonable grounds exist for proceeding.~~

~~(d) The factors that the QCA will have regard to for the purposes of **clause 10.2(c)** are:~~

~~(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 legislative requirements, including relating to workplace health and safety and environmental requirements;~~

~~(v) the appropriateness of Queensland Rail's processes to evaluate and select proposed capital expenditure projects, including 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.~~

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 10.2(c)**, 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 Regulatory Asset Base at its escalated value; and~~

~~(B) if only part of the Excluded Capital Expenditure is included in the Regulatory Asset Base, **clause 10.3(b)(i)** will continue to apply to the remainder.~~

~~4 Prudence of standard of works~~

~~4.1 Assessment of prudence of standard of works~~

~~(a) Assessing the prudence 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 prudence 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 prudence of standard of works~~

~~(a) Queensland Rail may request the QCA's acceptance of the standard of works of a capital expenditure project as prudent in accordance with this **clause 11**.~~

~~(b) If a request is made under **clause 11.2(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 11.2(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 11.2(b)(i)** are:~~

~~(i) the requirements of Operators and what is reasonably required to comply with Access Agreements;~~

~~(ii) current and likely future usage levels;~~

~~(iii) the requirements of the 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).~~

~~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 12.2**, prior to the capital expenditure being incurred).~~

5.2 Process for acceptance of prudence 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 13.1(b)**, Queensland Rail may request the QCA's acceptance of the costs of that capital expenditure project as prudent in accordance with this **clause 12.2**.

(b) If a request is made under **clause 12.2(a)**, the QCA will accept as prudent:

(i) the value of a contract if:

(A) the QCA is satisfied that contract provisions regarding contract variations and escalation accord with good commercial practice; and

(B) the auditor engaged in accordance with **clause 13.2** certifies that 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 12.2(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 13.2** 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 13.1(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 13**.

5.3 General process for acceptance of prudence of costs

~~(a) If **clause 12.2** does not apply or acceptance is not sought or obtained under **clause 12.2**, Queensland Rail may request the QCA's acceptance of the costs of a capital expenditure project as prudent in accordance with this **clause 12.3**.~~

~~(b) If a request is made under **clause 12.3(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 12.3(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 12.3(b)** are:~~

~~(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 13.1(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.~~

~~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 10**, 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 13.1(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 13.1(c)**; and~~

~~(B) whether the procurement strategy tends to assist in achieving the requirements for prudence of costs set out in **clause 12.3**); 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 13.1(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) accommodation of 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;~~

~~(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 13.2** 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

As part of the implementation of a procurement strategy approved by the QCA under **clause 13.1**, 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:

~~(a) Queensland Rail will appoint the auditor, after obtaining the QCA's approval of the auditor (including the terms of engagement);~~

~~(b) 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;~~

~~(c) the auditor must agree the processes for conducting an audit with Queensland Rail (which will consist of a proposed work program, including audit costs, for the execution of the audit);~~

~~(d) Queensland Rail will, within a reasonable time, provide any relevant information the auditor reasonably requires for the purpose of conducting the audit;~~

~~(e) 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 13.2(f)** below;~~

~~(f) the auditor will compile an audit report:~~

~~(i) 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~~

~~(ii) if the auditor identifies that Queensland Rail has not complied in all material respects with the approved procurement strategy:~~

~~(A) details on the relevant non-compliance;~~

~~(B) any reasons stated by Queensland Rail for the relevant non-compliance; and~~

~~(C) whether the non-compliance was reasonable in the circumstances;~~

~~(g) the auditor will provide to Queensland Rail and the QCA:~~

~~(i) progress reports on the audit process every six months; and~~

~~(ii) a copy of the audit report upon completion of the audit (which the QCA may publish if it considers it appropriate); and~~

~~(h) 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.~~

~~For the purpose of **clause 12.3**, the costs incurred by Queensland Rail in relation to an external auditor engaged in accordance with this **clause 13.2** will form part of the capital expenditure for the relevant capital expenditure project and the QCA will accept those costs as prudent.~~

~~7 Capital Expenditure Carryover Account~~

~~(a) Queensland Rail will maintain a register in which it will annually record all Approved Capital Expenditure (including identifying the relevant capital expenditure by project).~~

~~(b) If, at the end of each Year, the Approved Capital Expenditure differs from the Capital Indicator, 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, if the Approved Capital Expenditure exceeds the Capital Indicator; or~~

~~(ii) an over recovery of revenue, if the Approved Capital Expenditure is less than the Capital Indicator.~~

~~(c) The balance recorded in the Capital Expenditure Carryover Account will include:~~

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

~~(ii) a depreciation component, calculated as the difference between the depreciation assumed for the Capital Indicator and the depreciation that should have applied for the Approved Capital Expenditure; and~~

~~(iii) a tax depreciation component, calculated as the difference between the tax depreciation assumed for the Capital Indicator and the tax depreciation that should have applied for the Approved Capital Expenditure,~~

~~and will be calculated using the modelling parameters and assumptions used to determine the Reference Tariffs.~~

~~(d) The balance in the Capital Expenditure Carryover Account at the end of each Year will be rolled forward at the WACC.~~

~~(e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining Reference Tariffs to apply in the next undertaking with the intention of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking, the balance in the Capital Expenditure Carryover Account will be recovered from, or returned to, Access Holders (as the case may be) in the form of a single payment following the Terminating Date.~~

Schedule B – Network Management Principles

Network Management Principles

1 Train Planning Principles

1.1 Master Train Plan Principles

- (a) The MTP will indicate the Capacity and Train Paths necessary to satisfy all Train Services on each system in the Network including all relevant Train Service Entitlements, all of Queensland Rail's passenger Train Services, all other freight or passenger 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) The MTP will be in a form that sets out the time/distance (location) relationship of the Train Services and other activities on the Network and is readily convertible to a DTP.
- (d) Queensland Rail will notify all parties whose activities are may be affected by any modifications to the MTP (including Access Holders and relevant Infrastructure Service Providers such as relevant port operators and other below rail operators) as soon as reasonably practicable and at least 20 Business Days~~30 days~~ prior to the commencement of the modification except in the case of an Urgent Possession or Emergency Possession.
- (e) An Access Holder must give Queensland Rail sufficient notice of any requested changes to the 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 1.1(d)~~1.1(d)~~15.1(d)**.
- (f) 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.

Modifying the MTP

- (g) The MTP may be modified by Queensland Rail, without consultation, where:
 - (i) any of the following apply:

- (A) an Access Holder requests a long-term change to the times at which its Train Service/s operate, provided that change is within the scope of its Train Service Entitlement;
 - (B) an Access Holder requests to run an Ad Hoc Train Service;
 - (C) Queensland Rail creates a new or additional passenger Train Service, or modifies the times at which its passenger Train Services are scheduled in the MTP;
 - (D) a new or additional Train Service Entitlement has been created (through the signing of an Access Agreement, or an amendment to an Access Agreement);
 - (E) Queensland Rail wishes to change the time at which a Train Service operates provided that change is within the scope of the relevant Access Holder's Train Service Entitlement;
 - (F) Queensland Rail alters (including reduces or resumes) all or part of an Access Holder's Train Service Entitlement in accordance with that Access Holder's Access Agreement, provided that the modification does not result in any other Access Holder's scheduled Train Services not being met;
- (ii) the modification is intended to accommodate any Operational Constraint which is an Urgent Possession or an Emergency Possession;
 - (iii) a Planned Possession is cancelled; or
 - (iv) in Queensland Rail's reasonable opinion no Access Holders are adversely affected by the modification provided that Queensland Rail has first given notice in accordance with clause 1.1(d) above and otherwise complied with its obligations under this Schedule.
- (h) The MTP may be modified by Queensland Rail where Queensland Rail wishes to make a long-term change to the times at which one or more scheduled Train Services operate, provided that:
- (i) the modification is intended to accommodate:
 - (A) the creation of a new, additional, or modified Train Service Entitlement (through the signing of an Access Agreement, or an amendment to an Access Agreement) where that new or additional Train Service Entitlement cannot, in Queensland Rail's opinion, otherwise be reasonably accommodated in the MTP; or
 - (B) a new, additional or modified Queensland Rail passenger Train Service, where that service cannot, in Queensland Rail's opinion, otherwise be reasonably accommodated in the MTP; and

- (ii) where the modification ~~would~~ may result in an Access Holder's scheduled Train Services not being met, Queensland Rail:
 - (A) has consulted with that Access Holder; and
 - (B) to the extent that the modification is not within the scope of or otherwise affects that Access Holder's Train Service Entitlement, has agreed the modifications with that Access Holder (such agreement not to be unreasonably withheld).
- (i) The MTP may be modified by Queensland Rail, where Queensland Rail wishes to make a long-term change to the times at which one or more scheduled Train Services operate due to a new or modified Planned Possession, or other Operational Constraint (other than an Urgent Possession or an Emergency Possession) -provided that where the modification ~~may~~ would result in an Access Holder's scheduled Train Services not being met, Queensland Rail:
 - (i) has consulted with that Access Holder; and
 - (ii) to the extent that the modification is not within the scope of or otherwise affects that Access Holder's Train Service Entitlement, has used its best reasonable endeavours to mitigate the adverse impacts on that Access Holder; and -
 - (ii) where the modification is to a new or modified Planned Possession, to the extent that the modification is not within the scope of or otherwise affects, that Access Holder's Train Entitlements, has agreed the modification with that Access Holder (such agreement not to be unreasonably withheld).
- (j) The MTP may be modified by Queensland Rail where Queensland Rail and all affected Access Holders agree to the modification provided that where Queensland Rail seeks such a modification it:
 - (i) invites affected Access Holders to consider the modification in an appropriate forum¹⁹; and
 - (ii) gives each of those parties a copy of the proposed modification five Business Days prior to the scheduled consideration of the modification.
- (k) For clarity, Queensland Rail may modify the MTP under any one of **clauses 1.1(g)1-1(g)15-1(g)** to (j)(i) 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. However, Queensland Rail must adopt the clause which is appropriate and reasonable for the relevant situation having regard to the interests of Queensland Rail and of affected Access Holders.

¹⁹ 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.

~~(k)~~(l) Where an Access Holder disputes any proposed modification to the MTP that may affect that Access Holders Train Service Entitlement, other than in the case of an Urgent Possession or Emergency Possession, the dispute is to be resolved before the modification is implemented.

1.2 Daily Train Plan Principles

- (a) The DTP will indicate all scheduled Train Services and Planned Possessions in a form that indicates the time/distance (location) relationship of all activities,
- (b) The DTP represents an expected performance target that each Access Holder must comply with for its Train Services, for a particular day of operation for a specified part of the Network.
- ~~(c)~~ At least one Business Day prior to the day of operation, Queensland Rail will schedule the DTP and provide all relevant Access Holders and Infrastructure Service Providers with a copy of that DTP.
- ~~(e)~~(d) Queensland Rail will promptly notify all parties whose activities may be affected by any modifications to the DTP (including Access Holders and relevant Infrastructure Service Providers such as relevant port operators and other below rail operators).
- ~~(d)~~(e) 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 the DTP in variation from the MTP

- ~~(e)~~(f) The DTP may be scheduled in variation to the 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) any of the following apply:
 - (A) 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) an Access Holder requests to run an Ad Hoc Train Service; or
 - (C) Queensland Rail modifies the times at which any of its passenger Train Services, as scheduled in the MTP, operate,provided that the variation does not result in any other Access Holder's scheduled Train Services not being met; or
 - (ii) a Planned Possession is cancelled.
- ~~(f)~~(g) The DTP may be scheduled in variation from the MTP by Queensland Rail where at least two Business Days prior to the day of 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 Planned Possession;
 - (B) the creation of an Urgent Possession; or
 - (C) any other Operational Constraint affecting the DTP; and
- (ii) where the variation would may result in an Access Holder's scheduled Train Services not being met, Queensland Rail has consulted with that Access Holder and Queensland Rail has used its best endeavours to mitigate the variation.

~~(g)~~(h) The DTP may be scheduled in variation from the MTP by Queensland Rail where at least two Business Days prior to the day of 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 may result in an Access Holder's scheduled Train Services not being met, Queensland Rail has consulted with that Access Holder.

~~(h)~~(i) The DTP may be scheduled in variation from the MTP by Queensland Rail where at least two Business Days prior to the day of 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 forum²⁰, 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)~~(j) For clarity, Queensland Rail may schedule the DTP in variation from the MTP under any one of **clauses 1.2(e)1.2(f)** to ~~(h)~~(i) 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. However, Queensland Rail must adopt the clause which is appropriate and reasonable for the relevant situation having regard to the interests of Queensland Rail and of affected Access Holders.

Making modifications to the DTP once scheduled

~~(j)~~(k) Queensland Rail may make modifications to the scheduled DTP on a case by case basis without the need for consultation:

²⁰ 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) where:
 - (A) before the day of 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.

1.3 Publication of Train Plans

Queensland Rail must:

- (a) publish a complete MTP for each System within the Network on the Queensland Rail website. The initial MTP for each System must be published within 3 months of the Approval Date.
- (b) The publication must be in the form of a train graph or in tabular form and must contain information which is consistent with the train plan, information published by ARTC (as at the date of commencement of this Undertaking). Queensland Rail must update the complete MTP and its website publication every six months or more often for an Access Holder if reasonably requested; and
- (ii)(c) provide a completed DTP showing all services on request of an Access Holder acting reasonably.

2 Train Control Principles

Objective

- (a) The prime objective of Train Control is to facilitate the safe running of Train Services, and the commencement and completion of Possessions, as scheduled in the DTP.
- (b) Queensland Rail will manage the Network based on entry/exit times as specified in the DTP 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 the DTP by Queensland Rail and/or an Access Holder on the day of running in accordance with this **clause 2216** 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 the DTP.

Provision of Train Control information

- (e) Without limiting clause 1.3 of this Schedule, Queensland Rail will provide an Access Holder with:
 - (i) real time Train Control information that indicates actual running of that Access Holder's Train Services against the relevant DTP;
 - (ii) ~~subject to reasonable terms and conditions,~~ access to Train Control diagrams that 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 Train Controller is applying the principles in this Schedule in a consistent manner between Access Holders.

Traffic Management Decision Making Matrix

- (f) Where the operation of a Train Service differs from the DTP, the Train Controller will apply the Traffic Management Decision Making Matrix in clause 2(h)2(h)16(h), for the purposes of giving a Train 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 DTP. For example, if a Train Service is travelling in accordance with the DTP path allocated to it, 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 [2\(i\)2\(i\)16\(i\)](#)**.

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

Rule 3. Give priority to the Train Service that (in the Train 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 [2\(i\)2\(i\)16\(i\)](#)**.

