
Queensland Rail Limited

[Insert name of Operator]

Access Agreement

[This agreement is a standard access agreement for use with coal carrying Train Services in the West Moreton System with the same characteristics as the relevant Reference Train Service and where the Access Holder is the rolling stock operator for the relevant Train Services.]

Version: 1

Date Approved: [insert date]

Date

Parties

Queensland Rail Limited ABN 71 132 181 090 of Level 15, 295 Ann Street, Brisbane, Queensland (**Queensland Rail**)

and

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

Background

- A Queensland Rail operates, and is the Railway Manager for, the Network.
- B The Operator is seeking, and Queensland Rail has agreed to provide to the Operator, access to the Network for the purposes of the Train Services.
- C This agreement sets out the terms agreed by the Parties in accordance with which the Operator is granted non-exclusive access to the Network for the Train Services.

Operative Provisions

1. In this Agreement words and expressions which are defined in the General Conditions of Contract shall have the same meanings as are respectively assigned to them in the General Conditions of Contract.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - (a) Reference Schedule attached to this Agreement as **Schedule A**;
 - (b) General Conditions of Contract attached to this Agreement as **Schedule B**;
and
 - (c) all Schedules, exhibits and annexures to this Agreement.

and Clause 1.2 of the General Conditions of Contract shall apply to the extent that there is any inconsistency between any of the above documents.

ACCESS RIGHTS

1 Grant of Access Rights

In consideration of the Operator agreeing to pay the Access Charges and other payments to be made to by the Operator, Queensland Rail grants to, and will provide, the Operator Access Rights in accordance with the Train Service Description for the operation of Train Services on and from the Commitment Date on the terms in, and subject to the conditions of, this Agreement.

2 Nature and Scope of Access Rights

- (a) The Access Rights granted under Clause 1 are non-exclusive contractual rights and do not give the Operator any right, title or interest of any proprietary nature in the Nominated Network.
- (b) The Operator must not:
- (i) operate on or use any part of the Infrastructure that is not specifically included in the Nominated Network; or
 - (ii) use the Nominated Network for carrying out any provisioning, inspection, testing, maintenance of Rollingstock, any marshalling, shunting or other relocation of Rollingstock or storage of Rollingstock or for any other purpose other than the operation of Train Services unless specifically directed by Queensland Rail to do so in accordance with the provisions of this Agreement or as specified in this Agreement.
- (c) The Parties acknowledge and agree Queensland Rail is required to provide the Operator with certain benefits, rights and services in accordance with Clause 2.4(e) of, and the definition of "Access" in, Queensland Rail's Access Undertaking, and to the extent that these requirements are relevant to the Operator's Access Rights it is intended the terms on which they are provided are detailed in this Agreement.

3 Management of Queensland Rail's liability to the Customer

3.1 Definitions

For the purposes of this Clause 3, the following terms have the following meanings:

"Access Interface Deed" has the meaning given to that term in Clause 3.2(b)(i);

"AID Option" has the meaning given to that term in Clause 3.3(a);

"Customer" means the person or entity to which the Operator provides rail haulage services for which purpose the Operator requires the Access Rights under this Agreement;

“RHA Clause” means the clause to be included in the rail haulage agreement in accordance with Clause 3.5(a); and

3.2 Access Agreement conditional on Access Interface Deed

This Agreement is subject to and conditional on:

- (a) the Operator notifying Queensland Rail of its election in accordance with Clause 3.3; and
- (b) the Customer executing and delivering to Queensland Rail a deed in the form contained in Schedule 13 or in such other form as is agreed by the Customer and Queensland Rail (“Access Interface Deed”);

3.3 Operator’s election

The Operator must, within 2 Business Days after the execution of this Agreement, by written notice to Queensland Rail, elect to comply with Clause 3.4 (“Access Interface Deed”).

3.4 Access Interface Deed

In order to satisfy the condition in Clause 3.2:

- (a) the Operator must use its reasonable endeavours to procure the Customer to execute and deliver the Access Interface Deed to Queensland Rail;
- (b) as soon as practicable after receiving the Access Interface Deed duly executed by the Customer, Queensland Rail will also execute the Access Interface Deed and:
 - (i) provide a copy of the duly executed Access Interface Deed to the Customer; and
 - (ii) notify the Operator in writing that the Access Interface Deed has been executed by both the Customer and Queensland Rail; and
- (c) if the Customer has not executed and delivered to Queensland Rail the Access Interface Deed prior to the date which is one month after the date of this Agreement, this Agreement shall terminate and cease to be of effect on that date.

Ancillary Services

In consideration of the Operator agreeing to pay the charges for Ancillary Services, Queensland Rail will provide the Ancillary Services (if any) set out in **Schedule 11**.

4 Renewal

If the Operator gives notice to Queensland Rail not less than twelve (12) Months prior to the Termination Date of its intention to seek a renewal of the Term, Queensland Rail will consult with the Operator in good faith to negotiate an extension or renewal of the Term provided always that:

- (a) subject to any provision to the contrary in Queensland Rail's Access Undertaking, the Operator will not be granted priority over any other party seeking access to the Nominated Network; and
- (b) the chief executive of the Department of Transport and Main Roads has a right in priority to the Operator and any other party seeking access to reserve the capacity which is committed to the Operator under this Agreement with effect on and from the Termination Date for existing or proposed regularly scheduled passenger services.

SCHEDULE A

REFERENCE SCHEDULE



REFERENCE SCHEDULE

This Reference Schedule forms part of the Agreement dated the _____ day of 20 _____ made between Queensland Rail and the Operator listed in Item 1 below.

Item

1. Operator:

<u>Name</u>
<u>ACN</u>
<u>Address</u>

2. Commencement Date:

3. Termination Date:

4. Commitment Date:

5. Security Amount:

<u>(General Conditions of Contract Clause 2.4 (a))</u>	<u>Subject to Queensland Rail's reasonable assessment of the creditworthiness of the Operator, the Security Amount (if applicable) will be an amount equivalent to the greater of twelve (12) weeks Access Charges determined as if the Operator made maximum use of its Access Rights or the deductible for any one loss as specified in Schedule 7</u>
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6. Date for Completion of Matters prior to the Commencement of Train Services:

<u>(General Conditions of Contract Clause 3.1(c))</u>

SCHEDULE B

GENERAL CONDITIONS OF CONTRACT

CONTENTS

1	DEFINITIONS AND INTERPRETATION	16
1.1	Definitions	16
1.2	Interpretation	36
2	CHARGES	37
2.1	Access Charges	37
2.2	Invoicing	37
2.3	GST	38
2.4	Obligation to Provide Security	39
2.5	Exercise of Security	40
2.6	Return of Security	40
2.7	Weighbridges and Overload Detectors	41
3	TRAIN SERVICE ENTITLEMENTS	43
3.1	Train Services	43
3.2	Reduction of Access Rights	44
3.3	Relinquishment and Transfer of Access Rights	46
3.4	Termination where all Access Rights reduced, relinquished or transferred	48
3.5	Forecasts	48
3.6	Reduction of Access Rights where insufficient capacity created	48
4	DAY TO DAY TRAIN MOVEMENTS	51
4.1	Train Control	51
4.2	Train Control Rights and Obligations	51
4.3	Train Control Communications	52
5	TRAIN OPERATIONS	52
5.1	Compliance	52
5.2	Compliance with Scheduled Time	53
5.3	Alterations to Train Services	54
5.4	Notification	54
5.5	Operator to Supply Information	55
5.6	Performance Levels	55
5.7	Interface Coordination Plan	56
5.8	Operation of Trains and Rollingstock	56

5.9	Authorisation of Rollingstock & Rollingstock Configurations	57
5.10	Private Facilities.....	60
5.11	Entering and exiting the Network.....	61
6	INFRASTRUCTURE MANAGEMENT	61
6.1	Management and Control of the Nominated Network	61
6.2	Maintenance of the Nominated Network	61
6.3	Inspection by Operator	62
7	INCIDENT MANAGEMENT.....	62
7.1	Operator's Emergency Response Plan	62
7.2	Obstructions.....	64
7.3	Notification	64
7.4	Management of Incident Response	64
7.5	Investigations	66
8	ENVIRONMENTAL MANAGEMENT AND PROTECTION	66
8.1	Environmental Management.....	66
8.2	Environmental Management System.....	69
8.3	Carriage of Dangerous Goods on Train Services	69
8.4	Noise Management during Train Services	70
8.5	Spillage of Contaminating Materials	70
8.6	Community Liaison and Environmental Complaint Procedures	71
8.7	Audit and Review of Environmental Investigation and Risk Management Report	71
8.8	Notification	72
9	ACCREDITATION	73
9.1	Evidence of Accreditation	73
10	OPERATOR'S STAFF	73
10.1	Safety of Staff	73
10.2	Qualifications of Operator's Staff.....	73
10.3	Entry onto Land	74
11	INTERFACE RISK MANAGEMENT	74
12	INSPECTION AND AUDIT RIGHTS	77
12.1	Rights of Inspection and Audit.....	77
12.2	Inspection of Trains and Rollingstock.....	77
12.3	Notice of Inspection or Audit.....	78
12.4	Conduct of Inspection or Audit	78
12.5	Cooperation by the Parties	79

12.6	Costs of Inspection or Audit.....	79
12.7	Copies of Reports	80
12.8	Consequences of Inspection or Audit.....	80
12.9	Parties' Obligations.....	80
13	INSURANCE BY OPERATOR.....	80
13.1	Maintain Insurance Policies	80
13.2	Required Insurance Policies.....	80
13.3	Disclosure of Insurance Policies.....	80
13.4	Failure to Disclose Insurance Policies.....	81
13.5	Minimum Terms of Policies.....	81
13.6	Operator Not to Render Policy Void	81
13.7	Compliance.....	81
13.8	Notice of Potential Claims.....	81
13.9	Operator to pay all excess/deductibles.....	81
13.10	Settlement of Claims.....	81
14	INDEMNITIES AND LIABILITIES	82
14.1	Indemnity by Operator	82
14.2	Indemnity by Queensland Rail.....	82
14.3	Liability to Third Parties	82
14.4	Liability from Infrastructure Standard.....	82
14.5	Defence of Claims	83
14.6	Continuation of Indemnities	83
14.7	Determination of Liability	83
14.8	Loss Adjuster	83
14.9	Costs.....	84
15	LIMITATION OF LIABILITY	84
15.1	No Liability for Consequential Loss	84
15.2	Limitation on Claims	84
15.3	Claims in respect of non-provision of Access.....	85
15.4	Claims in respect of delays to Train Movements.....	86
16	MATERIAL CHANGE.....	86
16.1	Meaning of Material Change	86
16.2	Adjustment for a Material Change	87
16.3	Parties' Obligations.....	87

17	DISPUTES	87
17.1	Method	87
17.2	Chief Executive Resolution	87
17.3	Expert	88
17.4	Arbitration	89
17.5	Determination by Court	89
17.6	Queensland Competition Authority (QCA)	89
18	FORCE MAJEURE	89
18.1	Claim of Force Majeure	89
18.2	Suspension of obligations	90
18.3	Duty to Mitigate	90
18.4	End of period of Force Majeure	90
18.5	Termination for Loss or Damage to Nominated Network	90
18.6	Termination after extended Force Majeure Event	91
19	SUSPENSION	91
19.1	Right of Suspension	91
19.2	Details of Suspension	94
19.3	Effect of Suspension	94
20	TERMINATION	94
20.1	Termination by Queensland Rail	94
20.2	Termination for Change in Control	96
20.3	Termination by the Operator	96
20.4	Grounds for Termination to be specified	97
20.5	Obligations and other rights upon termination or expiration	97
20.6	Removal of Rollingstock following termination	97
21	ASSIGNMENT	98
21.1	Assignment by Queensland Rail	98
21.2	Assignment by the Operator	98
21.3	Charging	100
22	GENERAL	100
22.1	Variation/Amendment	100
22.2	Confidentiality	100
22.3	Intellectual Property	100
22.4	Entire Agreement	100
22.5	Non-merger	101

<u>22.6 Authority to enter into Agreement.....</u>	<u>101</u>
<u>22.7 Interpretation not to disadvantage a Party.....</u>	<u>101</u>
<u>22.8 Relationship.....</u>	<u>101</u>
<u>22.9 Notices.....</u>	<u>101</u>
<u>22.10 Certificate.....</u>	<u>102</u>
<u>22.11 Costs.....</u>	<u>102</u>
<u>22.12 Stamp Duty.....</u>	<u>102</u>
<u>22.13 Waiver and Exercise of Rights.....</u>	<u>103</u>
<u>22.14 Computation of Time.....</u>	<u>103</u>
<u>22.15 Severance of invalid or illegal terms.....</u>	<u>103</u>
<u>22.16 Rights Cumulative.....</u>	<u>103</u>
<u>22.17 Approvals and Consents.....</u>	<u>104</u>
<u>22.18 Ownership of Land.....</u>	<u>104</u>
<u>22.19 Implementation of Agreement.....</u>	<u>104</u>
<u>22.20 Schedules.....</u>	<u>104</u>
<u>22.21 Governing Law and Jurisdiction.....</u>	<u>104</u>
<u>22.22 Most Favoured Nation Status.....</u>	<u>104</u>

SCHEDULES**SCHEDULE 1 TRAIN SERVICE ENTITLEMENTS****SCHEDULE 2 NOMINATED NETWORK****SCHEDULE 3 CALCULATION OF ACCESS AND OTHER CHARGES****SCHEDULE 4 AUTHORISED ROLLINGSTOCK AND ROLLINGSTOCK CONFIGURATIONS****SCHEDULE 5 PERFORMANCE LEVELS****SCHEDULE 6 SAFEWORKING PROCEDURES, SAFETY STANDARDS, EMERGENCY PROCEDURES AND ENVIRONMENTAL STANDARDS****SCHEDULE 7 INSURANCE****SCHEDULE 8 QUEENSLAND RAIL'S INVESTIGATION PROCEDURES****SCHEDULE 9 ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT REPORT AND INTERFACE RISK MANAGEMENT PLAN****SCHEDULE 10 INTERFACE COORDINATION PLAN****SCHEDULE 11 ANCILLARY SERVICES AND OTHER CHARGES****SCHEDULE 12 CONFIDENTIALITY DEED****SCHEDULE 13 ACCESS INTERFACE DEED**

GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract form part of the Agreement dated the _____ day of 20 _____ made between Queensland Rail and the Operator.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless inconsistent with the context, the following words and expressions shall have the respective following meanings:

“Access Charges” means the charges determined in accordance with **Schedule 3** payable to Queensland Rail by the Operator for the Access Rights and any interest payable in relation to such charges pursuant to this Agreement;

“Access Rights” means the rights of access to the Nominated Network granted pursuant to this Agreement;

“Accreditation” means accreditation in accordance with Part 3 of Chapter 7 of the Transport Infrastructure Act and **“Accredited”** means to have Accreditation;

“Adjustment Charge” means an Adjustment Charge (as defined in Queensland Rail’s Access Undertaking) approved by the QCA from time to time in respect of the Operator;

“Agreement” or **“this Agreement”** means the Agreement, Reference Schedule and General Conditions of Contract between Queensland Rail and the Operator and includes all annexures, Schedules and exhibits to this Agreement;

“Allowable Threshold” means [*a % agreed between the Parties*] of the total number of Train Services scheduled for a Billing Period;

“Ancillary Services” means those services (if any) in addition to Access Rights which Queensland Rail has agreed to supply to the Operator and which are set out in **Schedule 11**;

“Assign” means to assign, novate, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber, and **“Assignment”** and **“Assignee”** shall have comparable meanings;

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

“Average Below Rail Transit Time Factor” means for each group of Train Services referred to in Table 1.4 of **Schedule 1**, the sum of all actual Below Rail Transit Times for all Train Services operated divided by the sum of the Sectional Running Times for all of those relevant Train Services in the relevant year;

“Base Access Charges” means the Base Access Charges specified in **Schedule 3** and incorporates the elements thereof;

“Below Rail Transit Time” means, for the relevant Train Service travelling from Origin to Destination or from Destination to Origin, the sum of:

- (a) the relevant Sectional Running Times;
- (b) delays to the Train Service from its scheduled Train path in the DTP, where that delay can be attributed directly to Queensland Rail but excluding:
 - (i) cancellations;
 - (ii) delays resulting from compliance with a Passenger Priority Obligation;
and
 - (iii) delays resulting from a Force Majeure Event;
- (c) the time taken in crossing other Trains (to the extent that such time is not contributed to by a Railway Operator or Force Majeure Events and is not otherwise included in paragraph (i) of this definition); and
- (d) delays due to Operational Constraints directly caused by the activities of Queensland Rail in maintaining the Infrastructure or due to a fault or deficiency in the Infrastructure provided such delays are not contributed to by a Railway Operator or Force Majeure Events and are not otherwise included in paragraph (ii) or (iii) of this definition;

“Billing Period” means the period of a Month;

“Board of Inquiry” means a board of inquiry established under the Transport Infrastructure Act;

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

Change in Control means:

a change in the entity that controls the Operator;

- (a) an entity that controls the Operator ceases to control the Operator; or
- (b) if the Operator is not controlled, another entity acquires control of the Operator,
except where:
 - (c) the Operator is listed on the Australian Securities Exchange before, and remains listed after, the relevant change;
 - (d) the relevant change relates directly to the initial listing of the Operator on the Australian Securities Exchange; or
 - (e) for paragraphs (a) and (b), the ultimate holding company of the Operator remains the same following the relevant change.

For the purposes of this definition “control”, “controls”, “controlled” and “ultimate holding company” have the meaning given to those terms in the Corporations Act.

“Change in Law” means:

- (a) any amendment, repeal, modification or enactment of any Law;
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority;
- (c) the making of any new directive, or any change in an existing directive, of any Authority;
- (d) the imposition of a requirement for authorisations not required as at the date of this Agreement;
- (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or
- (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 being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation;

“Change in Relevant Taxes” means:

- (a) the imposition of a new Relevant Tax;
- (b) an increase in the rate of a Relevant Tax; or
- (c) a change in the basis of calculation of a Relevant Tax;

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

“Commencement Date” means the date of execution of this Agreement as specified in Item 2 of the Reference Schedule;

“Commitment Date” means the date on which the Access Rights will be available to the Operator as specified in Item 4 of the Reference Schedule;

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

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

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

but Consequential Loss does not include:

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

“Contaminating Materials” means any material, substance, gas, liquid, chemical, biological substance, mineral or other physical matter which is toxic, flammable or inflammable, harmful to the environment (including any life form) or may cause pollution, contamination or otherwise cause damage;

“Corporation” has the meaning assigned to it by the Corporations Act;

“Corporations Act” means the Corporations Act 2001 (Cwth);

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

“Dangerous Goods” means any substance or article prescribed as Dangerous Goods under the Dangerous Goods Code;

“Dangerous Goods Code” means the following codes prepared by the Federal Office of Road Safety of the Commonwealth Department of Transport and Communications as amended or varied from time to time or any other codes developed to replace or supplement them:

- (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; and
- (c) the Code of Practice for the Safe Transport of Radioactive Material;

“Default Rate” means the Commonwealth Bank of Australia’s reference rate being the “Reference Rate” quoted by the Commonwealth Bank of Australia (or any successor bank) for borrowers with overdrafts of \$100,000 or more on any relevant date as published in the Australian Financial Review (or in the event that such a rate is not so quoted or published at or in respect of any relevant date, such other similar rate to the “Reference Rate” specified by a major commercial bank agreed between the Parties) plus 2%;

“Destination” means the destination or destinations described in **Schedule 1**;

“Discount Rate” means the allowable rate of return utilised in the determination of Reference Tariffs from time to time;

“Efficient Cost” means the cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Infrastructure to the required service standard, having regard to any matters particular to the

environment in which Queensland Rail operates, and including any transitional arrangements agreed between Queensland Rail and the QCA to reflect the transition from Queensland Rail's actual cost to that efficient cost;

“**Emergency Possession**” is similar to a Planned Possession except that this possession is required to rectify a serious fault with the Infrastructure that is considered dangerous to either a Railway Operator's and/or Queensland Rail's Staff, or where severe speed restrictions have been imposed affecting the scheduled Train services of Railway Operators. Such possession must be carried out less than five (5) Business Days from the detection of the problem;

“**Enhancement**” means the improvement, upgrading or other variation of the whole or any part of the Infrastructure which affects the capabilities of the Infrastructure and any major replacement programme for elements of the Infrastructure;

“**Environmental Authorities**” means:

- (a) a development approval or registration certificate for a chapter 4 activity or an environmental authority, as those terms are defined under the *Environmental Protection Act 1994 (Qld)*; or
- (b) any authority which has effect under section 619 of the *Environmental Protection Act 1994 (Qld)*;

“**Environmental Harm**” means serious or material environmental harm or environmental nuisance as defined in the *Environmental Protection Act 1994 (Qld)*;

“**Environmental Investigation and Risk Management Report**” means the environmental investigation and risk management report referred to in Clause 8.1(a) and included in Part 1 of **Schedule 9**;

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

“**Environmental Management System**” means an environmental management system or plan of management to address all environmental risks and to ensure compliance with all Environmental Laws and licences;

“**Environmental Protection Agency**” means the State department administering the *Environmental Protection Act 1994 (Qld)*;

“**Escalation Date**” means the dates on which the Access Charges and other charges payable by the Operator to Queensland Rail under this Agreement are to be escalated in accordance with **Schedule 3**;

“**Evaluation Period**” means:

- (a) when in reference to an individual Train service, the period which is equal to the length of the expected duration of the existing or proposed access right under the access agreement in respect of the relevant Train service;

- (b) when in reference to a combination of Train services for the purpose of determining a Reference Tariff to apply for some or all of those Train services, the period for which that Reference Tariff will apply; or
- (c) when in reference to a combination of Train services other than referred to in subparagraph (ii) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed access right under the access agreement in respect of any of the Train services comprising the combination of Train services, provided that such period does not exceed ten (10) years;

“First Escalation Date” means the Escalation Date (if any) identified as the First Escalation Date in Clause 1.2 of **Schedule 3** for each Train Service type;

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

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

and includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected Party;
- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the Parties are a party to industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) act of God;
- (f) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (h) malicious damage or sabotage;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (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, earthquake, washaway, landslide, explosion or other catastrophe, epidemic and quarantine restriction; and
- (m) delay of a supplier due to any of the foregoing whether any such cause of delay exists before, at the time, or after the date of this Agreement;

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

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

“GST Inclusive Reimbursement” is the amount calculated by the formula:

$$(A - C) \times (1+B)$$

Where:

A = the GST inclusive amount paid by a Party for a Reimbursable Item;

B = the rate of GST (expressed as a decimal) applicable at the time the calculation is made; and

C = any GST input tax credit that the Party can claim in respect of that Reimbursable Item;

“Incident” means any Network Incident involving the activities of the Operator;

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

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

- that Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor, with the exception of the corridor beyond Newlands mine to North Goonyella mine (and beyond);
- that Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of:
 - the branch line to Gregory mine; and
 - the corridor beyond North Goonyella mine to Newlands mine (and beyond);
- that Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory, Rolleston and Minerva mines and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond); or