Principles for managing deviations from the DTP

- (i) It is necessary for Train 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. Train Controllers will apply the following principles in managing deviations from the DTP:
 - (i) a Train Service may be given priority over other Train Services if it is 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 ~~2(i)(i)2(i)(i)16(i)(i)~~**, passenger Train Services may be given priority over other Train Services in the Metropolitan Region during peak periods if the Train Controller, acting reasonably, believes that this is necessary to seek to:
- (A) bring a “Late” passenger Train Service back to being “On Time”; or
- (B) avoid an “On Time” or “Ahead” passenger Train Service from becoming a “Late” passenger Train Service;
- (iii) subject to **clause ~~2(i)(i)2(i)(i)16(i)(i)~~**, livestock Train Services may be given priority over other Train Services if the Train Controller, acting reasonably, believes that this is desirable taking into consideration the livestock being transported (including, for example, the welfare of the livestock);
- (iv) subject to **clauses ~~2(i)(i)2(i)(i)16(i)(i)~~ to ~~(iii)(iii)~~**, a Train Service may be given priority over other Train Services if it is reasonably 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 ~~2(i)(i)2(i)(i)16(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 Train Controller acting reasonably 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.

3 Network Coordination

To ensure safe, efficient and reasonable operation of the Network, Queensland Rail will:

- (a) coordinate its Planned Possessions with Railway Managers of inter connecting rail infrastructure to ensure minimal disruption to trains operating across more than one network;
- (b) take into account through – running trains when developing each MTP;
- (c) in operation of the Network and development of each MTP have reasonable regard to the operating requirements and procedures of Railway Managers of inter connecting rail infrastructure including the Aurizon Network Network Management Principles, the Capricornia System Rules and the other approved system rules as may be relevant;

(d) not require Access Holders to agree or consent to any amendments to an MTP or DTP where those amendments cannot be accommodated by relevant Railway Manager of inter connecting rail infrastructure except where the change is due to an Urgent Possession or Emergency Possession.

Schedule C – Access Agreement Principles

Access Agreement Principles

1 Access Rights

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

~~1 Term~~

~~The Access Agreement will:~~

- ~~(a) apply for a defined period (subject to any earlier termination and any relevant survival of provisions); and~~
- ~~(b) not include an option for the Access Holder to renew the Access Rights.~~

~~2 Grant of Access Rights~~

- ~~(a) Queensland Rail will grant to the Access Holder a non-exclusive right to operate Train Services on the Network during the term of the Access Agreement in accordance with a specified Train Service Entitlement.~~
- ~~(b) An Access Holder's Train Services must only commence after all provisions of the Access Agreement required to be completed or complied with prior to the commencement of Train Services have been completed or complied with.~~

~~3~~ ~~Accreditation~~

~~The Access Holder must or must procure that its Nominated Railway Operator:~~

- ~~(a) be accredited in accordance with Part 5 of the TRSA in respect of the operation of the relevant Train Services;~~
- ~~(b) maintain that accreditation during the term of the Access Agreement;~~
- ~~(c) ensure Queensland Rail is provided with the material details of that accreditation; and~~
- ~~(d) comply with that accreditation and not operate Rolling Stock unless it holds that accreditation.~~

42 Access Charges

- (a) Access Charges are to be agreed between the parties and payable in accordance with reasonable payment terms set out in the Access Agreement. Late payments or credits by either party will bear interest at an agreed default rate.
- (b) The Access Agreement will provide for a fair and reasonable mechanism for dealing with bona fide Disputed invoices.
- (c) The Access Agreement may provide for periodic review of Access Charges.
- (d) Unless otherwise stated, all amounts payable under the Access Agreement are exclusive of GST.
- (e) In appropriate cases Queensland Rail may require lodgement of a security deposit to secure performance by the Access Holder of its obligations under the Access Agreement having regard to Queensland Rail's reasonable assessment of the creditworthiness of the Access Holder. Any required security deposit should reflect the cash flow risk that Queensland Rail has taken on.
- (f) Where there are no security arrangements in place and a user defaults on its payments, Queensland Rail is entitled to require some form of security deposit equivalent to its financial exposure, where the default was not attributable to a legitimate Dispute.
- (g) 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.
- (h) The Access Agreement may provide an adjustment mechanism where any changes in the Access Charges are backdated. Any such mechanism is subject to approval by the QCA.
- ~~(a) The Access Agreement must set out the Access Charges agreed between the parties and payable in accordance with reasonable payment terms.~~

- ~~(b) The Access Agreement may provide:~~
 - ~~(i) that late payments accrue interest at a specified rate;~~
 - ~~(ii) a reasonable mechanism for dealing with disputes about payment;~~
 - ~~(iii) for the review of Access Charges;~~
 - ~~(iv) an adjustment mechanism where any change in the Access Charges is backdated; and~~
 - ~~(v) that all amounts payable under it are exclusive of GST.~~

~~5 Network management~~

3 Train Service Entitlements

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

4 Entering and exiting the Network

- (a) The Access Holder is solely responsible for and bears the cost and risk of obtaining any rights to access or use Private Infrastructure and the Access Holder is not relieved of any obligation under the Access Agreement if the Access Holder cannot obtain any such rights.
- (b) Queensland Rail will, if relevant, negotiate in good faith the terms of a separate arrangement with the Access Holder for the connection of Private Infrastructure to the Networks and will use reasonable endeavours to facilitate the connection.

- (c) Subject to the terms of any agreement made pursuant to **clause 4(b)**, any disputes in relation to a proposed connection agreement for Private Infrastructure will be resolved using the dispute resolution process in the Undertaking.

5 Relinquishment

An Access Agreement must include provisions which provide:

- (a) that the relevant Access Holder may relinquish all or part of its Access Rights (whether or not for the purpose of allowing a specified Access Seeker to be granted Access Rights by Queensland Rail that use all or part of the Capacity that will become Available Capacity as a result of the relinquishment (**Relinquished Capacity**)); and
- (b) that any such relinquishment is subject to the Access Holder paying to Queensland Rail a fee:
- (i) equivalent to the present value (calculated at a discount rate equal to the WACC) of the aggregate of the Take or Pay Charges that would have been payable on and from the date on which the relinquishment will take effect until the end of the term if the relevant Access Rights were not relinquished and the Access Holder did not use those Access Rights; and
- (ii) if, prior to the date on which the relinquishment will take effect, Queensland Rail has granted Access Rights (with effect on or after that date) to an Access Seeker using the Relinquished Capacity (**New Access Holder**), adjusted to offset the aggregate of the Take or Pay Charges payable by the New Access Holder for all or part of the same period as that for which the Take or Pay Charges are calculated under **paragraph 5(b)(i)5(b)(i)22(b)(i)** (calculated assuming the New Access Holder does not use the relevant Access Rights) but only to the extent that those Take or Pay Charges are directly attributable to the Relinquished Capacity,
provided that in no circumstances will that fee be less than zero; and
- (c) if applicable, Queensland Rail will facilitate the Access Holder relinquishing Access Rights for the purpose of allowing an Access Seeker nominated by the Access Holder to be granted Access Rights by Queensland Rail, subject to Queensland Rail's requirements in relation to doing so being satisfied.

5.1 Management and control of Network

- (a) Queensland Rail is responsible for the management and control of the Network (including Train Control).
- (b) Queensland Rail will maintain the Network such that the Access Holder can operate the relevant Train Services in accordance with the terms of the Access Agreement.

- ~~(c) Queensland Rail may at any time, without the Access Holder's consent, impose operational constraints (such as speed or load restrictions).~~
- ~~(d) Queensland Rail may at any time, without the Access Holder's consent, perform Rail Infrastructure Operations.~~

5.26 Train Control Day-to-Day Train Movements

- (a) Queensland Rail is to have responsibility for Train Control and shall exercise Train Control having regard to the safe conduct of rail operations on the nominated network.
- (b) Queensland Rail and the Access Holder shall ensure that the operation of Train Services is in accordance with entry and exit times in the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles or varied in the circumstances specified in the Access Agreement (which normally include safety considerations, force majeure, incidents or emergencies, track possessions in accordance with the Access Agreement or as otherwise agreed between the parties, such agreement not to be unreasonably withheld).
- (c) The Network Management Principles establish the procedures Queensland Rail must follow in varying the Daily Train Plan.
- (d) The Access Holder is required to comply with all Queensland Rail Train Control directions and ensure all Trains and Rollingstock are equipped with appropriate communication systems to comply with the agreed Rollingstock Interface Standards.
- ~~(a) Queensland Rail will perform scheduling and Train Control in accordance with the terms of the Access Agreement.~~
- ~~(b) The Access Holder must comply with all of Queensland Rail's Train Control Directions and the Network Management Principles.~~
- ~~(c) Queensland Rail must comply with all applicable Laws, safeworking procedures and safety standards, the Operating Requirements Manual and all other train operation requirements in the Access Agreement and is not liable to the Access Holder if doing so is otherwise inconsistent with the Access Agreement.~~
- ~~(d) The Access Holder must:
 - ~~(i) ensure all Trains are equipped with appropriate communication systems; and~~
 - ~~(ii) provide and maintain all software and hardware, to Queensland Rail's satisfaction, to ensure an effective interface between Queensland Rail's and the Access Holder's information (including communication) systems.~~~~

- ~~(e) Queensland Rail will be entitled to treat other Train Services preferentially to the Access Holder's Train Services for the purpose of seeking to:
 - ~~(i) bring a passenger Train Service back to its scheduled running time;~~
 - ~~(ii) minimise any delay experienced by a passenger Train Service; or~~
 - ~~(iii) avoid a passenger Train Service that is operating, is scheduled to operate, or will be scheduled to operate in the Metropolitan Region during any peak period²⁴ becoming delayed.~~~~

~~6 Train operations~~

7 Train operations

- (a) The Access Agreement will specify all reasonable operational, communication and procedural requirements for Train Services.
- (b) Queensland Rail and the Access Holder are to comply with all laws, Safeworking Procedures and Safety Standards and all other train operations requirements in the Access Agreement. Safeworking Procedures and Safety Standards will as far as practicable be consistent for all Railway Operators on the nominated network.
- (c) The Access Holder must obtain certification from an appropriately qualified person whom both parties accept as being competent to provide certification for the Access Holder's Rollingstock and Rollingstock Configurations. Queensland Rail has a right to view a certificate of compliance and associated test results from an Access Holder in order to satisfy itself that the Rollingstock and Rollingstock Configurations are as agreed by the two parties in the IRMP and, if Queensland Rail is so satisfied the Rollingstock and Rollingstock Configurations so certified will be included in the Rollingstock specification as being authorised to operate on the nominated network subject to continuing compliance with the IRMP and the Rollingstock specification.
- (d) The Access Agreement will specify relevant Rollingstock Interface Standards. Queensland Rail may vary the agreed Rollingstock Interface Standards, the Safeworking Procedures and Safety Standards and other System-wide Requirements in respect to the management of the Rail Transport Infrastructure in the following circumstances:
 - (i) on safety grounds, acting reasonably, at any time following consultation with the Access Holder and the provision of reasonable notice to the Access Holder. In such circumstances,

²⁴ 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.

- each party is responsible for its own costs (including the costs of additional or modified equipment) in complying with the system wide change;
- (ii) in any other circumstance requiring a system wide change, Queensland Rail may, acting reasonably, negotiate such changes with the Access Holder and the Access Holder must not unreasonably withhold its consent to the change. Each party is responsible for costs in complying with the system wide change (including the cost of additional or modified equipment or modification of either party's Rollingstock) as agreed between them or, failing agreement, as determined by an expert.
- (e) The parties should agree specific performance levels and measurement criteria as a basis for creating effective performance management and incentives. This may involve financially based incentives and sanctions. The performance levels may also be reviewed periodically.
- (f) The Access Holder is responsible for the safe operation of its Rollingstock on the nominated network and must ensure that at all times its Rollingstock and Rollingstock Configurations comply with all applicable laws, the Rollingstock specification and the Rollingstock Interface Standards specified in the Access Agreement.
- (g) Queensland Rail may suspend the operation of Rollingstock and Trains for actual non-compliance or (acting reasonably) anticipated non-compliance with all applicable laws, the Rollingstock specification and the Rollingstock Interface Standards specified in the Access Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property. Queensland Rail may also suspend the operation of the affected Rollingstock and Trains for actual non-compliance where such non-compliance does not create a risk to the safety of any person or a material risk to property and the Access Holder has failed to rectify the non-compliance within a reasonable period of time. Where Queensland Rail suspends Rollingstock and/or Trains in these circumstances, the suspension will only apply until the non-compliance is rectified or in the event of anticipated non-compliance, the Access Holder has demonstrated that it is in compliance.
- (h) Where Queensland Rail suspends an Access Holder's Rollingstock and/or Trains, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.
- (i) The Access Holder must ensure all loadings of Rollingstock are secure.

8 Infrastructure Management

- (a) Queensland Rail is responsible for the management and control of the nominated network

- (b) Queensland Rail will carry out maintenance work on the nominated network such that, subject to any agreed criteria and the Network Management Principles, the infrastructure is consistent with the agreed Rollingstock Interface Standards and the Access Holder can operate Train Services in accordance with its Train Service Entitlements.
- (c) Queensland Rail may impose operational constraints (such as speed or load restrictions) for the protection of persons or property or to facilitate maintenance work or enhancements and has reasonable entitlements to take possession of the track for the purpose of maintenance work, emergency repairs and enhancements. In carrying out such work Queensland Rail will use its reasonable endeavours to minimise disruption to Train Services so that the Access Holder can operate Train Services in accordance with its Train Service Entitlements.
- (d) The Access Agreement will contain possession protocols for consultation with the Access Holder regarding maintenance that will impact on the Access Holder's schedule.
- (e) The Access Agreement will contain provisions requiring the parties to provide advice to each other in relation to factors that could affect the Access Holder's operation of Train Services or the integrity of the nominated network.
- (f) Prior to the commencement of Train Services, the Access Holder may, subject to reasonable terms and conditions, inspect the nominated network for the purposes of assessing the operational, environmental and safety risks with respect to the infrastructure, as well as the standard of the infrastructure comprising the nominated network including, but not limited to, fencing and at-grade crossings. Queensland Rail will not be liable for claims in relation to, or arising out of, the standard of the infrastructure except where Queensland Rail fails to maintain the infrastructure such that, subject to any agreed criteria (including those specified in the Network Management Principles), it is consistent with the agreed Rollingstock Interface Standards and the Access Holder can operate Train Services in accordance with its Train Service Entitlements.