~~that Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine and the loading facility for Baralaba mine in the vicinity of Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond);~~

“Infrastructure” means all rail transport infrastructure as defined in the Transport Infrastructure Act for which Queensland Rail is the Accredited Railway Manager but only to the extent that the use of that rail transport infrastructure is declared for section 97 of the Act;

“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;

“Insolvency Event” means the happening of any of the following events in relation to a Party:

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within ten (10) Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within one Month;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within ten (10) Business Days after it is made; or
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

“Interface Coordination Plan” means the plan detailed in **Schedule 10** as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party, in respect of all regular operational interfaces between the Parties that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Agreement other than those specified in the Network Management Principles;

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

“Interface Risk Management Plan” means an interface risk management plan identifying the Interface Risks associated with the Operator’s proposed operations and outlining both the control mechanisms agreed between Queensland Rail and

an Operator to ensure those Interface Risks are managed to an acceptable level, and the parties responsible for implementing those controls and ensuring they remain effective and, once agreed or determined in accordance with Clause 11, that interface risk management plan is included in Part 2 of **Schedule 9**;

“**Interface Risks**” means all the risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Operator’s operations and:

- (a) the Infrastructure;
- (b) existing operations on the Infrastructure (including other Train services); and
- (c) Queensland Rail’s Staff, other Railway Operators’ staff (including employees, contractors, invitees and agents of another Railway Operator and any other person under the control or supervision of another Railway Operator) or Queensland Rail’s or other Railway Operators’ interfaces with members of the public;

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

“**Investigation**” means an investigation conducted in accordance with **Schedule 8**;

“**Land**” means the land on which the Nominated Network is situated and which is:

- (a) land owned or controlled by Queensland Rail; or
- (b) land in respect of which entry is required to be given by Queensland Rail as part of the definition of “Access” in Queensland Rail’s Access Undertaking (as that provision is amended, varied or replaced from time to time);

“**Landowner**” has the meaning given to that term in Clause 22.18;

“**Law**” or “**Laws**” includes:

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

“**Load Variation Table**” means a table published by Queensland Rail in respect to the relevant Reference Train Service or Train Service type identifying allowable overloads for Wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads;

“**Maintenance Work**” means any work involving repairs to, renewal, replacement and associated alterations or removal of, the whole or any part of the Infrastructure (other than Enhancements) and includes any inspections or investigations of the Infrastructure;

“Master Book of Rules” means Queensland Rail’s standards for Safeworking Procedures;

“Master Train Plan” or **“MTP”** means that document 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 Infrastructure (where such scheduled times remain unchanged from week to week);

“Material Change” has the meaning given to that term in Clause 16.1(a);

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

“Maximum Allowable Gross Tonnage” means the maximum allowable gross tonnage for a Wagon, Wagon bogie or Train as specified in **Schedule 4**;

“Maximum Desirable Gross Tonnage” means the maximum desirable gross tonnage for a Wagon as specified in **Schedule 4**;

“Month” means calendar month, and **“Monthly”** has a corresponding meaning;

“Network Incident” means any Rollingstock derailment, Rollingstock disablement or breakdown, accident, collision or any other unplanned occurrence on the Infrastructure which causes or could cause injury to any person, damage to property or Environmental Harm or a disruption to or cancellation by Queensland Rail of any Train Movement;

“Network Management Principles” means the principles for the provision of Train Control and scheduling as specified in **Schedule B** to the Undertaking;

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

“Nominated Access Rights” has the meaning given to that term in Clause 3.3(a)(i)(A);

“Nominated Annual Train Services” means the number of Train Services that the Operator is entitled to operate during any one (1) year for each Train Service type as specified in **Schedule 1** or as varied in accordance with this Agreement;

“Nominated Monthly Train Services” means the number of Train Services that the Operator is entitled to operate during any one (1) month period for each Train Service type as specified in **Schedule 1** or as varied in accordance with this Agreement;

“Nominated Network” means that part of the Infrastructure detailed in Part 1 of **Schedule 2**;

“Nominated Weekly Train Services” means the number of Train Services that the Operator is entitled to operate during any one (1) week period as specified in **Schedule 1** or as varied in accordance with this Agreement;

“Notice of Intention to Relinquish” has the meaning given to that term in Clause 3.3(a)(i);

“Obstruction” means any circumstance relating to the whole or any part of the Infrastructure or private siding, including debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation by Queensland Rail of Train Services or Train Movements and includes any Network Incident but does not include an Operational Constraint imposed by Queensland Rail;

“One Way Train Service” means a Train Service operating in one direction only on the Nominated Network either from Origin to Destination or from Destination to Origin as the case may be;

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

“Operator” means the party specified in Item 1 of the Reference Schedule, its successors and permitted assigns;

“Operator Performance Level” means the Operator Performance Level specified in Part 1 of **Schedule 5**;

“Operator’s Controller” means the person for the time being nominated in that position pursuant to **Schedule 10**;

“Operator’s Customer” means a party that has a rail haulage agreement with the Operator in respect of some or all of the Access Rights;

“Operator’s Emergency Response Plan” means the plan as defined in Clause 7.1(a);

“Operator’s Incident Response Coordinator” means the person appointed pursuant to paragraph 4.1 of Part 4 of **Schedule 10**;

“Operator’s Proposal” has the meaning given to that term in Clause 8.1(c);

“Operator’s Recovery Team Leader” means the person appointed pursuant to paragraph 4.2 of Part 4 of **Schedule 10**;

“Operator’s Representative” means the person for the time being appointed pursuant to paragraph 3.2 of Part 3 of **Schedule 10**;

“Operator’s Safety Management System” means the system referred to in Clause 11(a)(iii);

“Operator’s Staff” means employees, contractors, volunteers and agents of the Operator and any other person under the control or supervision of the Operator who is involved in any activity associated with the Train Services;

“Origin” means the origin or origins described in **Schedule 1**;

“Other Dwell Times” means, for any other designated activity, the time period from when a Train Service arrives at a specified point until it has completed all relevant activities, is ready to depart from that point and has advised the relevant Queensland Rail Train Controller accordingly;

“Overload Charge” means the charge determined in accordance with Part 6 of **Schedule 3**;

“Overload Detector” means a weighing mechanism other than a Weighbridge agreed upon for use by the Parties and specified in Part 6B of **Schedule 2**;

“Party” means a party to this Agreement and **“Parties”** means the parties to this Agreement;

“Passenger Priority Obligations” means the obligations of a Railway Manager pursuant to sections 265 and 266 of the Transport Infrastructure Act;

“Performance Levels” means the Queensland Rail Performance Level and the Operator Performance Level;

“Planned Dwell Times” means any of Time at Mine, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule;

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

“Possession Protocols” means the protocols developed and advised by Queensland Rail from time to time (as varied in accordance with this Agreement) for managing and scheduling track possessions of the Infrastructure;

“Private Facilities” means sidings, loading and unloading facilities and any other facilities of any kind which are required by the Operator to operate the Train Services and which do not form part of the Nominated Network;

“Private Facilities Agreement” has the meaning given to that term in Clause 5.11;

“Queensland Rail Cause” means where Queensland Rail is unable to make Infrastructure is not available for the operation of Train services in accordance with a Railway Operator’s access rights under an access agreement for the operation of Train services on the Infrastructure, as a result of:

- (a) Planned Possessions, Emergency Possessions or Urgent Possessions;
- (b) a Force Majeure Event; or
- (c) any other action by Queensland Rail which directly resulted in the Infrastructure not being so available,

provided that the above reasons are not in any way directly attributable to a Railway Operator;

“Queensland Rail Commander” means a member of Queensland Rail’s Staff who has been delegated responsibility for the direction and coordination of Queensland Rail’s and the Operator’s resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with external agencies;

“Queensland Rail Emergency Procedures” means the procedures developed and advised by Queensland Rail from time to time (as varied by Queensland Rail in accordance with this Agreement) for dealing with a Network Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;

“Queensland Rail Performance Level” means the Queensland Rail Performance Level specified in Part 1 of **Schedule 5**;

“Queensland Rail Representative” means the Queensland Rail officer specified in **Schedule 10**;

“Queensland Rail Train Control Direction” means any instruction or direction (whether given orally or in writing, by means of signal or other similar device) issued by Queensland Rail or on behalf of Queensland Rail relating to Train Movements;

“Queensland Rail Train Controller” means the person nominated by Queensland Rail as the supervisor of Train Movements on the relevant part of the Nominated Network and whose details are specified in **Schedule 10**;

“Queensland Rail’s Access Undertaking” means the access undertaking submitted by Queensland Rail to the Queensland Competition Authority and approved by the Queensland Competition Authority under the *Queensland Competition Authority Act 1997 (Qld)* from time to time;

“Queensland Rail’s Right of Way” means the strip of property on which earthworks, traction wiring equipment, tunnels, bridges, fences and track are constructed for the operation of Rollingstock. Where the at grade boundaries for the Right of Way are not readily identifiable they will be regarded as being at least ten (10) metres from the centre line of the track;

“Queensland Rail’s Staff” means the employees, contractors and agents of Queensland Rail and any other person under the control or supervision of Queensland Rail involved in the provision of Access Rights;

“Quarter” means each period of three (3) consecutive Months commencing 1 January, 1 April, 1 July or 1 October in each year, and **“Quarterly”** has a corresponding meaning;

“Queensland Competition Authority” or **“QCA”** means the authority established under the *Queensland Competition Authority Act 1997 (Qld)*;

“Rail Safety Accreditation Unit” or **“RSAU”** means the Rail Safety Accreditation Unit of the Department of Transport and Main Roads for the State;

“Railway Manager” has the meaning given to that term in the *Transport Infrastructure Act*;

“Railway Operator” means, as the context allows:

(a) any party that holds rights of access to all or any part of the Infrastructure, whether or not that party is an Accredited railway operator; and

(b) any Accredited railway operator;

and including, but not limited to, the Operator;

“Recovery” means action to be taken in respect of any derailed, malfunctioning or immobilised Rollingstock for which the Operator is responsible to enable prompt recommencement of Train Movements, including the subsequent retrieval of any such Rollingstock;

“Reduction Factor” means:

(a) if:

(i) a new Access Holder or a Transferee has executed an Access Agreement (or a variation to an existing Access Agreement) in respect of Access Rights that Queensland Rail could not have provided without using the whole or part of the Nominated Access Rights; and

(ii) Queensland Rail’s provision of the Access Rights under that Access Agreement commenced, for a new Access Holder:

(A) who is not a Transferee, after Queensland Rail was given the Notice of Intention to Relinquish but prior to the payment to it of the Relinquishment Fee; or

(B) who is a transferee, on and from the Transfer Date,

(b) then:

(i) for the purpose of calculating the relinquish fee, if:

(A) the relevant Train Services of the Operator and the Train services of the New Access Holder or Transferee are coal carrying Train services; and

(B) the Transferee’s or New Access Holder’s Train services that will use the Nominated Access Rights will operate predominantly in and have an unloading facility that is a nominated unloading facility for a Reference Train Service in, the same Individual Coal System as the Train Services of the Operator that used those Nominated Access Rights,

an amount calculated as follows:

TOP_B / TOP_A

where:

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

TOP_B is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the Take or Pay amount that would be payable in accordance with the New Access Holder’s or Transferee’s Access Agreement (in relation to the whole or part of the Nominated Access Rights) if the New Access Holder’s or Transferee’s

Train services using the Nominated Access Rights were not operated by or for the New Access Holder or Transferee during the same period as the Remainder of the Original Term; or

(ii) if paragraph (a)(iv) does not apply, an amount calculated as follows:

A / B

where:

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

B is the annual train kilometres over the Rail Infrastructure attributable to the Train Services operated under the Nominated Access Rights, provided that to the extent that the New Access Holder's average contribution to Common Costs per train kilometre for its relevant Train service is less than the Operator's average contribution to Common Costs per train kilometre for its relevant Train Service, the Reduction Factor will be decreased in proportion to that relative contribution; or

(c) in all other circumstances, zero (0).

“Reference Tariff” means an access charge (including any system premium) applicable to a specified Reference Train Service over a specified part of the Infrastructure as specified in Queensland Rail's Access Undertaking;

“Reference Tariff Schedule” means the schedule attached to Queensland Rail's Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service;

“Reference Train Service” means a notional Train service identified 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;

“Reimbursable Item” means an item of expense incurred by either Party in respect of which that Party is entitled under this Agreement to be reimbursed by the other Party;

“Related Body Corporate” has the meaning given to that term in the Corporations Act;

“Relevant Escalation Date” means the Escalation Date occurring immediately prior to the last day of the Billing Period for which the invoice for the Access Charges payable in respect of that Billing Period is being prepared;

“Relevant Rollingstock” means any Rollingstock of the Operator with a minimum value of ONE MILLION DOLLARS (\$1,000,000) and which has been nominated as Relevant Rollingstock in Part 3 of **Schedule 4**;

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

“Relinquishment Date” has the meaning given to that term in Clause 3.3(a)(i)(B);

“Relinquishment Fee” means:

(a) the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the Take or Pay amount that would have been payable for the remainder of the Term if the Nominated Access Rights were not relinquished but the Operator did not operate the relevant Train Services less the product of that amount and:

(i) if the Nominated Access Rights to be relinquished:

(A) are for coal carrying Train Services operating in the West Moreton System and are not to be transferred to a Transferee, the greater of the Reduction Factor and 0.5; or

(ii) the Reduction Factor,

provided that:

(b) if that calculation requires information about future events (for example, assumptions about Reference Train Services or Train Services), Queensland Rail:

(i) may make assumptions about those future events so as to calculate the maximum amount of aggregate annual Take or Pay that could potentially be payable (provided that Queensland Rail will not make assumptions about the amount of future Reference Tariffs);

(ii) must assume that the forecast inflation rate is 2.5%; and

(c) where:

(i) the Reduction Factor is calculated in accordance with paragraph (a)(iv) of the definition of Reduction Factor; and

(ii) the Reference Tariff in relation to the Nominated Access Rights includes a system premium,

then the amount under paragraph (a) of this definition must be further adjusted by Queensland Rail to account for any consequential increase in the system premium that would otherwise result in Queensland Rail over recovering amounts from the Operator due to the application of the system premium; and

(d) notwithstanding any other provision in this definition if:

(i) a calculation results in an amount that is less than zero (0); or

(ii) the Nominated Access Rights to be relinquished:

(A) are for coal carrying Train Services operating in the West Moreton System; and

(B) are to be transferred to a Transferee for a period of less than two (2) years and only used by that Transferee for coal carrying Train Services operating in the West Moreton System,

then the amount is deemed to be zero (0).

“**Removal Expert**” means the person for the time being holding the position of Safety Regulator or such other person as agreed between the Parties;

“**Restoration**” means the removal of any Obstruction, the rectification of any Incident and the prompt recommencement of Train Movements including all requisite repairs to the Infrastructure but does not include Recovery;

“**Review Date**” means the date determined as the Review Date pursuant to Clause 3.1.2 of **Schedule 3**;

“**Rollingstock**” means locomotives, carriages, Wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicles which operate on or use a Track and where used in respect of the Operator’s Rollingstock includes Rollingstock which is owned, hired or leased by the Operator, supplied by a contractor of the Operator or is otherwise in the possession or control of the Operator;

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

“**Rollingstock Interface Standards**” means the minimum standards relating to the interface between Rollingstock and the Infrastructure with which the Rollingstock and Rollingstock Configurations must comply in order for them to be able to be operated on the relevant parts of the Infrastructure agreed as part of the Interface Risk Assessment and included in the Interface Risk Management Plan;

“**Safety Regulator**” means the Chief Executive of the Department of Transport and Main Roads (or his or her delegate) operating in accordance with Chapter 7 of the Transport Infrastructure Act;

“**Safety Related Work**” means safety activity in one or more of the following:

- (a) driving and operation of Trains;
- (b) control of the movement of Trains;
- (c) the design, construction, repair, maintenance, upgrading, inspection and/or testing of Track, Rollingstock, civil and electric traction infrastructure, Signalling and/or Telecommunications Equipment; and
- (d) any other duties prescribed by Queensland Rail as safety related work;

“**Safety Standards**” means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or Queensland Rail policies as specified in **Schedule 6** or varied in accordance with

Clause 5.10 of this Agreement and all standards relating to safety, including occupational health and safety, prescribed by any Laws;

“**Safeworking Procedures**” means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure as specified in Part 1 of **Schedule 6** or varied in accordance with Clause 5.10 of this Agreement;

“**Schedule**” means a schedule to this Agreement and any other schedule which amends, replaces or substitutes a schedule to this Agreement issued from time to time by Queensland Rail pursuant to Clause 22.20;

“**Scheduled Time**” means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as detailed in the Train Schedule or as amended or altered by Queensland Rail from time to time on the day of operation pursuant to the Network Management Principles provided that such amendments or alterations do not result in a notice for cancellation by the Operator pursuant to Clause 5.3(d);

“**Sectional Running Times**” means the time period measured from the time a Train Service passes the signal controlling entry into a track section between two relevant specified locations on the Nominated Network to the time the Train Service arrives at the signal controlling entry into the next track section between two relevant specified locations on the Nominated Network, and does not include an allowance for Planned Dwell Times;

“**Security Amount**” means an amount equal to:

- (a) initially, the amount specified in Item 5 of the Reference Schedule; and
- (b) thereafter, as increased or decreased in accordance with Clause 2.4;

“**Security**” has the meaning given to that term in Clause 2.4(a);

“**Security Interest Rate**” means the “Cash Rate: average 11am rate” as published in the Australian Financial Review (or in the event that such a rate is not so quoted or published at or in respect of any relevant date, such other similar rate included in another publication agreed between the Parties) less 0.5%;

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

“**Signalling and Telecommunications Equipment**” means all electronic, electrical and other equipment, including signalling systems, safety devices and communications facilities installed on or as part of the Infrastructure or on Rollingstock, for the purpose of compliance with Safeworking Procedures and to facilitate Train Control;

“**State**” means the State of Queensland;

“**Stowage**” means the short-term storage of Trains on the Nominated Network at locations specified by Queensland Rail but does not include storage of individual items of Rollingstock or the long-term storage of Trains;

“System” means the relevant one of the following:

- (a) the Mt Isa Line;
- (b) the North-Coast Line;
- (c) the West Moreton System; or
- (d) the Metropolitan Region.

“System Forecast” means the forecast of Gtk for the relevant Individual Coal System that is specified for the relevant Reference Train Service in the relevant Reference Tariff Schedule;

“System Gtk” means the actual Gtk achieved by all coal carrying Train services to the extent those Train services travel on the relevant Individual Coal System over the relevant period;

~~“System Wide Requirements” means the Network Management Principles, the Possession Protocols, the Interface Coordination Plan, the Rollingstock Interface Standards, the Safeworking Procedures and Safety Standards, the Queensland Rail Emergency Procedures and Queensland Rail’s Investigation Procedures;~~

“Take or Pay” means the charge for contracted Train services where the contracted Train services are not used by the relevant Railway Operator, and for the Operator is calculated as ATP in Part 5 of Schedule 3;

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

“Term” means the term of this Agreement, commencing on the Commencement Date and ending on the Termination Date;

“Termination Date” means the date specified in Item 3 of the Reference Schedule or such earlier date upon which this Agreement is terminated pursuant to the provisions of this Agreement;

“Third Party” means a person other than the Operator or Queensland Rail;

“Time at Depot” means the period from when a Train Service arrives at the entry signal to the depot until it has completed all activities at the depot, is ready to depart the depot and has advised the relevant Queensland Rail Train Controller accordingly;

“Time at Mine” means the time period from when a Train Service arrives at the entry signal to the specified mine loading facility until it has completed loading, has presented at the exit signal, is ready to depart the facility and has advised the relevant Queensland Rail Train Controller accordingly;

“Time at Unloading Facility” means the time period from when a Train Service arrives at the entry signal to the specified unloading facility until it has completed unloading, presented at the exit signal, is ready to depart the facility and has advised the relevant Queensland Rail Train Controller accordingly;

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

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

“Train Control” means the management and monitoring of all Train Movements and of all other operation of Rollingstock on the Infrastructure and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation including:

- (a) recording Train running times on Train diagrams and in Queensland Rail's information systems;
- (b) reporting of incidents occurring on the Infrastructure;
- (c) managing incidents occurring on the Infrastructure from within a Train Control centre;
- (d) field Incident management;
- (e) yard control services; and
- (f) exchanging information with Railway Operators;

“Train List” means the information required to be supplied by the Operator in accordance with Part 2 of **Schedule 10** in respect of each individual Train Service to be operated on the Nominated Network;

“Train Movement” means the operation of a Train on the Infrastructure by the Operator, Queensland Rail or any Railway Operator;

“Train Schedule” means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by Queensland Rail prior to the day of operation in accordance with the Interface Coordination Plan showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure;

“Train Service” means the running of a Train between specified origins and destinations by the Operator (including any Stowage) in accordance with a Train Service Description;

“Train Service Description” means the description of a Train Service detailed in Part 1 of **Schedule 1**;

“Train Service Levels” means collectively the Nominated Weekly Train Services, the Nominated Monthly Train Services and the Nominated Annual Train Services specified in **Schedule 1**;

“Transferee” has the meaning given to that term in Clause 3.3(a)(i)(C);

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

“Urgent Possession” is similar to a Planned Possession, except that such a possession is required to correct problems that are considered potentially dangerous and as a result, the possession must be carried out between five (5) Business Days and three (3) Months from the detection of the problem;

“Variation Notice” has the meaning given to that term in Clause 3.2(a);

“Wagon” means any Rollingstock designed to carry any load other than passengers;

“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;

“Weighbridge” means a weighbridge or weightometer certified under the Trade Measurement Act 1990 (Qld), as specified in Part 6A of Schedule 2; and

“Year” (when used with a capital) means the period from (and including) the first day of the Month in which the Commitment Date occurs to (but not including) the first anniversary thereof, and from every twelve (12) Month period thereafter except that the last year will end on the date of expiry or termination of this Agreement.

1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to:

 - (i) a person includes a firm, unincorporated association, corporation or other entity, government or statutory body and conversely;
 - (ii) a person includes its legal personal representative, successors and assigns;
 - (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
 - (iv) conduct includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
 - (vii) time is to local time in Queensland;
 - (viii) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;
 - (ix) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time and notwithstanding any changes in the identity of the Parties;
 - (x) any thing (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (xi) a Clause is to a clause of the General Conditions of Contract to this Agreement;

- (xii) a Schedule is to a schedule to this Agreement (as amended from time to time in accordance with this Agreement);
- (xiii) any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (xiv) any Authority, association or body whether statutory or otherwise shall, in the event of any such Authority, association or body ceasing to exist or being re-constituted, re-named or replaced or the powers or functions thereof being transferred to any other Authority, association or body, be deemed to refer respectively to the Authority, association or body established or constituted in lieu thereof or as nearly as may be succeeding to the powers or functions thereof; and
- (e) if there is any inconsistency between matters contained in a Schedule and any other provisions of the Agreement, the other provisions of the Agreement prevail. If there is any inconsistency between matters contained in Queensland Rail's Access Undertaking and this Agreement, the provisions of this Agreement prevail.