6.1 — ~~Operation of Train Services and Rolling Stock~~

- ~~(a) The Access Holder must only operate Train Services in accordance with the Access Agreement unless the Access Holder has obtained Queensland Rail's prior written consent.~~
- ~~(b) The Access Holder is responsible for the operation of Rolling Stock on the Network (including for ensuring the safe operation of Rolling Stock).~~
- ~~(c) The Access Holder must comply with all applicable Laws, safeworking procedures and safety standards, the Operating Requirements Manual and all other train operation requirements in the Access Agreement.~~
- ~~(d) The Access Holder must operate Train Services in accordance with the relevant scheduled times and Train schedule unless the Access Holder~~

~~is permitted under the Access Agreement to do otherwise (including the Network Management Principles) or the parties agree otherwise.~~

- ~~(e) If the Access Holder is not able to operate a Train Service in accordance with its scheduled time, then:
 - ~~(i) the Access Holder must as soon as practicable notify Queensland Rail that it is not able to operate that Train Service and the reason for its inability; and~~
 - ~~(ii) Queensland Rail will use reasonable endeavours to provide an alternative schedule time for the relevant Train Service (but is not obliged to do so if this would alter the scheduled time for other Trains or would result in Queensland Rail incurring additional costs or expenses).~~~~
- ~~(f) Queensland Rail may collect information in respect of the Access Holder's Rolling Stock which is fitted with an operative digital tag and may provide the Access Holder with access to that information (at the Access Holder's cost). If Queensland Rail collects any such information and provides it to the Access Holder, then Queensland Rail has no responsibility, and is not liable, for the accuracy, completeness or veracity of that information.~~
- ~~(g) The Access Holder must ensure the operation of the Rolling Stock (including loading, unloading and cleaning):
 - ~~(i) does not affect the safe operation of the Rolling Stock or the Network or the operations or activities of Queensland Rail or other Rail Transport Operators; and~~
 - ~~(ii) is such that all things on or in the Rolling Stock remain on or in the Rolling Stock (including secured in position) during transit.~~~~

~~6.2 Authorisation of Rolling Stock and Train Configurations~~

- ~~(a) The Access Holder must obtain certification for the Access Holder's Rolling Stock and Train Configurations from an appropriately qualified person approved by Queensland Rail. Queensland Rail has a right to view a certificate of compliance and associated test results from an Access Holder in order to satisfy itself that the Rolling Stock and Train Configurations are as agreed by the two parties in the relevant IRMP.~~
- ~~(b) If the Access Holder wishes to modify any of the Rolling Stock or Train Configurations, then the Access Holder must not use that Rolling Stock or Train Configuration unless and until:
 - ~~(i) the IRMP has been reviewed;~~
 - ~~(ii) the Access Holder has complied with clause 6.2(a); and~~
 - ~~(iii) the parties have agreed any amendments to the Access Agreement (including varying the methodology, rates or other inputs for calculating Access Charges) as reasonably necessary;~~~~

~~in relation to that Rolling Stock or Train Configuration (as applicable).~~

~~6.3 Entering and exiting the Network~~

~~The Access Holder is solely responsible for and bears the cost and risk of obtaining any rights to access or use Private Infrastructure and the Access Holder is not relieved of any obligation under the Access Agreement if the Access Holder cannot obtain any such rights.~~

~~6.4 Notification of damage or disrepair~~

~~The Access Holder must notify Queensland Rail of any damage or disrepair or failure in operation or function of any part of the Network of which the Access Holder becomes aware.~~

~~7 Interface risk management~~

- ~~(a) The Access Holder must use reasonable endeavours to not do anything or permit anything to be done what would give rise to Interface Risks not addressed in the relevant IRMP. If the Access Holder does or permits such anything, then the Access Holder must notify Queensland Rail as soon as practicable.~~
- ~~(b) Each party must notify the other party of any non-compliance that it becomes aware of (including details of how it has rectified or intends to rectify that non-compliance).~~
- ~~(c) The Access Agreement must provide a process for the regular review of the relevant IRMP by the parties.~~
- ~~(d) If the parties do not agree any matter in relation to such a review, that disagreement may be referred to dispute resolution under the Access Agreement.~~

~~8 Environmental and emergency management plan requirements~~

~~8.1 Dangerous goods~~

- ~~(a) The Access Holder must not carry, or permit to be carried, Dangerous Goods except:
 - ~~(i) as expressly provided in the Access Agreement; or~~
 - ~~(ii) with the prior permission of Queensland Rail given in accordance with the Access Agreement.~~~~
- ~~(b) If the Access Holder wishes to obtain Queensland Rail's permission to carry Dangerous Goods, the Access Holder must first satisfy Queensland Rail, acting reasonably, that:
 - ~~(i) carrying the relevant Dangerous Goods in the manner proposed by the Access Holder 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 obtained and are 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 complied with.~~
- ~~(c) Unless otherwise expressly provided in the Access Agreement, where Dangerous Goods are permitted to be carried, the Access Holder must ensure that:
 - ~~(i) any Authorisations required under any applicable Law or Dangerous Goods Code have been obtained prior to the operation of the Train Service carrying Dangerous Goods and are available for inspection by 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 a Train Service; and~~
 - ~~(iv) before any Dangerous Goods are carried on a Train Service, the Access Holder's emergency management plan must include procedures for responding to an incident involving those Dangerous Goods.~~~~

9 Environmental damage Incident Management

- (a) Prior to the commencement of Train Services the Access Holder is required to develop an emergency response plan containing procedures for dealing with incidents which must be compatible with Queensland Rail's emergency procedures.
- (b) In the event of an incident, Queensland Rail is responsible for the overall coordination and management of incident responses and may, subject to using reasonable efforts to consult with the Access Holder, take any action it considers reasonably necessary to recommence services as soon as possible. The Access Holder is responsible for recovery of its Rollingstock in accordance with its emergency response plan.
- (c) The Access Holder must cooperate and assist with the restoration of the network in accordance with directions from Train Controllers seeking to coordinate the clearance of network blockages. Any Access Holder so directed should be adequately compensated for doing so and is entitled to expect that all rail operators will be subject to the same obligation. Queensland Rail has the right to pass through the cost of clearing the blockage to the party that has caused the damage.

- ~~(d) Investigations into incidents are to be commenced as soon as practicable after an incident and carried out in accordance with the process specified in the Access Agreement. The parties must cooperate in any investigation and consult in good faith in relation to the implementation of any recommendations.~~

8.210 Environmental Protection and Other Issues

- ~~(a) All Environmental Laws, regulations and relevant guidelines must be complied with.~~
- ~~(b) Environmental management must be approached on a risk identification and risk management basis with respect to operations on the nominated network. Auditing requirements should be linked to the environmental risks posed by an Access Holder's Train Services and be established in that Access Holder's Environmental Investigation and Risk Management Report (EIRMR) which should be amended as necessary from time to time to address ongoing risk and compliance issues.~~
- ~~(c) The Access Holder is required to inform Queensland Rail of non-compliance with its Environmental Investigation and Risk Management Report (EIRMR) and provide details of how it intends to address the non-compliance. The Access Holder is required to rectify the non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of Queensland Rail and any action required by the DEHP.~~
- ~~(d) The Access Holder should comply with its obligations under the EP Act including any notices or directions it receives from the DEHP. The Access Holder is required to inform Queensland Rail of non-compliance with the Access Holder's obligations under the EP Act. Failure to comply with such an obligation, where that failure causes or threatens Serious Environmental Harm, establishes grounds for a material event of default.~~
- ~~(e) Queensland Rail reserves the right to suspend the right of an Access Holder to operate on the nominated network if, in Queensland Rail's reasonable opinion, the Access Holder's Train Services cause or threaten Material Environmental Harm or Serious Environmental Harm. A suspension will only apply until the Access Holder demonstrates to Queensland Rail that the circumstances that gave rise to Queensland Rail's right to suspend have ceased to exist.~~
- ~~(f) Where Queensland Rail suspends an Access Holder's Train Services on environmental grounds, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.~~

~~The Access Agreement must include a process that:~~

- ~~(a) allows Queensland Rail to notify the Access Holder:~~

- ~~(i) of environmental harm as defined in the *Environmental Protection Act 1994* (Qld) (or anything that is likely to result in environmental harm); and~~
- ~~(ii) any requirement that Queensland Rail or any relevant Authority considers necessary to prevent, mitigate or remedy that environmental harm; and~~
- ~~(b) obliges the Access Holder to comply with those requirements and otherwise take whatever action or intervention is required to prevent, mitigate or remedy that environmental harm.~~

11 Accreditation

- ~~(a) Queensland Rail must have and maintain Accreditation as a Railway Manager under the TIA to the extent required to perform its obligations under the Access Agreement.~~
- ~~(b) An operator Accredited as a Railway Operator under the TIA must operate Train Services and the operator must maintain such Accreditation to the extent required to perform its obligations under the Access Agreement.~~

12 Emergency management plan Access Holder's Staff

- ~~(a) The Access Holder is responsible for demonstrating through the Interface Risk Assessment process that it has in place a process for ensuring the competence of its staff performing safety related work.~~
- ~~(b) Queensland Rail reserves the right to suspend the right of the Access Holder's Train Services to operate on the nominated network in the event of breach or (acting reasonably) anticipated breach of any laws relating to rail safety, Queensland Rail Train Control directions, Safeworking Procedures or Safety Standards. A suspension will only apply until the breach is rectified or, in the event of an anticipated breach, the Access Holder has demonstrated to Queensland Rail that it is in compliance.~~
- ~~(c) Where Queensland Rail suspends an Access Holder's Train Services, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.~~

13 Safety Risk Management

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

~~8.3~~

- ~~(a) The Access Holder must develop an emergency management plan that details the procedures for the management of incidents on the Network involving the activities of the Access Holder (including all relevant matters outlined in the Operating Requirements Manual). The emergency management plan must be compatible with the Access Agreement and Queensland Rail's emergency procedures and consistent with the prudent practices of an operator of Trains in Australia.~~
- ~~(b) The Access Holder must obtain a notice from Queensland Rail that it has no objection to the emergency management plan. The Access Agreement must set out a process for obtaining such a notice.~~

~~8.4 Obstructions and notifications~~

- ~~(a) The Access Holder must not cause or contribute to, or permit to continue, any obstruction²² of the Network.~~
- ~~(b) The Access Agreement must include notification requirements to Queensland Rail's satisfaction in relation to environmental harm, incidents on the Network involving the activities of the Access Holder, Dangerous Goods, obstructions, non-compliance with any safeworking procedures and any similar matter (and including any action or intervention taken or being taken by the Access Holder).~~
- ~~(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 Access Holder's Rolling Stock that is causing or contributing to an obstruction or preventing or hindering Train Movements.~~
- ~~(d) If Queensland Rail gives a Train Control Direction to the Access Holder to assist in removing, rectifying, mitigating or otherwise dealing with an obstruction caused or contributed to by another Rail Transport Operator, Queensland Rail will reimburse to the Access Holder its reasonable direct costs and expenses of providing such assistance.~~

~~9 Noise mitigation~~

- ~~(a) In addition to any requirements under the IRMP, the Operator must pay a contribution, as reasonably determined by Queensland Rail, to~~

²² An obstruction is any 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 (that is, any Rolling Stock derailment or disablement or any 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) but does not include an Operational Constraint imposed by Queensland Rail.

~~Queensland Rail's costs and expenses relating to any noise mitigation or management measures on the Network, or adjacent land, considered necessary by Queensland Rail either in accordance with Prudent Practices or to comply with any noise levels or limits applicable²³ from time to time.~~

- ~~(b) Queensland Rail will use reasonable endeavours to consult with the Access Holder prior to electing to implement noise mitigation or management measures and to notify the Access Holder of how it will determine the Access Holder's contribution to costs and expenses.~~

14 ~~14~~ Inspection and audit rights

- ~~(a) Rights of inspection and audit in relation to each party's compliance with the Access Agreement and inspection of Trains and Rollingstock shall be included in the Access Agreement.~~
- ~~(b) The Access Agreement will specify the terms and conditions on which the parties can carry out such inspections and audits.~~
- ~~(c) Each party will, in carrying out any inspection or audit, give the other party reasonable notice and use reasonable endeavours to minimise disruption to the other party's operations.~~
- ~~(a) The Access Agreement will specify the reasonable terms and conditions on which Queensland Rail can carry out inspections and audits of the Access Holder's compliance with the Access Agreement and the loading of wagons used in a Train Service.~~
- ~~(b) Queensland Rail may require the Access Holder, and the Access Holder must comply with Queensland Rail's requirements, to do anything reasonably necessary for Queensland Rail to conduct the inspection or audit including to divert or delay a Train Service or to make any part of a Train available for inspection or weighing.~~

15 Insurance

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

16 ~~16~~ Risk and indemnities Indemnities and Liabilities

- ~~(a) 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.~~

²³ The applicable noise levels or limits will be those required to observe or comply with any applicable Laws or the lawful requirements of any relevant Authority or that are determined by Queensland Rail in accordance with Prudent Practices.

- ~~(b) The Access Holder is solely liable for and is required to release and indemnify Queensland Rail for any damage to property or personal injury or death of any person being transported on Train Services except to the extent that the damage or harm is caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of Queensland Rail or its staff. Unless otherwise agreed, the Access Holder shall extend to Queensland Rail any exclusion or limitation of liability afforded by the Access Holder's conditions of carriage with its customers.~~
- ~~(a) The Access Holder must indemnify Queensland Rail against all claims which may be brought against or made upon Queensland Rail and all losses:~~
- ~~(i) caused, or contributed to, by any default, act or omission by the Access Holder, the Access Holder's directors, officers, employees, contractors, agents, consultants or Customers;~~
 - ~~(ii) subject to **clause 11(a)(iv)**, relating to damage to or loss of any property or any personal injury or death relating to the Train Services, the Rolling Stock or Train Movements except to the extent caused, or contributed to, by Queensland Rail's negligence;~~
 - ~~(iii) in connection with or in relation to any obstruction²⁴, to the extent caused, or contributed to, by the Access Holder;~~
 - ~~(iv) arising out of, or in any way associated with, the handling, loading, unloading, transportation, escape or release of Dangerous Goods in connection with or relating to any Train Service for a Mixed Goods Train Service, whether or not caused, or contributed to, by any act or omission (including negligence) of Queensland Rail (or its officers, employees, contractors or agents) (but excluding any part of the claim or loss that would have arisen regardless of whether Dangerous Goods were being carried on the relevant Train Service);~~
 - ~~(v) relating to claims by a Customer;~~
 - ~~(vi) relating to third party claims in relation to any data collected about Train Services and distributed by Queensland Rail (on a bona fide basis) in accordance with the Access Agreement.~~
- ~~(b) The Access Holder is responsible for the conduct of the Access Holder's directors, officers, employees, contractors, agents and similar persons (including a delegate or subcontractor) in exercising any of the Access Holder's rights or complying with any of the Access Holder's obligations and that conduct is taken to be the Access Holder's conduct.~~

²⁴ See footnote 22.