2 CHARGES

2.1 Access Charges

The Operator must pay to Queensland Rail:

- (a) the Access Charges at the times and in the manner set out in this Agreement;
- (b) the charges for Ancillary Services (if any) calculated and payable in the manner set out in this Agreement;
- (c) any other charges or amounts payable in accordance with this Agreement; and
- (d) on demand and without prejudice to the rights, powers and remedies of Queensland Rail under this Agreement or otherwise at Law, interest at the Default Rate calculated on daily balances and payable daily on any amount outstanding in respect of an invoice, including any disputed amount which is subsequently determined to be payable to Queensland Rail, from the day after the invoice is due to be paid until the date that the amount outstanding is paid in full, and all interest payable but unpaid at the end of each Month shall be capitalised by Queensland Rail and such capitalised amount shall itself bear interest at the Default Rate.

2.2 Invoicing

Unless agreed otherwise between the Parties:

- (a) Queensland Rail will provide to the Operator an invoice for the Access Charges, charges for Ancillary Services (if any) and any other charges or amounts payable by the Operator under this Agreement as soon as practicable after the end of each Billing Period or, where this Agreement has expired or terminated on a date other than 30 June and the invoice is for

annual Take or Pay charges, as soon as practicable after the first 30 June following that expiration or termination.

- (b) The first Billing Period will commence on the Commitment Date and end on the last day of the Month in which the Commitment Date falls, and each subsequent Billing Period during the Term will commence on the day following the last day of the immediately preceding Billing Period.
- (c) Subject to Clause 2.2(d), the Operator must pay to Queensland Rail the amount of the invoice referred to in Clause 2.2(a) within ten (10) Business Days after receipt of the invoice.
- (d) Where the Operator bona fide disputes an amount or amounts claimed in an invoice it shall give notice of that dispute (setting out in detail the grounds for its objection) to Queensland Rail within ten (10) Business Days after receipt of the invoice. Notwithstanding the Operator's objection to any amounts claimed in an invoice, the Operator must pay to Queensland Rail the undisputed portion of the amount or amounts claimed in the relevant invoice together with 50% of the disputed portion within ten (10) Business Days after receipt of the invoice.
- (e) Any dispute as to the amount claimed in an invoice shall be resolved by an expert in accordance with Clause 17.3. Upon resolution of such dispute in accordance with Clause 17.3:
 - (i) the Operator must pay to Queensland Rail the amount (if any) determined to be payable by the Operator to Queensland Rail together with the interest on that amount calculated in accordance with Clause 2.1(d) within ten (10) Business Days after being notified of the expert's determination; or
 - (ii) Queensland Rail must credit to the Operator in the form of a deduction from the invoice for Access Charges and other charges for the Billing Period immediately following a resolution in accordance with Clause 17.3 any amount found to have been overpaid by the Operator together with interest on that amount at the Default Rate calculated on daily balances from the date of payment of the amount overpaid to the date of such credit. Such interest payable but unpaid at the end of each Month shall be capitalised and such capitalised amount shall itself bear interest at the Default Rate.
- (f) When providing the Operator with an invoice which includes, in whole or part, an amount for an annual Take or Pay charge, Queensland Rail shall provide the Operator with information on how Queensland Rail determined the amount of the annual Take or Pay charge.

2.3 GST

- (a) Unless otherwise stated, all amounts payable or other consideration to be provided under this Agreement are exclusive of GST.
- (b) If a Party is required to pay GST on any amount payable or other consideration to be provided under this Agreement, then the other Party must

pay to that Party an amount equal to the GST payable on the same date as the payment giving rise to the GST.

- (c) If the supply of a Reimbursable Item under this Agreement is subject to GST, then a Party must pay the other Party in respect of that Reimbursable Item the GST Inclusive Reimbursement.
- (d) Each invoice prepared pursuant to Clause 2.2(a) shall take the form of a Tax Invoice.
- (e) If the amount of GST paid or payable by a Party ('the supplier') on any supply under this Agreement differs from the amount on account of GST paid by the other Party ("recipient"), because the Commissioner of Taxation lawfully adjusts the value of taxable supply for the purpose of calculating GST, then the amount paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.

2.4 Obligation to Provide Security

- (a) The Operator must deliver to Queensland Rail, prior to the operation of Train Services, and maintain during the Term security for the performance of the Operator's obligations under this Agreement in the form of:
 - (i) an unconditional and irrevocable bank guarantee (or equivalent), for the Security Amount, in favour of Queensland Rail issued by a bank holding a current Australian banking licence and with a credit rating acceptable to Queensland Rail; or
 - (ii) any other security reasonably acceptable to Queensland Rail, and containing such terms and conditions as are reasonably acceptable to Queensland Rail ("**Security**").
- (b) Where the Operator has delivered a Security to Queensland Rail in the form of cash, Queensland Rail will pay interest to the Operator annually at the Security Interest Rate published on the day the Security is provided. The Security Interest Rate shall be reset on the first Business Day of each Month ("**Reset Date**") for that Month. Such interest shall be capitalised at each Reset Date and such capitalised interest shall itself bear interest at the Security Interest Rate.
- (c) The Operator may, with Queensland Rail's consent, replace any Security provided by the Operator in accordance with this Clause 2.4 with replacement Security. If the Operator replaces any existing Security with a replacement Security then Queensland Rail will release the existing Security in accordance with Clause 2.6(b).
- (d) The provision and continuance of the Security (or of any additional or replacement Security provided by the Operator in accordance with Clause 2.4(c) or Clause 2.4(f)) is a condition of the performance by Queensland Rail of its obligations under this Agreement.

- (e) If at any time during the Term the Operator is not required to give Queensland Rail a Security in accordance with this Agreement and Queensland Rail does not hold a Security from the Operator, the Operator must provide a Security within ten (10) Business Days after receipt of a notice from Queensland Rail where:
- (i) an event of default by the Operator in regard to payment of any amount due under this Agreement has occurred, that event of default is not the subject of a bona fide dispute between the Parties and such default continues for five (5) Business Days after notice of such default from Queensland Rail; or
 - (ii) in the event of an Assignment or at any time during the Term, if Queensland Rail is reasonably of the opinion that the Operator is:
 - (A) no longer financially sound;
 - (B) no longer able to meet its debts as and when they fall due; or
 - (C) not otherwise capable of performing its obligations under this Agreement.
- (f) If at any time during the Term the Security held by Queensland Rail is less than the Security Amount (including for reasons that Queensland Rail has drawn on or applied the Security in accordance with Clause 2.5), the Operator must increase the Security by the amount determined by Queensland Rail as required to ensure that the Security is for the Security Amount, and deliver to Queensland Rail an additional or replacement Security to reflect the change within ten (10) Business Days after receipt of notice from Queensland Rail.
- (g) If the Operator considers its financial circumstances have changed such that a Security would no longer be required, the Operator may request Queensland Rail in writing (but not more than once in any twelve (12) Month Period) to review the creditworthiness of the Operator and Queensland Rail will undertake such a review.

2.5 Exercise of Security

A Security may be called upon by Queensland Rail in any circumstances where Queensland Rail suffers direct loss or damage as a result of default by the Operator under this Agreement and is entitled to be compensated for such loss or damage under this Agreement.

2.6 Return of Security

Queensland Rail must repay or return to the Operator (and where appropriate provide to the Operator any necessary releases in relation to) any Security provided by the Operator under Clause 2.4:

- (a) subject to Queensland Rail's rights of recourse to the Security in Clause 2.5, promptly after the Termination Date;
- (b) on receipt of an additional or replacement Security provided by the Operator in accordance with Clause 2.4(c) or 2.4(f); or

- (c) following a review pursuant to Clause 2.4(g), Queensland Rail, acting reasonably, finds that it is not necessary for the Operator to provide Queensland Rail with a Security.

2.7 Weighbridges and Overload Detectors

- (a) Where an operational Weighbridge or Overload Detector is located en route between Origin and Destination the Operator must use reasonable endeavours to operate its Trains over such Weighbridge or Overload Detector in a manner to facilitate weighing.
- (b) Where a Weighbridge or Overload Detector is located en route between Origin and Destination, the Party responsible for that Weighbridge or Overload Detector (as specified in Part 6 of **Schedule 2**) must use reasonable endeavours to ensure that:
- (i) such Weighbridge or Overload Detector is available; and
 - (ii) Trains are operated in a manner that the Weighbridge or Overload Detector weighs the Operator's Trains.
- (c) Queensland Rail may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Operator.
- (d) The Operator must use reasonable endeavours to ensure that the mass of any Wagon or Train operated by it under this Agreement does not exceed the relevant Maximum Allowable Gross Tonnage.
- (e) In the event that any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Allowable Gross Tonnage, the Operator must reduce the gross mass to a level below the relevant Maximum Allowable Gross Tonnage. Queensland Rail may direct a Train to a specific siding or location to allow such reduction and the Operator shall comply with such direction.
- (f) In the event that any Wagon operated by the Operator is determined to be in excess of the relevant Maximum Desirable Gross Tonnage, Queensland Rail may:
- (i) charge the Operator (and the Operator must pay) an Overload Charge (in accordance with Part 6 of **Schedule 3**) in respect of that Wagon; and
 - (ii) impose any Operational Constraints which Queensland Rail considers to be reasonable in the circumstances.
- Queensland Rail will include the Overload Charge in the invoice for Access Charges for the Billing Period immediately following such determination for payment by the Operator.
- (g) The Weighbridges to be used by Queensland Rail in the calculation of Access Charges are those specified in Part 6A of **Schedule 2**.

- (h) Where the Operator's Trains are weighed by an operational Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in Part 6B of **Schedule 2** must use reasonable endeavours to:
- (i) keep a record of the gross mass of each loaded Wagon and Train (and the Operator must use reasonable endeavours to ensure such information is obtained from the operator of the Weighbridge or Overload Detector where the Weighbridge or Overload Detector is not owned or controlled by Queensland Rail);
 - (ii) provide such record to the party loading the Trains; and
 - (iii) provide such record to the other Party within ten (10) Business Days of the end of each Month.
- (i) If either Party reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the accuracy of such Weighbridge or Overload Detector to be tested, and the Weighbridge or Overload Detector shall be deemed to have malfunctioned from the date of such notice until such testing has been carried out and/or the Weighbridge or Overload Detector has been recalibrated and the mass will be determined in accordance with Part 2 of **Schedule 3**. Testing will be carried out in accordance with the following procedure:
- (i) As soon as reasonably practicable the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of **Schedule 2** must ensure that a suitably qualified person conducts a test of the calibration of the Weighbridge or Overload Detector and makes any adjustments required to correct the calibration.
 - (ii) Except in the case of manifest error or fraud, the determination of the person conducting the test will be final and binding on the Parties.
 - (iii) Where the person conducting the test determines that the Weighbridge or Overload Detector is measuring within the tolerances specified in Part 6 of **Schedule 2**, the Weighbridge or Overload Detector will be treated as having been measuring accurately from the date on which the relevant notice was given pursuant to this Clause 2.7(i) and the Access Charges (including any Overload Charge) will be determined from that date according to Part 5 of **Schedule 3**. The invoice for Access Charges in respect of the Billing Period following such determination will be adjusted to appropriately account for the difference in payment of Access Charges arising from having treated the Weighbridge or Overload Detector as malfunctioning pursuant to this Clause 2.7(i).
 - (iv) The cost of conducting such test shall be met by:
 - (A) the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of **Schedule 2** in the event that the Weighbridge or Overload Detector is determined to be not

measuring within the tolerances specified in Part 6 of **Schedule 2**; or

(B) the Party giving notice under this Clause 2.7(i) in the event that the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in Part 6 of **Schedule 2**.

(j) Notwithstanding any other provision in this Agreement, neither Party will be liable to the other for any damage, loss, cost or expense that the other may suffer or incur as a result of that Party, in good faith, acting on the basis of any mass determined in accordance with this Agreement.

(k) Notwithstanding any other provision in this Agreement, neither Party shall have any Claim against the other Party as a result of or arising from any delay to or cancellation of Train Services as a result of the operation of Clause 2.7(i).

3 TRAIN SERVICE ENTITLEMENTS

3.1 Train Services

(a) Without limiting any other provision of this Agreement, the Operator must not commence any Train Services unless and until the Operator has done each of the following in respect to those Train Services:

(i) if applicable, delivered to Queensland Rail the Security in accordance with Clause 2.4;

(ii) provided to Queensland Rail a certificate of compliance for all of the Operator's Rollingstock and Rollingstock Configurations in accordance with Clause 5.9 and Queensland Rail has authorised such Rollingstock and Rollingstock Configurations;

(iii) demonstrated to Queensland Rail that the Operator has entered into agreements in respect of the Private Facilities as required by Clause 5.11 (if applicable);

(iv) provided to Queensland Rail a copy of the Operator's Emergency Response Plan which must be compatible with the Queensland Rail Emergency Procedures;

(v) provided to Queensland Rail an acceptable Environmental Investigation and Risk Management Report in accordance with Clause 8.1;

(vi) implemented those elements of the Environmental Investigation and Risk Management Report, if applicable, which are to be implemented prior to the commencement of Train Services;

(vii) complied with the community liaison requirements referred to in Clause 8.6(a);

(viii) provided to Queensland Rail evidence of its Accreditation as required by Clause 9.1(a);

- (ix) conducted an Interface Risk Assessment in accordance with Clause 11(a);
 - (x) devised in collaboration with Queensland Rail an Interface Risk Management Plan and implemented the elements of such plan required to be implemented prior to the commencement of Train Services;
 - (xi) developed the Operator's Safety Management System and incorporated into that system the elements and process referred to in Clause 11(a)(iii); and
 - (xii) taken out the insurances required under Clause 13 and provided to Queensland Rail evidence of that insurance as required by Clause 13.3.
- (b) Queensland Rail will use all reasonable endeavours to cooperate with the Operator to facilitate the Operator's completion or compliance with Clause 3.1(a).
- (c) If the Operator has not done each of the acts, matters or things specified in Clause 3.1(a) for its initial Train Services by:
- (i) the date specified in Item 6 of the Reference Schedule and Queensland Rail has no reasonable expectation that the Operator can commence the operation of Train Services by the Commitment Date; or
 - (ii) by the Commitment Date,
- then Queensland Rail may, provided that Queensland Rail has complied with Clause 3.1(b), notify the Operator in writing of its intention to terminate this Agreement and if the Operator has not complied with all the requirements of Clause 3.1(a) by a date which is twenty (20) Business Days after the date of the notice, Queensland Rail may terminate this Agreement.
- (d) The Operator must operate Train Services only in accordance with the Train Service Description and this Agreement. Unless acting under a Queensland Rail Train Control Direction, the Operator must not operate Train Services which do not comply with the Train Service Description without the prior written approval of Queensland Rail, which approval may specify terms in addition to or varying the terms of this Agreement in respect of those Train Services, including the Access Charges applicable. The Operator must comply with such terms in operating the Train Services.

3.2 Reduction of Access Rights

- (a) If the Operator, for any reason other than the occurrence of a Force Majeure Event or the failure of Queensland Rail to make the Access Rights available, does not operate, over any four (4) consecutive Quarters, at least eighty-five percent (85%) of the Train Services allowed under its Train Service Description for that period, then Queensland Rail may within forty (40) Business Days, give the Operator written notice ("**Resumption Notice**") of:
- (i) that underutilisation;

- (ii) that Queensland Rail is considering reducing the Operator's Access Rights from a nominated date ("**Date of Resumption**") to the extent of that underutilisation; and
 - (iii) requesting the Operator to demonstrate a sustained requirement for the Access Rights that have not been utilised.
- (b) If a Resumption Notice is given to the Operator and:
- (i) the Operator has not demonstrated to Queensland Rail's reasonable satisfaction, within 15 Business Days of receiving the Resumption Notice, a sustained requirement for the Access Rights that were not utilised; and
 - (ii) Queensland Rail is satisfied that it can demonstrate that it has a reasonable expectation of:
 - (A) a sustained alternative demand for the capacity used by the Access Rights in question; or
 - (B) receiving a commercial benefit sufficiently material to justify the resumption of the Access Rights in question,
- then:
- (iii) Queensland Rail must notify the Operator of whether Queensland Rail has decided to proceed with the resumption and, if Queensland Rail has decided to proceed, whether Queensland Rail has decided to reduce the level of the resumption, or nominate a later date for the Date of Resumption, from that given in the Resumption Notice; and
 - (iv) if Queensland Rail has decided to proceed with the resumption, the Operator's entitlement to operate Train Services shall be reduced to the level specified in the Resumption Notice with effect on and from the Date of Resumption (except to the extent that those matters have been varied in accordance with Clause 3.2(b)(iii)).
- (c) If the Operator does not agree with the reduction of the Operator's entitlement proposed by Queensland Rail pursuant to Clause 3.2(a), the Operator may, within twenty (20) Business Days of receipt of the Resumption Notice, notify Queensland Rail in writing that it disputes the proposed reduction in which case the Operator may refer the dispute for determination by an expert in accordance with Clause 17.3 of this Agreement. The expert will determine whether the conditions for a reduction in Access Rights set out in Clause 3.2(a) have been met and whether the Operator has demonstrated, to Queensland Rail's reasonable satisfaction, a sustained requirement for that part of the Access Rights to which the reduction would apply. The reduction proposed in the Resumption Notice will not take effect until resolution of the dispute and then only to the extent that the reduction is consistent with the expert's determination.
- (d) Queensland Rail may withdraw the Resumption Notice at any time prior to the later of the Date of Resumption and ten (10) Business Days following the resolution of the dispute.

- (e) Where the Operator's Customer or Customers has or have provided written notification to Queensland Rail requesting the transfer to another Railway Operator for some or all of the Access Rights for which they are the Operator's Customer or Customers, then Queensland Rail will, as permitted under and subject to any requirements specified in Queensland Rail's Access Undertaking, reduce the Access Rights for the Operator in accordance with that request. The provisions of Clause 17 shall not apply to this Clause 3.2(e).
- (f) In the event that the Operator's entitlement to operate Train Services is reduced in accordance with this Clause 3.2, the Agreement (including the Base Access Charges) will be varied accordingly.
- (g) The Operator shall have no claim or entitlement to compensation as a result of any reduction in Train Services pursuant to this Clause 3.2.

3.3 Relinquishment and Transfer of Access Rights

- (a) Unless otherwise specified in the Access Agreement, an Operator may relinquish or transfer its Access Rights in accordance with this Clause 3.3.
- (b) An Operator who intends to relinquish Access Rights must give Queensland Rail reasonable notice of its intention to do so ("**Notice of Intention to Relinquish**"), specifying:
 - (i) the "Nominated Access Rights"; and
 - (ii) subject to Clause 3.3(c), the date ("**Relinquishment Date**") on which and the period for which the Nominated Access Rights are to be relinquished.
- (c) An Operator who intends to transfer all or part of its Access Rights to an Access Seeker (the "Transferee") must give Queensland Rail reasonable notice of its intention to do so ("**Notice of Intention to Transfer**"), specifying:
 - (i) the Nominated Access Rights;
 - (ii) subject to Clause 3.3(d), the date ("Transfer Date") on which and the period for which the Nominated Access Rights are to be transferred; and
 - (iii) the identity of the Transferee.
- (d) The period from the giving of the Notice of Intention to Relinquish until the Relinquishment Date, or the period from giving of the Notice of Intention to Transfer until the Transfer Date, must not:
 - (i) exceed two (2) years, where the Access Rights to be relinquished or transferred under the Access Agreement are for coal carrying Train Services operating in the West Moreton System; or
 - (ii) exceed six (6) months, where 3.3(d)(i) does not apply.
- (e) An Operator who wishes to relinquish or transfer Nominated Access Rights must pay a Relinquishment Fee to Queensland Rail. The relinquishment or transfer of any Nominated Access Rights in accordance with this clause is

subject to and conditional on the Operator's payment of the Relinquishment Fee to Queensland Rail.

- (f) The Operator immediately prior to paying the Relinquishment Fee (but not less than 5 Business Days prior to the Relinquishment Date or Transfer Date), must request Queensland Rail to calculate the Relinquishment Fee. Upon being so requested, Queensland Rail will calculate the Relinquishment Fee in accordance with clause 1.1 ("Relinquishment Fee"). Subject to clause 3.3 (g), Queensland Rail will notify the Operator as soon as reasonably practical of the Relinquishment Fee and how it was calculated.
- (g) If the calculation of the Relinquishment Fee changes during the period from the time Queensland Rail notifies the Operator under Clause 3.3(f) to the Operator seeking to pay the Relinquishment Fee, then Queensland Rail:
 - (i) may refuse to accept that payment (and, if so, the Relinquishment Fee is deemed not to have been paid by the Operator); and
 - (ii) must advise the Operator of the correct Relinquishment Fee and the circumstances giving rise to the change in the calculation.
- (h) The terms of the Access Agreement will continue to apply in respect of the Nominated Access Rights until the later of:
 - (i) the Operator paying the Relinquishment Fee to Queensland Rail; and
 - (ii) the Relinquishment Date or Transfer Date.
- (i) Where Queensland Rail identifies an opportunity for it to enter into an Access Agreement with an existing or prospective Railway Operator that would result in a lessening of the Operator's Relinquishment Fee, Queensland Rail will not unreasonably delay the process for negotiating and executing an access agreement with that existing or prospective Railway Operator.
- (j) In the event of a transfer of Access Rights under this clause, Queensland Rail will transfer the applicable Nominated Access Rights provided that:
 - (i) the access rights sought by the Transferee are for the same type of Train Service Entitlement (i.e. cyclic traffic) as the Nominated Access Rights;
 - (ii) corresponding access rights are included in a new or varied access agreement with the Transferee;
 - (iii) Queensland Rail's obligation to provide access, for all or part of the period specified in Clause 3.3(a)(i)(B), under that new or varied access agreement in respect of the relevant access rights commences on and from the later of paying the Relinquishment Fee to Queensland Rail and the Transfer Date;
 - (iv) Queensland Rail is satisfied that the new or varied access agreement has been developed in accordance with the requirements of Queensland Rail's Access Undertaking;
 - (v) the Operator complies with Clauses 3.3(c) and (f); and

(vi) Queensland Rail has sufficient capability in its Infrastructure so that it can do so without adversely affecting other Third Parties who are seeking access to Queensland Rail's Infrastructure or its ability to comply with its obligations to Third Parties with existing rights to access Infrastructure.

3.4 Termination where all Access Rights reduced, relinquished or transferred

Where Access Rights have been reduced, relinquished or transferred in accordance with this Agreement to the extent that there is no longer any Access Rights, Queensland Rail will be entitled to terminate this Agreement.

3.5 Forecasts

(a) For the purposes of permitting Queensland Rail to plan for the maintenance and upgrading of the Infrastructure, the Operator will, within twenty (20) Business Days after being requested to do so by Queensland Rail (such requests to be made not more than once in any six (6) Month period), provide to Queensland Rail a forecast in writing representing the Operator's best estimate for the next six (6) year period specified by Queensland Rail in its request of:

(i) the number and frequency of Train Services it will require;

(ii) the gross tonnage it will transport;

(iii) the average number of gross tonnes per Train it will transport; and

(iv) any changes in Rollingstock or Rollingstock Configuration which will vary any of the above,

such forecast of the above information to be made up of:

(v) a forecast for each Month of the first year of such period; and

(vi) a forecast for each of the remaining five (5) years of such period.