~~(c) The Access Holder is responsible for the conduct of each passenger on the Access Holder's Train Services and that conduct is taken to be the Access Holder's conduct.~~

12.17 Limitation of Liability

- ~~(a) The liabilities of the parties for default shall be limited as agreed in the Access Agreement.~~
- ~~(b) Except as otherwise provided in the Access Agreement, neither party has any liability for Consequential Loss or loss of profits in any circumstances.~~
- ~~(c) Unless otherwise agreed in the Access Agreement, where a party:
 - ~~(i) (whether Queensland Rail or the Access Holder), requires the conduct of an audit or inspection under **clause 8.1.7(e)** or **(f)** of the Undertaking (as applicable); or~~
 - ~~(ii) (being Queensland Rail), suspends an Access Holder's Rollingstock, Trains and/or Train Services,~~~~
- ~~(d) that party (referred to as the "First Party") will be liable to the other party in respect of loss or damage (including damages for Consequential Loss) arising from the conduct of the audit or inspection or the suspension (as applicable) if, and only if, no reasonable person in the position of the First Party could have formed the view that the stated grounds for such an audit, inspection or suspension existed, provided that the other party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the audit or inspection or the suspension. The First Party shall bear the burden of establishing that a reasonable person in its position could have formed that view.~~
- ~~(e) The Access Agreement will specify the circumstances in which the Access Holder has a claim against Queensland Rail for the non-provision of Access or the cancellation of a Train Service caused by breach of the Access Agreement or negligence by Queensland Rail.~~
- ~~(f) The Access Agreement will specify the circumstances in which each party has a claim against the other party for delays to Train movements caused by breach of the Access Agreement or negligence by the other party.~~
- ~~(g) Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim.~~
- ~~(a) The liabilities of the parties for default will be limited or excluded as agreed in the Access Agreement.~~
- ~~(b) Subject to **clause 12(c)** and except as otherwise provided in the Access Agreement, neither party has any liability for Consequential Loss in any circumstances.~~

- ~~(c) Consequential Loss is excluded from the indemnity in **clause 11** except for any loss arising out of any claim by a third party including a Customer.~~
- ~~(d) No exclusion or limitation of liability or restriction on the making of a claim in the Access Agreement will apply in respect of a claim by one party against the other for monies due and payable in accordance with the Access Agreement.~~
- ~~(e) Without limitation to the matters for which Queensland Rail's liability may be excluded, Queensland Rail's liability in relation to:
 - ~~(i) any loss of any thing carried by a Train Service;~~
 - ~~(ii) any matter for which the Access Holder bears or assumes risk or liability (including the Access Holder's representations or warranties);~~
 - ~~(iii) any act or omission by Queensland Rail referred to in **clause 8.4(b) or 8.4(c)**;~~
 - ~~(iv) any exercise of a right, or compliance with an obligation by Queensland Rail in accordance with the Access Agreement; or~~
 - ~~(v) any data collected in connection with the Train Services;~~is excluded and if it cannot be excluded is limited to \$1.00.~~
- ~~(f) The Access Agreement will specify the circumstances in which either party has a claim against the other party in respect of delays to Train Movements caused by a breach of the agreement by, or negligence of, the defaulting party.~~
- ~~(g) The Access Agreement will specify the circumstances in which the Access Holder has a claim against Queensland Rail for the non-provision of Access or the cancellation of a Train Service caused by breach of the Access Agreement or negligence by Queensland Rail.~~
- ~~(h) Claims by either party must be lodged within two years of the occurrence of the event or circumstance giving rise to the claim and must exceed \$500,000 for any one event or cause of action or series of related events or causes of action.~~
- ~~(i) A party must use best endeavours to give the other party notice and full details of any such claim within 12 months after the event or circumstance giving rise to the claim occurs.~~

18 Material Change

- ~~(a) Access Charges will be adjusted to reflect the net impact of any material change where such material change results in a variation to the net cost to Queensland Rail of performing its obligations under the Access Agreement.~~

- (b) A material change shall be limited to changes in taxes, laws or funding from Queensland Rail's Transport Service Contract Payments. The effects of material changes should be assessed on a case-by-case basis and in consultation with the Access Holder.
- (c) An independent expert will determine any Dispute regarding the impact on Access Charges as a result of a material change.

19 Disputes

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

1320 Default, suspension and termination

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

14 Insurance

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

15 Security

- (a) The Access Holder must provide a security deposit to Queensland Rail in the form of a bank guarantee or other form satisfactory to Queensland Rail (and on terms acceptable to Queensland Rail) to secure the performance of its obligations under the Access Agreement.
- (b) Queensland Rail may review the amount of the security deposit to increase or decrease it as factors relevant to Queensland Rail's risk exposure change.

16 Adjustments

- (a) A mechanism will be provided to allow adjustments to the Access Agreement (including, if applicable, by adjusting the relevant Access Charges) where a material change occurs that has a net adverse financial effect on Queensland Rail in relation to it performing its obligations or exercising its rights so that:
 - (i) the net financial effect of the material change on Queensland Rail is removed; and

- ~~(ii) Queensland Rail is placed in the position it would have been in if the material change had not occurred.~~
- ~~(b) A material change will include changes in taxes, credits, laws, standards and funding (for example from Transport Service Payments).~~
- ~~(c) If the parties are not able to agree any adjustments to the Access Agreement, then the matter will be referred to an independent expert for determination as a dispute.~~
- ~~(d) The Access Agreement may include rate review provisions as referred to in **clause 3.5** of this Undertaking.~~

~~17~~ Disputes

- ~~(a) Any dispute between the parties is firstly to be escalated through each party's internal management structure and ultimately to each party's chief executive officer (or the nominee of the chief executive officer). If the dispute is not resolved, then the parties may agree to refer the dispute for resolution by an expert (and must do so if the Access Agreement requires such a referral).~~
- ~~(b) The dispute resolution provisions must recognise the ability of the Rail Safety Regulator under the TRSA to resolve disputes and must provide that a referral to the Rail Safety Regulator overrides the dispute resolution provisions in the Access Agreement to the extent of any inconsistency with the dispute resolution process in the Access Agreement.~~
- ~~(c) Queensland Rail will be able to determine disputes in relation to amendments to an IRMP, the safety of persons or property, the environment or the land on which the Network is located (including the use of the Network) if the dispute is not resolved under the Access Agreement by agreement between the parties or by an expert or resolved by the Rail Safety Regulator.~~
- ~~(d) If a dispute is not resolved by agreement or referral to an expert, then the dispute may be determined by a court.~~

~~18~~21 Force Majeure Event

- ~~(a) The obligations of either party (other than an obligation to pay monies due) will be suspended where by reason of a Force Majeure Event that party is delayed in, or prevented from, carrying out its obligations under the Access Agreement. The Access Agreement will provide for relief in respect of the payment of Access Charges to the extent that Queensland Rail is unable to provide Access Rights because of a Force Majeure Event, affecting Queensland Rail.~~
- ~~(b) If infrastructure on specified lightly trafficked corridors of the nominated network is damaged by a Force Majeure Event and in Queensland Rail's~~

~~reasonable opinion the cost of repairing the damage is not economic, Queensland Rail may elect not to proceed with repairs or replacement unless the parties agree as to the funding of the cost of that work.~~

- ~~(c) The Access Agreement will provide for a process that might result in termination of the Access Agreement if circumstances of a prolonged Force Majeure Event prevent the performance by a party of its obligations.~~
- ~~(a) The obligations of a party (other than an obligation to pay monies due) will be suspended where a Force Majeure Event prevents or hinders that party from performing its obligations under the Access Agreement.~~
- ~~(b) If part of the Network is damaged or destroyed by a Force Majeure Event, Queensland Rail may elect not to proceed with repairs or replacement unless the parties agree as to the funding of the cost of that work.~~
- ~~(c) The Access Agreement may be terminated if a delay caused by a Force Majeure Event continues for a prolonged period.~~

~~19 Reduction and relinquishment of Access Rights~~

~~19.1 Reduction of Access Rights~~

~~An Access Agreement must include provisions that:~~

- ~~(a) entitle Queensland Rail to reduce the Access Holder's Access Rights where the Access Holder has under-utilised the Access Rights; and~~
- ~~(b) set out objective criteria for the purpose of assessing whether the Access Rights are consistently underutilised.~~

~~19.2 Relinquishment~~

~~An Access Agreement must include provisions which provide:~~

- ~~(a) that the relevant Access Holder may relinquish all or part of its Access Rights (whether or not for the purpose of allowing a specified Access Seeker to be granted Access Rights by Queensland Rail that use all or part of the Capacity that will become Available Capacity as a result of the relinquishment (**Relinquished Capacity**)); and~~
- ~~(b) that any such relinquishment is subject to the Access Holder paying to Queensland Rail a fee:~~
- ~~(i) equivalent to the present value (calculated at a discount rate equal to the WACC) of the aggregate of the Take or Pay Charges that would have been payable on and from the date on which the relinquishment will take effect until the end of the term if the relevant Access Rights were not relinquished and the Access Holder did not use those Access Rights; and~~
- ~~(ii) if, prior to the date on which the relinquishment will take effect, Queensland Rail has granted Access Rights (with effect on or after~~

~~that date) to an Access Seeker using the Relinquished Capacity (New Access Holder), adjusted to offset the aggregate of the Take or Pay Charges payable by the New Access Holder for all or part of the same period as that for which the Take or Pay Charges are calculated under paragraph (i) above (calculated assuming the New Access Holder does not use the relevant Access Rights) but only to the extent that those Take or Pay Charges are directly attributable to the Relinquished Capacity;~~

~~provided that in no circumstances will that fee be less than zero; and~~

- ~~(c) if applicable, Queensland Rail will facilitate the Access Holder relinquishing Access Rights for the purpose of allowing an Access Seeker nominated by the Access Holder to be granted Access Rights by Queensland Rail, subject to Queensland Rail's requirements in relation to doing so being satisfied.~~

2022 Assignment

- ~~(a) The Access Holder may assign the whole of its rights and obligations under the Access Agreement to a related body corporate, provided that the assignor remains liable for the performance of obligations under the Access Agreement or to a non-related body corporate, with the prior written consent of Queensland Rail (such consent not to be unreasonably withheld).~~
- ~~(b) A change in control of an Access Holder not a publicly listed corporation will be deemed to be an assignment of the Access Agreement.~~
- ~~(a) Queensland Rail may assign, novate, transfer or otherwise deal with (Assign) its rights and obligations under the Access Agreement without the prior consent of the Access Holder. Queensland Rail must give notice to the Access Holder advising the effective date of the Assignment.~~
- ~~(b) On the Assignee executing and delivering to the Access Holder a deed covenanting to be bound by and to perform Queensland Rail's obligations under the Access Agreement, Queensland Rail will be released and discharged from further liability under the Access Agreement in respect of obligations that the Assignee has undertaken to perform.~~
- ~~(c) The Access Holder may Assign the whole of its rights and obligations under the Access Agreement with the prior consent of Queensland Rail provided that the Assignee enters into a deed of covenant with Queensland Rail (on terms satisfactory to Queensland Rail) to be bound by and to perform the Access Holder's obligations under the Access Agreement.~~
- ~~(d) The Access Holder may only mortgage, charge, encumber or otherwise grant any security (Charge) over its rights and obligations under the~~

~~Access Agreement in favour of a person (Chargee) if the Access Holder, Chargee and Queensland Rail have entered into a deed of covenant (on terms satisfactory to Queensland Rail) where the Chargee must only exercise rights under the Charge as though the Chargee was the Access Holder.~~

23 Queensland Rail's Access Undertaking

- ~~(a) The parties will comply with all applicable laws.~~
- ~~(b) The parties will comply with the terms of the Undertaking, including the ring fencing obligations, in effect from time to time, unless otherwise agreed in the Access Agreement.~~

24 Representation and warranties

The Access Agreement may set out representations and warranties given ~~by~~ by both the Access Holder to Queensland Rail in favour in and -Queensland Rail to the Access Holder, including, for example, that the Access Holder has satisfied itself as to both the standard and suitability of the Network for the Train Services and the ability of the Access Holder's Rolling Stock to safely interface with, and to operate on, the Network.

25 Confidentiality

The Access Agreement may include a confidentiality provision if required by either party. However, any confidentiality provision must not prevent an Access Holder 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).

23 Land tenure

- ~~(a) The Access Agreement must include provisions that detail the Access Holder's obligations in relation to complying with the requirements of Queensland Rail's land tenure and to not contribute to Queensland Rail breaching its land tenure obligations.~~
- ~~(b) If there is any inconsistency between the Access Agreement and a land tenure then the land tenure prevails to the extent of the inconsistency.~~
- ~~(c) Queensland Rail is not liable to the Access Holder in relation to any amendment, replacement, surrender, termination, expiry or determination of any land tenure.~~

~~Schedule D~~

~~Feedback Form for Unsuccessful Access Application~~

Reason for unsuccessful Access Application		Tick as appropriate
1.	The Access Charges that are expected to arise from the Access Agreement (clause 1.1.1(a)(i))	
2.	The cost and risk to Queensland Rail of providing Access Rights in accordance with the Access Agreement (clause 1.1.1(a)(i))	
3.	The ability of the Access Seeker to satisfy and continue to satisfy the prudential requirements set out in clause 2.9.1 (clause 1.1.1(a)(i))	
4.	The term of the Access Agreement (clause 1.1.1(a)(i))	
5.	Another effect that entering into the Access Agreement may have on Queensland Rail's financial and risk position (clause 2.7.2(d)(i))	
6.	The time of receipt of the Access Application (clause 1.1.1(a))	

Schedule D – Regulatory Asset Base

Regulatory Asset Base

1 Maintenance of Regulatory Asset Base

1.1 Roll forward principles

On an annual basis, Queensland Rail will roll forward the asset values in its 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 02-1**; and

- (e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with **clause 04.2**.