(b) Queensland Rail will, within 3 months after being requested to do so by the Operator (such requests to be made not more than once in any six (6) Month period), provide to the Operator forecasts of planned major Enhancements relating to the Nominated Network for each of the next six (6) years.

(c) The information and/or forecasts provided pursuant to Clauses 3.5(a) or (b) shall be prepared and supplied in good faith however the information and/or forecasts shall not be a representation or warranty as to the accuracy of the information and/or forecasts itself and the parties have no liability in any respect for the information and/or forecasting.

3.6 Reduction of Access Rights where insufficient capacity created

(a) Notwithstanding any other provision in this Agreement, if Queensland Rail grants access rights ("**Conditional Access Rights**") to Railway Operators (including the Access Rights of the Operator under this Agreement) ("**Conditional Access Holders**") that are conditional on the completion of particular Infrastructure Enhancements, then:

- (i) after the commissioning of the last of the relevant Infrastructure Enhancements, Queensland Rail will, subject to Clause 3.6(b), undertake an assessment of the change in Existing Capacity arising as a result of those Enhancements (“Change in Existing Capacity”);
 - (ii) where Change in Existing Capacity is measured as the Existing Capacity at that time, less the Existing Capacity of the system in the absence of the Infrastructure Enhancement, using consist Supply Chain Operating Assumptions;
 - (iii) the assessment must be done expeditiously with an evaluation period of no more than six months following commissioning;
 - (iv) if that assessment indicates that the Change in Existing Capacity is not due to an Infrastructure Enhancement, then Conditional Access Rights will not be reduced;
 - (v) if the Change in Existing Capacity is due to an Infrastructure Enhancement but:
 - (A) that assessment indicates that the Change in Existing Capacity is less than the Planned Capacity for those infrastructure enhancements at the time when the Conditional Access Rights were granted; and
 - (B) that Change in Existing Capacity is not sufficient to provide all of the Conditional Access Rights to all of the Conditional Access Holders and rectify any existing deficit of Available Capacity to Committed Capacity in respect of the relevant Rail Infrastructure,
- then:
- (C) the Conditional Access Rights of the Operator will be reduced on a pro rated basis, to a proportion of:
 - a. the Change in Existing Capacity; and
 - b. less the Capacity required to be provided to existing non-conditional Access Holders to rectify any existing deficit of Available Capacity to Committed Capacity in respect of the relevant Rail Infrastructure;
 - c. by reference to the proportion that those Conditional Access Rights bear to the aggregate of the Conditional Access Rights for all of the Conditional Access Holders;
 - (D) Queensland Rail will notify the Operator:
 - a. of the assessment that has been undertaken; and
 - b. of the reduction in its Conditional Access Rights (“Access Rights Reduction”) and the basis of that calculation; and

- c. that each of the Conditional Access Holders together will be placed in a queue (or returned to the queue if one already exists) in accordance with the Undertaking and be given a starting position in the queue based on the date of their original Access Application, but only to the extent of their Access Rights Reduction unless they notify Queensland Rail within 20 Business Days that they do wish to seek the additional Access Rights.
- (b) Queensland Rail may defer an assessment for the purposes of Clause 3.6(a) until such time as Queensland Rail reasonably considers that the relevant Enhancements are fully operational and the demand conditions are such that a reasonable assessment can be undertaken.
- (c) If the Operator is notified of a reduction in the Operator's Conditional Access Rights, then, subject to Clause 3.6(f), the Operator's Conditional Access Rights are reduced in accordance with that notice and this Agreement (including the Train Service Description) is taken to be amended to the extent necessary to give effect to that reduction.
- (d) Subject to Clause 3.6(e), any dispute between the Parties in connection with the operation of this Clause 3.6 (including the pro rating of the Operator's Conditional Access Rights) may be referred by either Party to the QCA for resolution in accordance with the dispute resolution provisions that apply in respect of the determination of disputes by the QCA under Queensland Rail's Access Undertaking.
- (e) If Queensland Rail is of the opinion that:
- (i) a dispute which arises in connection with this Clause 3.6, or the outcome or consequences of that dispute, may be relevant to other Conditional Access Holders; or
- (ii) a dispute which arises under a provision equivalent to this Clause 3.6 of an access agreement with another Conditional Access Holder, or the outcome or consequences of that dispute, may be relevant to the Operator under this Agreement,
- then:
- (iii) Queensland Rail will invite the other Conditional Access Holders to participate in the dispute resolution process under this Agreement, or will invite the Operator to participate in the dispute resolution process under the relevant access agreement with the other Conditional Access Holder (as applicable); and
- (iv) Queensland Rail, the Operator and the other Conditional Access Holders will be bound by the outcome of the dispute irrespective of whether or not the Operator and the other Conditional Access Holders (as applicable) choose to actively participate in the dispute.

- (f) If the Operator is, in accordance with this Clause 3.6, a party to, or is invited to participate in, a dispute that has been referred to the QCA in connection with the operation of this Clause 3.6, then:
- (i) a reduction of the Operator's Conditional Access Rights in accordance with this Clause 3.6 will not take effect until the resolution of that dispute and then only to the extent that the reduction is consistent with the QCA's determination; and
 - (ii) Queensland Rail's obligations under this Agreement to the extent of the Operator's Access Rights Reduction are suspended until the resolution of that dispute.
- (g) This Clause 3.6 only applies to the extent that it is not inconsistent with Queensland Rail's Access Undertaking and does not oblige Queensland Rail to do or not to do anything that would cause Queensland Rail to fail to comply with Queensland Rail's Access Undertaking.

4 DAY TO DAY TRAIN MOVEMENTS

4.1 Train Control

Queensland Rail will provide and will have exclusive responsibility for Train Control in respect of the Nominated Network.

4.2 Train Control Rights and Obligations

- (a) Queensland Rail must exercise Train Control by the issue of Queensland Rail Train Control Directions to the Operator and the Operator's Staff consistent with the Network Management Principles.
- (b) In exercising Train Control Queensland Rail shall have regard to the safe conduct of rail operations on the Infrastructure and:
- (i) may delay, alter or add a Train Service;
 - (ii) may cancel, re-route or re-schedule a Train Service;
 - (iii) may alter the Scheduled Times for Train Services in the Train Schedule; and
 - (iv) may impose any Operational Constraint on the Nominated Network consistent with Clause 6.2.
- (c) The Operator must:
- (i) comply with Queensland Rail Train Control Directions;
 - (ii) ensure the Operator's Staff comply with Queensland Rail Train Control Directions;
 - (iii) ensure that Train drivers are contactable by the Queensland Rail Train Controller to receive Queensland Rail Train Control Directions;
 - (iv) notify the Queensland Rail Train Controller as soon as the Operator becomes aware that it is not possible for the Operator or the Operator's Staff to comply with a Queensland Rail Train Control Direction or the

Operator or the Operator's Staff have not complied with a Queensland Rail Train Control Direction; and

- (v) notify the Queensland Rail Train Controller as soon as the Operator becomes aware of any changes or delays in Train Services or any circumstances which have affected or may affect Train Control including the ability of any Train Service to conform to its Scheduled Times.

4.3 Train Control Communications

The Operator must ensure all Trains are equipped with or have available means of communication to permit the Operator's Staff to comply with this Agreement (including the Rollingstock Interface Standards and the relevant Safeworking Procedures).

5 TRAIN OPERATIONS

5.1 Compliance

- (a) To the extent relevant to the performance of its obligations under this Agreement the Operator must observe and comply with :
 - (i) all applicable Laws;
 - (ii) the conditions of its Accreditation;
 - (iii) the lawful requirements of relevant Authorities;
 - (iv) the Rollingstock and Rollingstock Configurations authorised in accordance with Clause 5.9;
 - (v) the Train Service Description (subject to the Network Management Principles);
 - (vi) the description of the relevant Reference Train Service except as otherwise specified in this Agreement;
 - (vii) Queensland Rail Train Control Directions;
 - (viii) the Safeworking Procedures and Safety Standards;
 - (ix) the Network Management Principles;
 - (x) the Interface Coordination Plan;
 - (xi) to the extent applicable, the Queensland Rail Emergency Procedures;
 - (xii) the Operator's Emergency Response Plan;
 - (xiii) the Environmental Investigation and Risk Management Report;
 - (xiv) subject to the provision of reasonable notice specifying relevant requirements, the relevant requirements of the Environmental Authorities held by Queensland Rail from time to time and the permits, approvals and licences in respect of facilities to which access is provided by Queensland Rail to the Operator;

- (xv) the Interface Risk Management Plan (including the Rollingstock Interface Standards);
 - (xvi) subject to the provision of reasonable notice specifying relevant licences and permits and their applicability to the Operator, to the extent applicable to the Operator, all licences and permits affecting the operations of Queensland Rail; and
 - (xvii) to the extent applicable to the Operator, the terms of Queensland Rail's Access Undertaking (including the ring fencing obligations) in effect from time to time.
- (b) To the extent relevant to the performance of its obligations under this Agreement, Queensland Rail must observe and comply with:
- (i) all applicable Laws;
 - (ii) the conditions of its Accreditation;
 - (iii) the lawful requirements of relevant Authorities;
 - (iv) to the extent applicable, Queensland Rail Train Control Directions;
 - (v) the Safeworking Procedures and Safety Standards;
 - (vi) to the extent applicable, the Train Service Description (subject to the Network Management Principles);
 - (vii) the Network Management Principles;
 - (viii) the Interface Coordination Plan;
 - (ix) Queensland Rail's Emergency Procedures;
 - (x) the Interface Risk Management Plan;
 - (xi) all licences and permits affecting the operations of Queensland Rail; and
 - (xii) the terms of Queensland Rail's Access Undertaking (including the ring fencing obligations) in effect from time to time.
- (c) Queensland Rail must ensure that as far as practicable:
- (i) the Network Management Principles;
 - (ii) the Safeworking Procedures and Safety Standards; and
 - (iii) Queensland Rail's Emergency Procedures
- will be applied consistently for all Railway Operators on the Nominated Network.

5.2 Compliance with Scheduled Time

- (a) The Parties must use reasonable endeavours to:
- (i) operate Train Services in accordance with the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles, varied in the circumstances specified in this Agreement or otherwise

agreed between the Parties (such agreement not to be unreasonably withheld); and

(ii) otherwise comply with all other Scheduled Times.

(b) A Train Service shall be deemed to operate in accordance with its Scheduled Time if it does not vary more than three (3) minutes from the Scheduled Time.

5.3 Alterations to Train Services

(a) If the Operator does not propose to operate a Train Service the Operator must, prior to the scheduled operation of the Train Service, advise Queensland Rail of the cancellation of such Train Service and the reason for such cancellation.

(b) In the event that a Train Service is unable to operate in accordance with its Scheduled Time then, provided that the Operator has complied with Clause 5.2(a), Queensland Rail will use its reasonable endeavours to provide an alternative Scheduled Time for the relevant Train Service provided that Queensland Rail will be under no obligation to alter the scheduled times for other Train Movements.

(c) In the event that for any reason the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule or at any other Scheduled Time advised by Queensland Rail in accordance with Clause 5.3(b), Queensland Rail may authorise the operation of another Train Movement at that Scheduled Time.

(d) In the event that a Train Service is for any reason unable to commence to operate in accordance with its Scheduled Time and following bona fide consultation between the Parties it is not possible for Queensland Rail to provide an alternative Scheduled Time reasonably acceptable to both Parties, such Train Service may be cancelled by either Party giving notice to the other Party as soon as practicable.