1.2 Adjusting the value of assets in the Regulatory Asset Base

- (a) The value of assets contained in the 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 ~~Depreciated Optimised Replacement Cost value, subject to approval by the QCA approval.~~ of additional sections of the Network incorporated into the West Moreton System, 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; ~~or~~
 - ~~(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~~
 - ~~(ii)(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 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 the 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 02-2(b)**.
- (c) Information provided to the QCA under this **clause 01-3** (including in response to a request under **clause 02-2(b)**):
 - (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) ~~is provided subject to sections 187 and/or 239 (as applicable) of the QCA Act. must be kept confidential and not published by the QCA except to the extent that Queensland Rail agrees otherwise.~~

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 02-1**, has accepted the capital expenditure into the 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 01-1**, subject to **clause 01-2**, 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 Macalister and Macalister to Columboola.
- (b) Information provided to the QCA under this **clause 01-4**:
 - (i) will be accompanied by a statement signed by Queensland Rail's Chief Executive Officer confirming that information is, in all material respects, correct;
 - (ii) ~~is provided subject to sections 187 and/or 239 (as applicable) of the QCA Act; and~~
~~(i) must be kept confidential and not published by the QCA except to the extent that Queensland Rail agrees otherwise; and~~
 - ~~(ii)(iii)~~ must be based on the roll forward principles in **clause 01-4**.

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 the 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 03**;
 - (B) prudent in the standard of works in accordance with **clause 04**; and
 - (C) prudent in cost in accordance with **clause 05**; and
 - (ii) has been incurred and either the capital expenditure project has been commissioned or formally discontinued.
- (b) The QCA must notify Queensland Rail in writing if it accepts capital expenditure into the Regulatory Asset Base.
- (c) If the QCA is considering refusing to accept all or part of any capital expenditure into the 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, within 20 Business Days after being given that draft decision (or such longer period as agreed by the QCA), 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 the 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 03** to **05** in relation to a capital expenditure project at any time, then this does not affect its right to seek any such acceptance under **clauses 03** to **05** 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 the Regulatory Asset Base.
- (g) Queensland Rail will provide to the QCA for approval a copy of its strategic asset management plan describing the general standards

Queensland Rail will apply in determining whether to incur capital expenditure by replacing assets within the Regulatory Asset Base rather than maintaining the existing assets (on approval by the QCA being the “Asset Management Plan”). The Asset Management Plan is not intended to be binding on Queensland Rail, or represent a pre-assessment of prudence by the QCA, but is intended to provide a useful guide as to the prudence of the scope of Queensland Rail’s proposed Asset Replacement Expenditure. Queensland Rail will advise the QCA of any proposed amendments to the Asset Management Plan over the Term. If the QCA assesses any proposed amendments to the Asset Management Plan as material, it will notify Queensland Rail and those amendments will not be taken into account when considering consistency with the Asset Management Plan in accordance with this Schedule, unless the Asset Management Plan including the proposed amendments is resubmitted by Queensland Rail for approval by the QCA, and is approved by the QCA.

2.2 Assessing prudence of capital expenditure

For the purposes of **clauses 03, 04** and **05**:

- (a) the QCA must:
 - (i) in assessing whether capital expenditure is prudent:
 - (A) only consider information available, or reasonably available, to Queensland Rail at the time of making the investment decision; and
 - (B) as it considers necessary, take advice from independent advisors using appropriate benchmarks and experience and consult with relevant stakeholders, 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
 - (ii) give Queensland Rail a notice of any determination that it makes under **clauses 03, 04** or **05** (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 03, 04** or **05** (as applicable) within 45 Business Days after receiving the request from Queensland Rail to make such a determination under **clauses 3, 4** or **5** (as applicable);
- ~~(c)~~ Queensland Rail must respond to a request by the QCA under **clause 02.2(b)** within 30 Business Days after receiving that request (or such longer period as agreed by the QCA); and

- ~~(d) if the QCA has not notified Queensland Rail of any determination that it is required to make under **clauses 3, 4 or 5** (as applicable) within 45 Business Days after:~~
- ~~(ii) where the QCA has not made a request under **clause 2.2(b)**, receiving a request from Queensland Rail under **clauses 3, 4 or 5** (as applicable) to make such a determination; or~~
- ~~(iii) where the QCA has made a request under **clause 2.2(b)**, receiving additional information from Queensland Rail reasonably required to make any determination under **clauses 3, 4 or 5** (as applicable) as requested by the QCA;~~
- ~~(c) then the QCA is taken to have made a determination to accept Queensland Rail's 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, accept the scope of a capital expenditure project as prudent if
 - ~~(b)(i)~~ 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; ~~or-~~
 - ~~(ii)~~ it is Asset Replacement Expenditure and is consistent with the asset age and composition of the assets in the West Moreton System and asset replacement is in accordance with the Asset Management Plan. However, the QCA retains the right to review the composition of Asset Replacement Expenditure.
- ~~(a)(b)~~ If **clause 03-2(a)** does not apply or acceptance is not sought or obtained under **clause 03-2(a)**, Queensland Rail, an Access Seeker, an Access Holder, ~~or~~ a Customer or a third-party investor may request the QCA's acceptance of the scope of a capital expenditure project as prudent in accordance with **clause 03-2(e)**.
- ~~(b)(c)~~ If a request is made under **clause 03-2(b)**, 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 03-2(d)**, 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 03-2(e)(i)** does not apply, reasonable grounds exist for proceeding.

~~(e)~~(d) The factors that the QCA will have regard to for the purposes of **clause 03-2(e)** are:

- (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 legislative requirements, including relating to workplace health and safety and environmental requirements;
- (v) the appropriateness of Queensland Rail's processes to evaluate and select proposed capital expenditure projects, including 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.

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 03-2(e)**, 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 Regulatory Asset Base at its escalated value; and
 - (B) if only part of the Excluded Capital Expenditure is included in the Regulatory Asset Base, **clause 03-3(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 a third-party investor** may request the QCA's acceptance of the standard of works of a capital expenditure project as prudent in accordance with this **clause 04**.
- (b) If a request is made under **clause 04-2(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 04-2(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 04.2(b)(i)** are:
- (i) the requirements of Operators and what is reasonably required to comply with Access Agreements;
 - (ii) current and likely future usage levels;
 - (iii) the requirements of the 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 which is accepted by the Safety Regulator; and
 - (vi) all relevant Law and the requirements of any Authority (including the Safety Regulator).

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 05.2**, 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 06.1(b)**, Queensland Rail or a third-party investor may request the QCA's acceptance of the costs of that capital expenditure project as prudent in accordance with this **clause 05.2**.
- (b) If a request is made under **clause 05.2(a)**, the QCA will accept as prudent:
 - (i) the value of a contract if:
 - (A) the QCA is satisfied that contract provisions regarding contract variations and escalation accord with good commercial practice; and

- (B) the auditor engaged in accordance with **clause 06.2** certifies that 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 05.2(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 06.2** 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)~~ (2) the contract has been appropriately managed having regard to the matters in **clause 06.1(c)(iv)**;
 - ~~(2)(3)~~ (3) whether the contract variations and/or escalations are appropriately justified; and
 - ~~(3)(4)~~ (4) 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 06**.

5.3 General process for acceptance of prudence of costs

- (a) If **clause 05.2** does not apply or acceptance is not sought or obtained under **clause 05.2**, Queensland Rail or a third-party investor may request the QCA's acceptance of the costs of a capital expenditure project as prudent in accordance with this **clause 05.3**.
- (b) If a request is made under **clause 05.3(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 05.3(e)** 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 05.3(b)** are:
- (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 06.1(b)**, the extent to which Queensland Rail has achieved compliance with that procurement strategy;
 - ~~(iii)~~**(iv)** the Asset Management Plan; and
 - ~~(iv)~~**(v)** 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.

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 03**, 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 06.1(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 06.1(c)**; and
 - (B) whether the procurement strategy tends to assist in achieving the requirements for prudence of costs set out in **clause 05.3**); 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 06.1(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) accommodation of 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;
 - (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 06.2** 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

As part of the implementation of a procurement strategy approved by the QCA under **clause 06.1**, 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:

- (a) Queensland Rail will appoint the auditor, after obtaining the QCA's approval of the auditor (including the terms of engagement);
- (b) 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;

- (c) 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);
- (d) Queensland Rail will, within a reasonable time, provide any relevant information the auditor reasonably requires for the purpose of conducting the audit;
- (e) 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 06-2(f)** below;
- (f) the auditor will compile an audit report:
 - (i) 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
 - (ii) if the auditor identifies that Queensland Rail has not complied in all material respects with the approved procurement strategy:
 - (A) details on the relevant non-compliance;
 - (B) any reasons stated by Queensland Rail for the relevant non-compliance; and
 - (C) whether the non-compliance was reasonable in the circumstances;
- (g) the auditor will provide to Queensland Rail and the QCA:
 - (i) progress reports on the audit process every six months; and
 - (ii) a copy of the audit report upon completion of the audit (which the QCA may publish if it considers it appropriate); and
- (h) 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.
- ~~(h)~~(i) When deciding whether to approve a procurement strategy, the QCA may take advice as it considers necessary from appropriately qualified and experienced independent advisors and, if so, the cost of those advisors will be borne by Queensland Rail.

For the purpose of **clause 05.3**, the costs incurred by Queensland Rail in relation to an external auditor engaged in accordance with this **clause 06.2** will

form part of the capital expenditure for the relevant capital expenditure project and the QCA will accept those costs as prudent.

7 Capital Expenditure Carryover Account

- (a) Queensland Rail will maintain a register in which it will annually record all Approved Capital Expenditure (including identifying the relevant capital expenditure by project).
- (b) If, at the end of each Year, the Approved Capital Expenditure differs from the Capital Indicator, 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, if the Approved Capital Expenditure exceeds the Capital Indicator; or
 - (ii) an over recovery of revenue, if the Approved Capital Expenditure is less than the Capital Indicator.
- (c) The balance recorded in the Capital Expenditure Carryover Account will include:
 - (i) a return on capital component, calculated as the difference between the return on capital assumed for the Capital Indicator and the return on capital that should have applied for the Approved Capital Expenditure, accrued at the WACC;
 - (ii) a depreciation component, calculated as the difference between the depreciation assumed for the Capital Indicator and the depreciation that should have applied for the Approved Capital Expenditure; and
 - (iii) a tax depreciation component, calculated as the difference between the tax depreciation assumed for the Capital Indicator and the tax depreciation that should have applied for the Approved Capital Expenditure,

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

- (d) The balance in the Capital Expenditure Carryover Account at the end of each Year will be rolled forward at the WACC.
- (e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining Reference Tariffs to apply in the next undertaking with the intention of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking, the balance in the Capital Expenditure Carryover Account will be recovered from, or returned to, Access Holders (as the case may be) in the form of a single payment following the Terminating Date.

Schedule E – Tabulated representations of quarterly and annual report information

Tabulated representations of quarterly and annual report information

1 Quarterly reports

			Mt Isa	West Moreton	North Coast	Other ²⁵
Train Services						
Train Services that reached their destination within the Allotted Time Threshold		Number				
		%				
Train Services that did not reach their destination within the Allotted Time Threshold	Due solely to the acts or omissions of Queensland Rail in its capacity as the Railway Manager	Number				
		%				
	Due solely to delays attributed to an Access Holder or a Nominated Railway Operator	Number				
		%				
	Due to any other reason	Number				
		%				
Total Train Services		Number				
Delays						
The average Above Rail Delay		Minutes/100 train KMs				
The average Below Rail Delay						
The average Unallocated Delay						

²⁵ The Network outside the West Moreton Reporting Area, the Mt Isa Reporting Area and the North Coast Reporting Area.

			Mt Isa	West Moreton	North Coast	Other ²⁵
Cancellations						
Train Services scheduled in the Daily Train Plan (DTP) that were cancelled	Due solely to Queensland Rail in its capacity as the Railway Manager	Number				
		%				
	Due solely to delays attributed to an Access Holder or a Nominated Railway Operator	Number				
		%				
	Due to any other reason	Number				
		%				
Major Reportable Safety Incidents						
Major reportable incidents reported to the Rail Safety Regulator		Number				
Complaints by Access Holders						
<u>Operating Requirements Manual</u>	<u>Number</u>					
	<u>%</u>					
<u>Interface Risk Management Plan</u>	<u>Number</u>					
	<u>%</u>					
<u>Environmental investigation and/or risk management negotiation process or report created pursuant to clause 2.6.2 of the Undertaking</u>	<u>Number</u>					
	<u>%</u>					
<u>Rollingstock Authorisation</u>	<u>Number</u>					
	<u>%</u>					
<u>Application of the Network Management Principles</u>	<u>Number</u>					
	<u>%</u>					
Temporary Speed Restrictions						
Track under temporary speed restriction ²⁶	Average %					
	Average KMs					
Overall Track Quality Index						
Most recent measure of Track quality	OTCI					

²⁶ This measure excludes the Metropolitan Region.

2 Annual reports

Request for Preliminary Information	Number		Average time to provide information (Business Days)	
Requests for preliminary information in accordance with clause 2.1.3				
<u>Number of instances of Preliminary Information provided to an Access Seeker under clause 2.1.5</u>	<u>< 10 days</u>	<u>11 to 20 days</u>	<u>21 to 40 days</u>	<u>> 40 days</u>
Access Applications	Number		%	
Access Applications acknowledged in accordance with the Undertaking within the applicable timeframe				
For Access Applications received in accordance with the Undertaking and not acknowledged within the applicable timeframe	Average delay to give acknowledge notice (Business Days)			
Indicative Access Proposals	Number		%	
Indicative Access Proposals provided in accordance with the Undertaking within the applicable timeframe				
Acknowledgement notices including an extension of time for the provision of an Indicative Access Proposal				
Where Indicative Access Proposals are provided in accordance with the Undertaking but outside the applicable timeframe	Average delay to give Indicative Access Proposal (Business Days)			
<u>Number of instances of issue of Indicative Access Proposal</u>	<u>< 10 days</u>	<u>11 to 20 days</u>	<u>21 to 40 days</u>	<u>> 40 days</u>
<u>Number of instances of an Access Seeker giving a notice of intention to proceed</u>	<u>< 10 days</u>	<u>11 to 20 days</u>	<u>21 to 40 days</u>	<u>> 40 days</u>
Disputes under clause <u>5.16.3 (dispute resolution process)</u> and under clause 2.1.3 (publishing and amending	Number			

templates\dispute-resolution-process			
Total	clause 6.1	clause 2.1.3	
Disputes determined in favour of the Access Seeker			
Negotiation Process		Number	%
Access Applications for which a Negotiation Cessation Notice have been given under clause 2.6.3			
Access Agreements executed by Queensland Rail (excluding agreements which extend or renew an Access Holder's Access Rights that existed immediately prior to execution of the agreement)	Negotiation Period		Number
	≤ 3mths		
	> 3 but ≤ 6mths		
	> 6 but ≤ 12mths		
	> 12mths		
	Total		

Schedule F – Standard Access Agreement

Standard Access Agreement

Schedule G – Preliminary and Additional Information

PART A. PRELIMINARY INFORMATION

1 Information Pack

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

<ul style="list-style-type: none"> Sectional running times (calculated based on the projected average sectional running times for the Predominant Train Service) Maximum Train lengths Incident recovery times <p>(l) Description of Systems</p> <ul style="list-style-type: none"> Operational Safeworking <p>(m) Capacity Information</p> <ul style="list-style-type: none"> MTP* 		
---	--	--

~~* The MTP is provided subject to the following caveats:~~

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

~~2. Access to Rail Corridor~~

Content	Cost
Access to the rail corridor*	Nil

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

~~Part 10 Identification of the relevant party (including that party's name, address and contact details) that the Access Seeker would need to obtain approval from to gain access to that land, where this information is reasonably available to QR Network;~~

~~Part 11 Advice as to the nature and extent of the rights, if any, that QR Network holds in relation to the relevant land; and~~

~~Part 12 A notice that may be provided to that party identifying that QR Network has no objection to the Access Seeker negotiating for access to that land.~~

2 ~~3~~ Rollingstock Interface Standards

Content	Cost
QR Network <u>Queensland Rail</u> Rollingstock Interface Standards *	\$1,000.00 per set

* ~~QR Network~~Queensland Rail Rollingstock Interface Standards are provided subject to the following caveats:

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

3 ~~4~~. Commercial Information

Content		Cost
<p><u>For a System where a Reference Tariff applies</u></p>	<p><u>Relevant reference tariffs.</u></p> <p><u>Blackwater System</u></p> <ul style="list-style-type: none"> ➤ <u>Central Blackwater Cluster</u> ➤ <u>North Blackwater Cluster</u> ➤ <u>Stanwell Cluster</u> ➤ <u>South West Blackwater</u> <p><u>Goonyella System</u></p> <ul style="list-style-type: none"> ➤ <u>North Goonyella Cluster</u> ➤ <u>South Goonyella Cluster</u> ➤ <u>West Goonyella Cluster</u> ➤ <u>Gregory Branch via Goonyella Cluster</u> ➤ <u>Central Goonyella Cluster</u> <p><u>Moura System</u></p> <p><u>Newlands System</u></p> <p><u>Western System</u></p>	<p>Nil</p>
<p><u>For a System where no Reference Tariff applies</u></p>	<p><u>Cost of providing the service, including the capital, operating and maintenance costs consistent with s101(2)(b) of the QCA Act.</u></p> <p><u>Asset value including the valuation methodology consistent with s101(2)(c) of the QCA Act.</u></p>	

Applicable QR Network <u>Queensland Rail</u> Standard Access Agreement	Nil
<u>Capacity Information</u> <u>MTP</u>	<u>Nil</u>

* The MTP is provided subject to the following caveats:

Part 13 The identity of other Access Holders will not be detailed on the information provided;

Part 14 The terms and conditions of other Access Holders' Train Service Entitlements will not be detailed; and

Part 15 The MTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact on the Capacity of the Rail Infrastructure detailed, but QR Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Capacity of the Rail Infrastructure detailed.

4 Sample IRMP

<u>Content</u>	<u>Cost</u>
<u>Sample IRMP</u>	<u>Nil</u>

5 Operating Plan Template

<u>Content</u>	<u>Cost</u>
<u>Operating Plan Template</u>	<u>Nil</u>

PART B.ADDITIONAL INFORMATION

1 Capacity Information

~~a) The relevant current DTP, assessed in accordance with Paragraph (b) below, for the relevant part of the Rail Infrastructure subject to the following caveats:~~

~~(i) the identity of other Access Holders will not be detailed on the information provided;~~

~~(ii) the terms and conditions of other Access Holders' Train Service Entitlements will not be detailed; and~~

~~(iii) the DTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact upon the Capacity of the Rail Infrastructure detailed, but QR Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Capacity of the Rail Infrastructure detailed.~~

(a) The relevant current DTP will be assessed as:

(i) for an Access Application in respect of a Timetabled Traffic, the current DTP for the relevant day (or days) of the week; or

(ii) for an Access Application in respect of a Cyclic Traffic, the current DTPs for a week, unless ~~QR Network~~Queensland Rail reasonably believes that provision of DTPs for a longer period of time is required in order that the DTPs show a use of Capacity that is representative of current utilisation.

(b) Access to Train Control diagrams, indicating actual running of Train Services against the relevant DTP, for those days for which the DTP has been provided in accordance with Paragraph (a) above.

~~2. Information for EIRMR~~

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

~~4.2~~ Information for Interface Risk Assessment

- (a) All relevant information reasonably available to ~~QR Network~~Queensland Rail that is required for the purpose of the Interface Risk Assessment, in accordance with **clause 2.6.2(a)** in the Undertaking, to the extent it has not already been provided. Paragraph 8.1.1(c).

3 Access to Rail Corridor

<u>Content</u>	<u>Cost</u>
<u>Access to the rail corridor *</u>	<u>Nil</u>

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

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

5. Other Information

4. Other Information

24 Other Information

- (a) Other information as follows:
- (i) information required in accordance with s.101(2) of the Act, to the extent that this information has not already been provided; and
 - (ii) other information that is reasonably required by the Access Seeker in accordance with s.101(1) of the Act, provided such information is reasonably able to be provided by ~~QR Network~~Queensland Rail and cannot be reasonably obtained from a source other than ~~QR Network~~Queensland Rail (and subject to **clause 2.2.2** of the Undertaking).

Schedule H – Access Conditions

1 Requiring Access Conditions

1.1 Agreeing Access Conditions

~~15.1.1~~ Queensland Rail or an Access Funder acting reasonably may ~~require an Access Seeker to~~ agree to Access Conditions before being granted Access Rights, to the extent that this is reasonably required in order to mitigate Queensland Rail's or an Access Funder's exposure to the financial risks associated with providing Access ~~for~~ the ~~Access Seeker's~~ proposed Train Service.

1.2 Access Conditions Reasonably Required

~~15.1.2~~ For the purposes of ~~c~~**Clause 1.11.1(a)1.1**, Access Conditions ~~are deemed to~~may be reasonably required:

- (a) where:
 - (i) Queensland Rail is to develop Infrastructure Enhancements (for example, a new branch line or increasing the height of tunnels to accommodate taller than usual trains); and
 - (ii) those Infrastructure Enhancements would not be required had that Access Seeker not sought Access for its Train Services;
- (b) if ~~Access~~ Conditions are required then pursuant to ~~C~~**clause 1.4(e)(ii)**, provided that the sharing of responsibility between the First Party and the Subsequent Party in respect of the Access Conditions originally borne by the First Party is equitable; ~~or~~

1.3 Terms of Agreements

~~15.1.3~~ If an Access Condition results in Queensland Rail earning revenue from ~~the~~an Access Seeker's Access that is in addition to the ongoing Access Charge (for example, an upfront contribution or Access Facilitation Charge), Queensland Rail will:

- (a) where the Access Condition relates to Infrastructure Enhancements:
 - ~~(iii)~~(i) negotiate ~~a~~an ~~agreement~~ separate agreement from the Access Agreement with the party who agreed to pay such additional revenue (or their nominee Access Seeker) as a rebate to that party or their nominee; Such rebate will be equivalent to the amount of the cost component of the relevant Access Charge that is separately funded through the additional revenue (for example, depreciation and the non-diversifiable component of the return on any relevant Infrastructure Enhancements). The rebate must not be payable over a longer period than the asset lives of the relevant Infrastructure Enhancement; where the rebate is equivalent to the amount provided in the Access Charge for a cost component to the

~~extent that this component is separately funded through the additional revenue (for example, depreciation and the non-diversifiable component of the return on any relevant Infrastructure Enhancements), with the rebate being payable over no longer period of time than the asset lives of the relevant Infrastructure Enhancements (as endorsed by the QCA, from time to time, for the purpose of calculating the Regulatory Asset Base);~~
or

~~(i)(ii)~~ (ii) exclude the cost components separately funded through the additional revenue (for example, the value of any relevant Infrastructure Enhancements to the extent supported by the additional revenue) from the cost base (including the asset base) used to determine the ongoing Access Charge.

(b) where the Access Condition relates to an ~~Expansion~~Extension, negotiate an agreement of the type described in ~~paragraph (i)(A)~~clause 1.3(a) above, or some equivalent agreement, that above that has the effect of returning to the Access ~~Seeker~~Funder (or the nominee Access Seeker) their contribution to the Access Condition:

(i) over no longer period of time than Queensland Rail can reasonably be expected to recover the value of the relevant Infrastructure Enhancement through the ongoing Access Charge; and

(ii) subject to clause 1.3(c) below, the balance of the contribution to the Access Condition, ~~where if that~~the Access Seeker's Access Agreement expires before the full amount has been returned, and Queensland Rail continues to earn Access Charges from other Access Holders for the use of the relevant Rail Transport Infrastructure.

~~(c)~~ provided that, where Access Funders fund an Extension, ensure those Access Funders are compensated for their investment by receiving an amount equal to the return on and of the capital component of Access Charges from any Access Holders of the Capacity created by their investment who did not participate in the user funding (with Queensland Rail being entitled to receive an amount equal to the components of Access Charges based on operation and maintenance costs); however,

(i) where the Access Charges from the relevant Rail Transport Infrastructure are not sufficient to cover both the return to the Access Funder (or nominee Access Seeker), and the approved operating and maintenance costs, Queensland Rail can only be obliged to return the amount it has received from Reference TariffsAccess Charges net of the approved 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). ~~While this may reduce the amount the Access Funder/ receives in~~

~~a particular year, it does not remove the entitlement of the Access Funder/ to receive back its capital contribution/underwriting over time, so that the net present value of the rebates it receives equals the net present value of the capital contribution/underwriting before the payments stop.~~

~~(e)~~(d) include in the agreements described in ~~paragraph (i) or (ii)~~clause 1.3(a) or (b) above (as applicable) an obligation on Queensland Rail to transfer to an Access Funder ~~(or nominee Access Seeker)~~ any tax or other financial benefit accruing to Queensland Rail as legal owner of the Rail Transport Infrastructure covered by the Access Condition, where the risks have been transferred to the Access Seeker (or the nominee Access Seeker or Customer) as a result of the Access Condition.

1.4 Subsequent parties using Infrastructure Enhancements

~~15.1.4~~Where the Access of an Access ~~Holder~~Funder ~~(or nominee Access Seeker)~~ (“**First Party**”) is subject to an Access Condition in relation to the construction of Infrastructure Enhancements and Access is sought by an Access Seeker (“**Subsequent Party**”) to operate Train Services using all or part of those Infrastructure Enhancements, Queensland Rail will use reasonable endeavours to either:

- (a) negotiate an agreement with the First Party ~~Access Funder~~ where a rebate paid in accordance with ~~C~~clause 1.1(d)(i)1.3 includes the amount provided in the Access Charge paid by the Subsequent Party for the cost component to the extent that the component is separately funded through the additional revenue (for example, depreciation and the non-diversifiable component of the return on the relevant Infrastructure Enhancements); or
- (b) renegotiate the terms of the First Party’s Access Conditions and impose Access Conditions on the Subsequent Party, so that the First Party ~~Access Funder~~ and the Subsequent Party share the responsibility that was originally borne by the First Party ~~Access Funder~~.

1.5 Use of Infrastructure Enhancements

~~15.1.5~~For the purposes of determining for ~~this C~~clause 01.4 whether another Customer or a Subsequent Party uses (or will use) an Infrastructure Enhancement, the Customer or Subsequent Party is deemed not to do so unless the particular characteristics of the Train Service for the Customer or the Subsequent Party’s Train Service would also have resulted in the Infrastructure Enhancement being required for Access to be provided in relation to the Customer or to the Subsequent Party. (For example, if Queensland Rail increased the height of tunnels to provide Access to an Access Seeker using taller than usual trains, Train Services for Subsequent Parties operating through those tunnels will not use that Infrastructure Enhancement unless they use trains of a height that would also have required the height of the tunnels to be increased.)

2 Access Conditions Register

2.1 Maintaining a Register

15.1.1 Queensland Rail will maintain a register (“Access Conditions Register”) of any Access Conditions that result in:

- (a) Queensland Rail earning revenue from an Access ~~Holder’s~~Funder’s (or their nominee Access Seeker’s) Access that is in addition to the ongoing Access Charge (in accordance with Clause ~~10(c)(d)~~);
- (b) revenue being paid by a party other than an Access ~~Holder~~Funder’s (or their nominee Access Seeker’s) to Queensland Rail in order to directly fund capital expenditure on the Rail Transport Infrastructure incurred by Queensland Rail; or
- (c) Rail Transport Infrastructure assets being given to Queensland Rail or sold to Queensland Rail at significantly less than market value (except where such assets are given to or sold to Queensland Rail by a ~~QR~~ PartyRelated Party).

2.2 Register information

15.1.2 The Access Conditions Register will identify:

- (a) the person paying revenue or providing the assets;
- (b) the nature of the Access Conditions (if applicable);
- (c) the date when the arrangement commenced;
- (d) the costs and assets to which the arrangement relates;
- (e) the amount of the additional revenue; and
- (f) the action that Queensland Rail has taken in accordance with ~~Clause (d)~~ clause 1.3.

2.3 Copy of the Access Conditions Register

~~(b)~~(a) The QCA may, with one (1) month’s notice, request Queensland Rail in writing to provide a copy of the Access Conditions Register.

2.4 Audit of the Access Conditions Register

~~(e)~~(a) The QCA may also request an audit of the register, that will follow a process agreed to by Queensland Rail and the QCA (acting reasonably), consistent with the audit provisions in **clause 5.3.3 of the Undertaking**.

3 Prohibited Access Conditions

Queensland Rail may not seek to impose, pursuant to ~~C~~clause **6.5-41.4.3 of the Undertaking**, any Access Condition that:

- ~~(d)~~(a) restricts Access ~~Seekers~~Funders (or Access Seekers or their Customers) from raising disputes with the QCA or disclosing proposed Access Conditions or other contract terms to the QCA;

(e)(b) requires Access Funders, (or their Access Seekers or Customers) to disclose information that is confidential to one or more of them, to any other Access Funder, Access Holder, Access Seeker, or their Customer in circumstances other than those permitted by this Undertaking. ~~and~~

Schedule I – ~~Corridor~~System Master Planning Process

~~QUEENSLAND RAIL LIMITED – ACCESS UNDERTAKING 1 – FEBRUARY 2013~~

1 Planning

Queensland Rail, as Access Provider, will adopt an annual master planning process for all Train Services for each main ~~corridor~~System in the Network being at the Approval Date the ~~Western-West Moreton~~ System, the Mt Isa Line and the North-Coast Line. Each Master Plan must be for a minimum of ~~three~~ five (35) years but can extend to a longer time period. Queensland Rail will develop each Master Plan in accordance with the following processes:

- (a) Queensland Rail will establish a ~~Corridor~~System Capacity Group for each ~~corridor~~System comprising:
 - (i) Access Holders that hold Access Rights for Train Services and Access Seekers that are seeking Access Rights for Train Services along that ~~corridor~~System;
 - (ii) ~~end-c~~Customers of those Train Services;
 - (iii) owners and/or operators of the unloading destinations for those Train Services;
 - (iv) any other relevant stakeholders;
 - (v) the QCA, as an observer only.
- (b) Queensland Rail will actively involve the ~~Corridor~~System Capacity Group in the development of the annual Master Plan to be released at the end of June each year.
- (c) Before finalising the Master Plan for each ~~corridor~~System, Queensland Rail will:
 - (i) convene a System Planning Forum comprising the ~~Corridor~~System Capacity Group and provide an opportunity for all members to identify their ~~corridor and logistic interface infrastructure~~ demand expectations over the subsequent 3-5 years timeframe;
 - (ii) publish a draft ~~corridor~~System Master Plan on Queensland Rail's website and invite all stakeholders and the ~~Corridor~~System Capacity Group to comment on the options set out in the draft Master Plan;

- (iii) convene a ~~Corridor~~System Planning Forum to provide an opportunity for the ~~Corridor~~System Capacity Group to raise any issues or concerns with the draft ~~corridor~~System Master Plan;
- ~~(iii)~~(iv) consider the views submitted by those stakeholders at the ~~Corridor~~System Planning Forum or in written submissions in good faith and take those views into account in finalising each ~~corridor~~System Master Plan;:-
- ~~(iv)~~(v) convene a ~~Corridor~~System Planning Forum to release the ~~corridor~~System Master Plan and include a public link to each final Master Plan on Queensland Rail's website.
- (d) Each ~~corridor~~System Master Plan must contain information on the following categories:

 - (i) ~~capacity~~ assessment of existing capacity of the ~~corridor~~System, including any relevant ~~corridor~~System operating assumptions which impact on the capacity assessment;
 - (ii) identify the relevant asset management plan and asset replacement capital expenditure to be undertaken over the period of each Master Plan;
 - (iii) provide an aggregate demand assessment and identification of the projects that may be required to meet increased demand; ~~and~~
 - (iv) identify any asset management, supply chain and technological innovation alternatives available to increase capacity whilst keeping capital investment to a minimum.- Queensland Rail should provide an indicative assessment of alternative capacity solutions arising from discussions with ~~relevant stakeholders and the Corridor Planning Forum System Capacity Group~~ (note that this may involve capacity solutions which Queensland Rail cannot deliver, but which may present a better system solution for consideration of the ~~Corridor~~System Planning Forum).
- (e) Each ~~Corridor~~System Capacity Group is to jointly have access to Queensland Rail's capacity analysis model via one appointed external consultant (at the ~~Corridor~~System Capacity Group's cost) to undertake a peer review of the model and the model's output. Queensland Rail will run a reasonable range of scenarios for consideration by ~~Corridor the System~~ Capacity Group. Capacity modelling is to be undertaken on the basis of upfront agreement about model parameters and the sensitivity analysis to be conducted on these modelling parameters, with any dispute on model parameters being referred to the QCA for resolution.

Schedule J – Investment Framework Principles

Foundation Premises

- 1 ~~QR Network~~Queensland Rail cannot be forced to fund an Extension other than in accordance with an approved access undertaking or the provisions of the Act regarding determination of access disputes.
- ~~2 To the extent that QR Network does invest in rail transport infrastructure used in the provision of declared services²⁷, including Significant Investments, the QCA can determine the rate of return that is commensurate with the risk of the investment.~~
- ~~32~~ QR NetworkQueensland Rail should not be able to exploit its monopoly power.
- ~~43~~ UsersAccess Funders should have the right to fund Extensions (other than Asset rReplacement capital Eexpenditure), where Queensland Rail has elected not to fund, at their option.

Undertaking coverage

- ~~54~~ All Extensions in respect of the Network ~~rail transport infrastructure used to provide the Declared Service~~ must take place under the auspices of an access undertaking approved under the Act to ensure even-handed dealing with all parties.
- ~~1. QCA will have the following roles in addition to those already in the previous undertaking:~~
 - ~~(a) determining whether proposed capital expenditure forms part of a Significant Investment or not;~~
 - ~~(b) approving Access Conditions sought in respect of Significant Investments;~~
 - ~~(c) approving a Standard User Funding Agreement; and~~
 - ~~(d) making binding arbitration determinations in relation to:~~

²⁷ ~~The declaration regarding provision of access to the QR Network rail infrastructure will not cover access to railway lines to new coal basins. Access seekers will have to seek declaration of these services via the QCA Act which has been amended to allow access to privately owned railway lines which meet the QCA Act's access criteria.~~

- ~~(i) Users' claims that they are unable to fund their shares of a Significant Investment via debt financing on reasonable terms obtained from a reputable financial institution; and~~
- ~~(ii) the terms of a proposed or existing User Funding Agreements including: (A) security requirements, and (B) any variations from a Standard User Funding Agreement approved by the QCA.~~

~~(i) Network investment~~

Network Extensions

~~65~~ Subject to paragraph 8, Extensions should accommodate the needs of all ~~Users~~ Access Funders who are seeking Access Rights which require additional Capacity and who are willing to ~~execute a User Funding Agreement, commit to the approved terms and conditions of investment in the Extension during the Extension Process, whether or not these Users agreed to provide funding for the Extension.~~

~~7~~ However, where there is a Funding Shortfall in respect of a Significant Investment, only Funding Users are guaranteed to have their Capacity requirements accommodated in the relevant Extension.

~~8~~ If a User Funded Extension or Extension funded solely by QR Network produces Available Capacity, that Available Capacity and any pre-existing Available Capacity will be treated equally in future allocations of Available Capacity between Access Seekers.

~~96~~ All Available Capacity, whether funded by ~~QR Network~~ Queensland Rail or ~~Users~~ Access Funders, will be allocated in accordance with the Undertaking's capacity allocation rules ~~or as determined by the QCA if relevant parties are not able to agree.~~

Funding

~~11. Users may opt to fund Extensions (other than replacement capital expenditure) and other system investments²⁸, even in circumstances where QR Network is willing to do so. Users need not provide the funding themselves directly but may involve other parties (e.g. Users may seek debt financing).~~

~~12. If Users intend to fund an Extension, all potential Users for the Capacity to be created by an Extension must be given the opportunity to participate in the~~

²⁸ Investments that are not strictly 'Extensions', such as 'robustness' projects proposed in previous QR Network Master Plans.

~~funding of the Extension in proportion to the Capacity the Access Rights they are seeking would utilise.~~

~~13. If Users fund an Extension, they will be compensated for their investment by receiving an amount equal to the return on and of the capital component of Access Charges from any Users of the Capacity created by their investment who did not participate in the user funding (with QR Network being entitled to receive an amount equal to the components of Access Charges based on operation and maintenance costs).~~

~~7. The arrangements should be such that Queensland Rail receives no benefit (tax or cash flow) from wholly Access Funder funded Extensions, with Queensland Rail retaining only the portion of Reference Tariffs related to operating and maintenance costs.~~

~~10. QR Network Queensland Rail must fully fund:~~

~~15.1.18. Asset Replacement capital expenditure:~~

~~(a) Expansions which are valued at less than \$300 million and are required to produce Available Capacity needed for provision of Access Rights sought by Access Seekers; and~~

~~(b) capital expenditure valued at less than \$300 million needed to respond to a Capacity shortfall resulting from either a change in System Operating Assumptions or an incorrect forecast of capacity delivered by Infrastructure Enhancements.~~

~~The Regulated WACC will apply to any such investments and Access Conditions cannot be sought in respect of access which is dependent on such investments other than in accordance with Clause 6.5.2 of the Undertaking. An Extension may include a number of related projects on different parts of the network. There may also be more than one such Extension over the Term. In the case of a dispute, the QCA will determine whether capital expenditure forms part of a Significant Investment or comes within this provision.~~

~~15. QR Network has no obligation to fully fund Significant Investments or Customer Specific Branch Lines. However, it is anticipated that QR Network will want to fund all or part of Significant Investments and Customer Specific Branch Lines where it considers it is in its commercial interests to do so, unless:~~

~~(a) it is unable to raise finance or in doing so would prejudice its capital management; or~~

~~(b) Users propose to fund all or part of such an Extension.~~

~~As discussed later, QR Network may seek approval for Access Conditions and/or additional returns in respect of Significant Investments.~~

~~If QR Network indicates that it is unwilling to fund all or part of an Expansion, the board of directors of QR Network must, or where the unwillingness to fund is based on a decision of its holding company, QR Network must procure that the~~

~~board of its ultimate holding company, provide the QCA with a statement setting out the reasons for this, for publication on the QCA's website.~~

~~(A) — Smaller users_ and difficulties in providing user funding~~

~~16. — QR Network_ must fund up to 30% of a partially User Funded Significant Investment, if requested to do so by Users_ that are unable to raise their own share of the funds by debt funding on reasonable terms from reputable financial institutions. QR Network_ can seek approval from the QCA for special terms and conditions for that funding to the extent justified by special risks and costs being borne by QR Network_.~~

~~17. — The obligation to partially fund Significant Investments in accordance with paragraph 16 is subject to QR Network_ having a maximum commitment of \$300 million in respect of such funding for the Term.~~

~~18. — If QR Network_ disputes that a User is unable to fund its share of the costs of a Significant Investment (by debt funding on reasonable terms from reputable financial institutions) and is unwilling to fund the User's share, the QCA will arbitrate. The onus of proof will rest with the User claiming they are unable to raise debt funding on reasonable terms from reputable financial institutions. If the QCA concludes that the User could have raised its share of the funds by debt funding on reasonable terms from reputable financial institutions, the User will not be eligible for QR Network_ funding under this provision.~~

~~19. — While QR Network_ will not be otherwise obliged to provide funding for a Significant Investment, QR Network_ will have the right to participate in a User Funded Extension up to the level of the Capacity that is created in excess of that needed by the Funding Users_.~~

Consequences of insufficient funding for Significant Investments

~~20. — Where the aggregate of the development costs:~~

~~(a) — QR Network_ has voluntarily decided to fund;~~

~~(b) — Funding Users_ have decided to fund; and~~

~~(c) — QR Network_ has been obliged to fund in accordance with paragraph 16 above,~~

~~in respect of a Significant Investment (together the Committed Funding) is:~~

~~(d) — more than QR Network_'s estimate of the cost of building the smallest efficient Extension, then:~~

~~(i) — QR Network_ will design the level of Planned Capacity to be created by the Extension to reflect the Committed Funding; and~~

~~(ii) — the Capacity created by the Extension will be first allocated to all of the Funding Users_ (in the proportions their funding bore to the~~

~~total development cost) and any remaining Available Capacity will be allocated among the other Users/Access Funders who put forward an expression of interest in accordance with paragraph 50 but did not provide User Funding based on the formation of a queue in accordance with the principles in the approved access undertaking;~~

~~(e) is less than QR Network's estimate of the cost of building the smallest efficient Extension (with the difference being the Funding Shortfall):~~

~~(i) QR Network will advise the Funding User of the Funding Shortfall and the Funding Users will be given a reasonable opportunity to elect to fund the Funding Shortfall (in which case they will be given the first right of refusal of Planned Capacity proportionate to the additional funding provided);~~

~~(ii) if the Funding Users in aggregate fail to provide sufficient additional funding to rectify the Funding Shortfall, then QR Network is not obliged to develop the Extension (but may do so if it wishes to itself fund the Funding Shortfall); and~~

~~(iii) if the Funding Shortfall is rectified, the Extension will be developed to reflect the smallest efficient Extension with Capacity created by the Extension being first allocated to all of the Funding Users (in the proportions their funding bore to the total development cost except to the extent a Funding User providing funding but did not exercise their right of first refusal) and any remaining Available Capacity will be allocated among the other Users who put forward an expression of interest in accordance with paragraph 50 but did not provide User Funding based on the formation of a queue in accordance with the principles in the approved access undertaking.~~

~~If QR Network is unwilling to fully fund a Significant Investment and some Users who are seeking additional Capacity are unable or unwilling to raise their shares of the funding, the Users who are willing to fund the Significant Investment will have to meet the full cost of the Significant Investment, subject to paragraph 16 above, and QR Network will not be obliged to develop the Significant Investment until such funding arrangements between Users are agreed or one or more Users will fund the Funding Shortfall in return for being allocated the remaining uncontracted Planned Capacity.~~

Ownership

419 ~~QR Network~~ Queensland Rail will own, ~~and operate and maintain~~ the rail-Rail Transport infrastructure utilised to provide the declared service, including Extensions other than Customer Specific Branch Lines which are wholly

funded by ~~Users~~ Access Funders. ~~Access to parts of the rail network created by Extensions to other coal basins will not automatically be declared and QR Network Queensland Rail~~ may or may not be the owner or operator for such Extensions.

4210 ~~Access Funders~~ Users will have the right to own, ~~and~~ operate and maintain Customer Specific Branch Lines while ~~QR Network~~ Queensland Rail must facilitate their connection to the existing network and ongoing operation.

Security

4311 In relation to any User Funded Extension, each Funding User (or Funding User's financier where debt financed) may take security over the contracts, including the User Funding Agreement, and associated cash flows and ~~QR Network~~ Queensland Rail's creditors may take security over ~~its the~~ cash flows and the resulting ~~Rail Infrastructure~~ Network which it has funded.

Construction

~~14 QR Network must construct all Expansions because of operational/safety concerns with multiple parties accessing an operating railway with multiple Users, subject only to the step-in rights described in paragraph 26.~~

4512 Prudent cost overruns on construction will be incorporated into the Regulatory Asset Base and passed on to Access Holders via Access Charges, unless special Access Conditions are approved by the QCA which provide differently. ~~QR Network~~ Queensland Rail will absorb all other cost overruns ~~(as is the case now)~~.

4613 ~~QR Network~~ Queensland Rail must expeditiously construct Extensions, including Extensions funded by Access Funders ~~Users~~. ~~QR Network~~ Queensland Rail must, prior to developing an Extension, provide Access Funders ~~Users~~ with an indicative timetable for the construction of the Extension. If ~~QR Network~~ Queensland Rail unnecessarily delays the construction of an approved User Funded Extension, including an Extension that ~~QR Network~~ Queensland Rail has agreed to fund, Access Funders ~~Users~~ may undertake the construction at the Access Funders ~~Users~~' expense. If there is a dispute regarding whether ~~QR Network~~ Queensland Rail has unnecessarily delayed construction the QCA will arbitrate (having regard to ~~QR Network~~ Queensland Rail's indicative timetable and any circumstances ~~QR Network~~ Queensland Rail claims have delayed the construction). In the event of such a step-in right being exercised ~~QR Network~~ Queensland Rail must use its best endeavours to facilitate Access Funders ~~Users~~' undertaking the construction of the Extension including, to the extent it can do so, by:

- (a) providing access to land and electricity required for the development of the Extension;
- (b) providing the Access FundersUsers with details of the required standards and specifications for the Rail InfrastructureNetworkNetwork;
- (c) providing the Access FundersUsers with details of the current status of the work on the Extension;
- (d) keeping all relevant Access FundersUsers informed regarding operations of the Rail InfrastructureNetwork which may impact on the development of the Extension;
- (e) providing the funds it has received through User Funding that ~~it~~ has not been spent in the development of the Extension to the Access FundersUsers undertaking the development of the Extension;
- (f) assigning or novating contracts required for the development of the Extension or, where assignment or novation is not practicable, entering into back-to-back arrangements where QR NetworkQueensland Rail on-supplies goods or services to the UsersAccess Funders on the same terms as they are supplied to QR NetworkQueensland Rail by third party suppliers; and
- (g) assisting the Access FundersUsers undertaking the development to obtain all necessary licences and approvals for the development (by assignment from QR NetworkQueensland Rail or otherwise).

1714 Access FundersUsers will be permitted to construct Customer Specific Branch Lines to their own specifications, with interface standards approved by QR NetworkQueensland Rail. QR NetworkQueensland Rail must facilitate Access FundersUsers developing their own Customer Specific Branch Line including by providing access to land which QR NetworkQueensland Rail has the power to provide and entering into a Standard Rail Connection Agreement in respect of the Connecting InfrastructureExtension.

WACC/Rate of Return/Access Conditions

- ~~21. The Regulated WACC provides an appropriate return on capital for normal monopoly infrastructure risks that are systematic.~~
- ~~22. The WACC that applies will be the same whether infrastructure investment is undertaken by QR Network or Users, reflecting the same infrastructure investment risk. Coal company WACCs are not appropriate to User investment in coal rail transport infrastructure as they relate to the risks associated with coal mine ownership (e.g. production, sales, prices etc) and not coal rail transport infrastructure risks.~~
- ~~23. All investments in Rail Infrastructure (by QR Network or Users) will earn the Regulated WACC, unless they incur risks in addition to those that are compensated for in the Regulated WACC. Such risks might include demand risk, asset stranding risk and construction risk.~~

~~24. If QR Network intends to impose Access Conditions in respect of the provision of access which is dependent on a Significant Investment it must seek approval from the QCA for such Access Conditions. The QCA may approve special Access Conditions including additional returns to address any additional risks associated with Significant Investment. Special Access Conditions may relate to matters such as: the depreciation period and/or profile, take or pay arrangements or the term of contracts. To the extent that QR Network seeks additional returns to compensate it for additional risks, the risks should be accounted for in the cash flows to which the Regulated WACC rate is applied, with the cash flows being determined considering the possible outcomes and the probabilities of the outcomes as a consequence of the additional risks.~~

~~25. If QR Network considers that its cost of funds for a Significant Investment is inconsistent with the Regulated WACC, then QR Network may ask the Authority to approve an uplift on the Regulated WACC (the Varied WACC). The circumstances in which the QCA will approve a Varied WACC will be limited to changes in the risk free rate and debt margin in respect of the Significant Investment unless QR Network can show that, as a result of funding the Significant Investment, it has a materially different gearing ratio or credit rating. Users will have the option to accept a Varied WACC approved by the QCA, or to pursue User funding instead.~~

~~26. QR Network must obtain the QCA's approval for any proposed Access Conditions or other risk adjustments. However, parties will first have the opportunity to commercially negotiate the terms of access.~~

~~The QCA will approve Access Conditions that are commercially agreed between QR Network and all relevant Users unless:~~

- ~~(a) it is not in the public interest, including the public interest in having competition in markets;~~
- ~~(b) it may disadvantage the interests of parties who are not parties to the agreement;~~
- ~~(c) QR Network has failed to provide the required information to Users regarding risk and return (see below); or~~
- ~~(d) it would contravene a provision of the Act or the Undertaking.~~

~~27. As part of the process for negotiating the proposed Access Conditions, QR Network must provide upfront a detailed analysis to both the QCA and the Users of the additional risks faced by QR Network and the Access Conditions (including additional returns) it considers are required to mitigate or to compensate for those risks. Failure to provide this analysis will be grounds for the QCA to refuse to approve Access Conditions.~~

~~28. If parties are unable to agree terms within 60 days of the detailed analysis being provided by QR Network, or such further period of time approved by the QCA, the QCA will arbitrate the matter. The QCA will not grant extensions that take the total negotiation period to more than 120 days, unless a majority by number of the Access Seekers or Customers ask for such an extension. All periods referred to in this paragraph commence on the date that the QCA considers the price negotiations to have effectively~~

~~commenced. Unless particular circumstances indicate otherwise, the QCA would consider the negotiation period to begin on the date when QR Network issues its detailed analysis of the additional risks and Access Conditions for an Extension. If the QCA has reason to believe that QR Network has commenced negotiating with Users regarding Access Conditions in respect of an Extension, it may require QR Network to provide the detailed analysis required by this Investment Framework to all relevant Users within 10 Business Days and cease negotiating the content of Access Conditions until that analysis has been provided.~~

~~29. Users may at any time decide to refer the matter to the QCA for arbitration or to fund the Extension themselves. In considering the appropriateness of the proposed Access Conditions, the QCA will consult with stakeholders. The QCA may decline to arbitrate during the process, where it considers the referral is vexatious or the referring party has not negotiated Access Conditions in good faith.~~

~~30. Whether or not QR Network accepts the Access Conditions that the QCA considers to be reasonable, the QCA will publish its decision, which will indicate the Access Conditions the QCA considers reasonable.~~

~~31. QR Network may not seek to impose, and the QCA will not approve, any Access Condition that:~~

~~(a) restricts Access Seekers or their Customers from raising disputes with the QCA or disclosing proposed Access Conditions or other contract terms to the QCA;~~

~~(b) requires Access Seekers, Access Holders, or their Customers to disclose information that is confidential to one or more of them, to any other Access Holder, Access Seeker, or their Customer in circumstances other than those permitted by this Undertaking; or~~

~~(c) results in QR Network earning Access Charges based on a Varied WACC or otherwise earning above the return provided by Reference Tariffs based on the Approved WACC, other than as approved by the QCA.~~

Pricing

~~4815~~ Access Charges in respect of Access which is able to be provided by virtue of Extensions should be determined in accordance with the pricing principles incorporated in the undertaking, ~~(i.e. a uniform tariff that sits between incremental and stand-alone costs)~~, unless the QCA considers, on application from QR Network Queensland Rail or Funding Users, that an alternative approach is appropriate in the circumstances.

~~19~~ The QCA will revise Reference Tariffs when a Significant Investment occurs, based initially on forecast costs and subsequently on actual costs.

~~2016~~ Where a User Funded Extension is deemed by the Authority to have created Available Capacity in excess of that needed for an efficient expansion of the network (e.g. a User may want to construct a facility with excess Capacity), the cost of the excess Capacity may not be incorporated in the ~~Regulatory Asset Basepricing~~ for the purposes of calculating current Access Charges and may instead be carried forward (at the ~~Regulated or Varied~~ WACC, as applicable to Access Charges for train services which utilise the Extension) for inclusion in Access Charges at a later date.

~~2417~~ User funding will cover the capital costs of the Extension, with ongoing maintenance and operating costs included in the Reference Tariff in the usual way.

~~32.— The Funding Users will have their capital investment (including any amounts of a relevant feasibility study) refunded to them in accordance with the depreciation profile associated with the capital expenditure, together with the Regulated or Varied WACC (as applicable) on the un-refunded balance, subject to QR Network receiving Reference Tariffs in respect of the user funded Capacity that are sufficient to cover the amount of the refund after meeting approved operating and maintenance costs. If Reference Tariff revenues are not sufficient, QR Network is obliged to refund only the amount it has received from such Reference Tariffs net of approved operating and maintenance costs. Users must also be refunded any financial benefits that accrue to QR Network as legal owner of the Rail Infrastructure. The arrangements should be such that QR Network receives no benefit (tax or cash flow) from wholly User Funded Extensions, with QR Network retaining only the portion of Reference Tariffs related to operating and maintenance costs.~~

~~33.— If a shortfall (or surplus) in Reference Tariff revenue occurs in respect of Capacity funded by QR Network or Users, the shortfall (or surplus) will be met by (or refunded to) all Access Holders in the relevant Individual Coal System through the existing revenue cap adjustment process. A shortfall (or surplus) caused solely by a Funding User will be to the account of that Funding User.~~

~~2218~~ No additional fees or on-costs may be charged by ~~QR Network~~Queensland Rail in respect of User Funded Extensions, unless there are additional costs or risks assumed by Queensland Rail which Queensland Rail would not have assumed but for the User Funded Extension. Queensland must act reasonably in calculating any additional costs or risks and must provide justification for the costs and/or risks.

Extension Process

~~2319~~ The investment decision process (deciding on the reasonableness of/need for the investment in the Extension) should be independent of who funds the investment – ~~QR Network~~Queensland Rail, Users or a combination of the two.

2420 ~~QR Network~~Queensland Rail will initiate an Extension Process where it:

- (a) believes an Extension is required to meet demand within the coal supply chain; or
- (b) is requested to do so by the owner or operator of an expanding or new unloading facility that services users of the Rail Infrastructure Network; or
- (c) is requested to do so by a ~~coal~~ supply chain group such as the DBCT Coal Chain Coordinator, the Gladstone Coal Export Executive and the BMA Hay Point Coal Chain Capacity Group for the West Moreton System;
- ~~(d) has received access requests which would utilise in excess of 70% of the Planned Capacity to be developed by the smallest efficient Extension of the Rail Infrastructure; or~~
- ~~(e) has received access requests for less than 70% of the Planned Capacity to be developed by the smallest efficient an Extension, but those Users are willing to meet 70% of the costs associated with development of the Extension.~~

2521 The Extension Process must include timetables, deadlines and information requirements.

~~34. Where a need for further Infrastructure Enhancements can be reasonably anticipated, QR Network must undertake the necessary scoping and planning studies (including pre-feasibility and feasibility studies). Access Seekers seeking Access that is dependent on such Infrastructure Enhancements can be requested to underwrite the studies and all prudent costs of the studies will be:~~

- ~~(a) considered as User Funding in respect of determining how Planned Capacity to be developed by an Extension is allocated and in respect of return of capital; and~~
- ~~(b) included in the Regulatory Asset Base irrespective of whether the project is completed through to the commissioning stage.~~

If QR Network Queensland Rail unreasonably delays the necessary studies, Access Funders Users may undertake the necessary work at their cost and QR Network Queensland Rail must give the Access Funders Users all reasonable assistance, including any necessary information and site access.

2622 A mechanism must be in place to inform all Access Funders Users who would reasonably be expected to have an interest in gaining Access Rights which might be generated by a potential Extension of the network (including those listed on the Committed Capacity Register or in a queue for Available Capacity), and invite all Access Funders Users to put forward an expression of interest in respect of the Access Rights they are seeking.

2723 Funding Access Funders Users must be given the opportunity to collaborate with QR Network Queensland Rail in relation to all key matters affecting the

cost and timing of the Extension, including, but not limited to project scope, cost, procurement strategy, construction and timing.

Dispute Resolution

2824 Disputes arising between potential or existing Funding Users and ~~QR Network~~Queensland Rail in respect of:

- (a) proposed user funding terms, ~~or~~
- (b) existing User Funding Agreements; or
- ~~(b)(c)~~ project scope, cost, procurement strategy, construction and timing;

can be referred to the QCA for determination, or to commercial arbitration if the QCA does not hold the power to hear the matter

Finalisation of the Investment Framework

~~35. QR Network~~Queensland Rail will be required to submit:

- ~~(a) a Standard User Funding Agreement; and~~
- ~~(b) a draft amending access undertaking which incorporates the principles set out in this Investment Framework into the approved access undertaking;~~

~~with QR Network~~Queensland Rail having 3 months from Approval Date to finalise the Standard User Funding Agreement and amendments to the Authority's satisfaction.

~~36. If QR Network~~Queensland Rail fails to do so, the QCA will have the power to finalise and approve a Standard User Funding Agreement and amendments to the approved access undertaking to incorporate the principles set out in this Investment Framework.

~~37. In the interim, the QCA will require Parts 4, 6 and 7 of the approved undertaking to incorporate the most critical elements of these principles. As such, Extensions which are currently being progressed or considered such as Wiggins Island are covered by the new investment framework. However, in respect of Extensions which are currently in process (such as Wiggins Island), it will be treated as if QR Network~~Queensland Rail had formed the intention to negotiate Access Conditions on the Approval Date.

~~29~~ Definitions

- ~~(a) For the purposes of this Schedule the following terms have the meanings given below:~~

~~**Committed Funding** has the meaning given in paragraph 20.~~

~~**Customer Specific Branch Line** means an Extension that when constructed will connect an Access Holder or Customer's single loading facility to Rail Infrastructure.~~

~~**Expansion** means an Extension that is not a Customer Specific Branch Line.~~

~~**Extension** of Rail Infrastructure includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the Rail Infrastructure. An Extension may include a number of related Infrastructure Enhancements on different parts of the Rail Infrastructure.~~

~~**Extension Process** means the process described in paragraphs 47-51.~~

~~**Funding Shortfall** has the meaning given in paragraph 20.~~

~~**Funding User** means a User which has entered a User Funding Agreement with QR Network.~~

~~**Infrastructure Enhancement** means new Rail Infrastructure or a modification to existing Rail Infrastructure.~~

~~**Investment Framework** means the principles set out in this Schedule.~~

~~**Major Expansion** means an Expansion for the purpose of creating or providing additional Capacity substantially as a result of or in connection with a single Major External Development.~~

~~**Regulated WACC** means 9.96% per annum.~~

~~**Significant Investment**: means investment applying to a Major Expansion estimated to cost in excess of \$300 million.~~

~~**Standard User Funding Agreement** means a pro forma User Funding Agreement~~

~~**Users** means Access Seekers and/or their Customers.~~

~~**User Funding Agreement** means an agreement by which a User agrees to provide funding to QR Network for the development of Infrastructure Enhancements.~~

~~**User Funded Extension** means an Extension, the costs of which are to be wholly or partly funded by Users pursuant to User Funding Agreements.~~

~~**Varied WACC** means a weighted average cost of capital different to that of the Regulated WACC.~~

~~Where a term has not been specifically defined in this Schedule, the definitions in Part 12 of the Undertaking apply.~~