5.4 Notification

(a) Queensland Rail must notify the Operator's Controller (such notification to include where relevant the anticipated effect on the relevant Train Service) as soon as reasonably practicable after Queensland Rail discovers or becomes aware of any circumstances including Obstructions (other than those circumstances of which the Operator is aware or ought to have been aware) which:

(i) have materially affected, or could potentially materially affect, the ability of any Train Service to comply with its Scheduled Time; or

(ii) have affected, or could potentially affect, the security or safety of a Train Service or the Operator's Staff.

(b) Queensland Rail must at the earliest possible time after becoming aware of the relevant changes advise the Operator's Controller from time to time of changes to advices previously provided pursuant to Clause 5.4(a).

(c) The Operator must inform Queensland Rail of any failure to comply with:

- (i) any applicable Laws relevant to the Operator's Train Services;
- (ii) Queensland Rail Train Control Directions; and
- (iii) the Rollingstock and Rollingstock Configurations authorised in **Schedule 4.**

5.5 Operator to Supply Information

The Operator must provide to Queensland Rail and at all times maintain operable all necessary software, hardware and associated communication links to establish, to Queensland Rail's reasonable satisfaction, an interface with Queensland Rail's information systems and must provide information to Queensland Rail in relation to each Train Service prior to operation on the Nominated Network in accordance with paragraph 2.1 of Part 2 of **Schedule 10.** The interface with Queensland Rail's information systems will be subject to any controls specified by Queensland Rail to protect the integrity and confidentiality of the systems and the information contained therein.

5.6 Performance Levels

- (a) The Performance Levels which apply to the performance by the respective Parties of their obligations under this Agreement are set out in Part 1 of **Schedule 5.** A failure by either Party to achieve the relevant Performance Level will not constitute a breach of this Agreement and the only consequences of such failure as between the Parties shall be the consequences set out in this Clause 5.6.
- (b) If the Operator does not comply with the Operator Performance Level then the Operator must pay to Queensland Rail the amount determined in accordance with **Schedule 5** as part of the invoice issued by Queensland Rail for Access Charges and other charges for the Billing Period immediately following Queensland Rail becoming entitled to that amount. Where there is no next Billing Period, the Operator must pay such amount to Queensland Rail within ten (10) Business Days after receipt of a Tax Invoice from Queensland Rail.
- (c) If Queensland Rail does not comply with the Queensland Rail Performance Level then Queensland Rail will credit to the Operator the amount determined in accordance with **Schedule 5** by way of a deduction from the invoice issued by Queensland Rail for Access Charges and other charges for the Billing Period immediately following the Operator becoming entitled to that amount. Where there is no next Billing Period, Queensland Rail must pay such amount to the Operator within ten (10) Business Days after receipt of a Tax Invoice from the Operator.
- (d) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six (6) Months after the Commitment Date or any previous review of the Performance Levels. If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties may agree on varied Performance Levels and any associated variations to the Agreement including the Base Access Charges and the Train Service Description. If the

Parties are unable to agree to such variations then the existing Performance Levels shall continue to apply unless varied by Queensland Rail in accordance with the provisions of Clause 5.6(e).

(e) In the event that the Operator

(i) does not comply in any material respect with the Train Service Description; and

(ii) the Operator fails to demonstrate to the reasonable satisfaction of Queensland Rail when requested to do so, that the Operator will consistently comply with the Train Service Description for the remainder of the Term

then, following consultation with the Operator, Queensland Rail will be entitled to:

(iii) vary the Train Service Description to a level it reasonably expects to be achievable by the Operator for the remainder of the Term having regard to the extent of previous compliance with the Train Service Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator or to Queensland Rail); and

(iv) vary the Agreement (including, without limitation, the Operator Performance Level and the Base Access Charges) to reflect the impact of the change in the Train Service Description.

(f) The Operator shall be entitled to dispute any variation proposed by Queensland Rail pursuant to Clause 5.6(e) and such dispute will be referred to an expert for resolution in accordance with Clause 17.3.

5.7 Interface Coordination Plan

(a) Queensland Rail and the Operator agree to comply with the Interface Coordination Plan in exercising their rights and performing their obligations under this Agreement.

(b) Queensland Rail will provide the Operator with that information identified in paragraph 3(f) of Part 1 of **Schedule 10** relevant to the Operator's operation of Train Services.

5.8 Operation of Trains and Rollingstock

The Operator is responsible for the safe operation of its Rollingstock on the Nominated Network and must ensure that at all times whilst operating on the Nominated Network:

(a) its Rollingstock and Rollingstock Configurations comply with the Interface Risk Management Plan (including the Rollingstock Interface Standards);

(b) it operates only authorised Rollingstock and Rollingstock Configurations as specified in **Schedule 4**; and

(c) all loading and unloading of its Rollingstock is undertaken in a manner that:

- (i) is consistent with the requirements of **Schedule 4** and the Rollingstock Interface Standards;
- (ii) does not affect the safe operation of the Rollingstock; and
- (iii) ensures that all items on or in the Operator's Rollingstock remain secured in position during transit.

5.9 Authorisation of Rollingstock & Rollingstock Configurations

- (a) Prior to the operation of any Train Services the Operator must:
 - (i) implement the control measures devised in the Interface Risk Management Plan relevant to assessing the compatibility of the Operator's Rollingstock and Rollingstock Configurations with the Nominated Network; and
 - (ii) without limiting Clause 5.9(a)(i), provide to Queensland Rail a certificate by a suitably qualified person whom both Queensland Rail and the Operator accept as being competent to provide such certification as to the compliance of the Operator's Rollingstock and Rollingstock Configurations with the Interface Risk Management Plan (including the Rollingstock Interface Standards) and the Rollingstock and Rollingstock Configurations the subject of that certificate shall then, subject to Queensland Rail's reasonable satisfaction with the certificate provided, be authorised by Queensland Rail and included in **Schedule 4** as the authorised Rollingstock and Rollingstock Configurations.
- (b) If requested to do so by Queensland Rail, the Operator must provide to Queensland Rail (or procure the certifying party to provide to Queensland Rail) relevant documentation (including reports on trials and/or commissioning tests) demonstrating that the Rollingstock and Rollingstock Configurations comply with the Interface Risk Management Plan including the Rollingstock Interface Standards.
- (c) Where Queensland Rail is not satisfied, on the basis of documentation provided by the Operator or the certifying party in accordance with Clauses 5.9(a) and (b), that the Rollingstock and/or Rollingstock Configurations comply with the terms of the Interface Risk Management Plan, either Party may refer the adequacy of the documentation and whether the Rollingstock and/or Rollingstock Configurations comply with the terms of the Interface Risk Management Plan for resolution by an expert in accordance with Clause 17.3.
- (d) In the event that during the Term the Operator wishes to:
 - (i) modify any of the Operator's authorised Rollingstock or Rollingstock Configurations; or
 - (ii) have additional Rollingstock or Rollingstock Configurations authorised for use on the Nominated Network,

then prior to using any such modified or additional Rollingstock or Rollingstock Configurations on the Nominated Network:

- ~~(iii) (i) the Operator must notify Queensland Rail (giving details of the relevant modification or additional Rollingstock or Rollingstock Configurations);~~
- ~~(iv) (ii) if Queensland Rail considers it reasonably necessary to do so, the Operator must conduct a supplementary Interface Risk Assessment jointly with Queensland Rail in accordance with Clause 11 (and the provisions of that Clause shall apply if there is any dispute between the Parties in relation to the conduct of the supplementary Interface Risk Assessment);~~
- ~~(v) (iii) the Operator must provide to Queensland Rail a certificate of compliance in respect of the modified or additional Rollingstock or Rollingstock Configurations in accordance with Clauses 5.9(a) to (c);~~
- ~~(vi) (iv) the Interface Risk Management Plan shall be amended to reflect any changes agreed or determined in accordance with this Clause 5.9(d) and the Parties shall make any other amendments to this Agreement (including Queensland Rail varying the Base Access Charges) which may be reasonably necessary to reflect the authorisation and use of the modified or additional Rollingstock or Rollingstock Configurations on the Nominated Network; and~~
- ~~(vii) (v) Queensland Rail must advise the Operator of any variations to the Base Access Charges payable by the Operator as a result of the authorisation of such modified or additional Rollingstock or Rollingstock Configurations. If the Operator disputes the variations to the Base Access Charges advised by Queensland Rail in accordance with this Clause, either Party may refer the dispute to the QCA for determination in accordance with Clause 17.6.~~

~~1. Amendments to System Wide Requirements~~

- ~~— Queensland Rail may, acting reasonably, amend a System Wide Requirement by the issue of a notice (“Amendment Notice”):~~
 - ~~— on safety grounds, at any time without the consent of the Operator subject to providing reasonable notice of the proposed amendment and consulting with the Operator prior to its implementation;~~
 - ~~— if required pursuant to a Material Change; and~~
 - ~~— in any other circumstance, subject to negotiating the Operator’s agreement to such proposed amendment prior to its implementation in accordance with this Clause 5.10 (the Operator’s agreement not to be unreasonably withheld or delayed).~~
- ~~— The Amendment Notice issued by Queensland Rail pursuant to Clause 5.10(a) must include details of the proposed amendments to the extent reasonably necessary so as to properly inform the Operator of the terms of the proposed amendments and to enable the Operator to assess the consequences and impact for the Operator of the proposed amendments and details of the proposed implementation date.~~

- ~~(e) In respect of any amendment proposed pursuant to Clause 5.10(a)(iii), the Operator shall provide advice to Queensland Rail as to whether:~~
- ~~—— the proposed amendments will materially impact on the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Agreement over a sustained period of time notwithstanding the Operator's entitlement to reach agreement with Queensland Rail in terms of the funding of any material financial impact pursuant to Clause 5.10(e)(ii); or~~
 - ~~—— the Operator will suffer a net material financial impact (that is, a net cost) equivalent to 1% or greater of the annual Access Charges directly as a result of the proposed amendments.~~
- ~~—— Where the Operator has provided advice to Queensland Rail pursuant to Clause 5.10(c)(i) and has satisfied Queensland Rail, acting reasonably, within thirty (30) days of receipt by Queensland Rail of that advice, that the Operator's operation of Train Services under this Agreement will be fundamentally frustrated over a sustained period of time directly as a result of the proposed amendments notwithstanding the Operator's entitlement to reach agreement with Queensland Rail in terms of the funding of any net material financial impact pursuant to Clause 5.10(e)(ii), Queensland Rail will not implement the proposed amendments. In the event that the Operator is unable to so satisfy Queensland Rail, Queensland Rail may implement the proposed amendments at any time except that:~~
- ~~—— in the event that the circumstances outlined in Clause 5.10(c)(ii) exist, such implementation shall be subject to Clause 5.10(e); or~~
 - ~~—— in the event that the Operator disputes Queensland Rail's finding, either Party may refer the dispute for determination by an expert in accordance with Clause 17.3 and Queensland Rail will not implement the proposed amendments pending the determination of the expert.~~
- ~~—— Where the Operator has provided advice to Queensland Rail pursuant to Clause 5.10(c)(ii) that the relevant circumstances exist then:~~
- ~~—— within thirty (30) days of providing such advice the Operator shall provide to Queensland Rail further advice of such net material financial impact including estimates of any additional costs, savings, benefits or detriments to be obtained or suffered or reasonably expected to be obtained or suffered, by the Operator directly as a result of implementing the proposed amendments and the Operator shall warrant that any estimates given by it are accurate on the basis of the information reasonably available to it and sufficiently detailed to enable Queensland Rail to reasonably assess such net material financial impact; and~~
 - ~~(ii) the Parties will negotiate in good faith to agree appropriate financial arrangements between them with respect to such net material financial impact and, failing agreement within a further thirty (30) day period, either Party may refer the matter of appropriate financial arrangements~~

~~to an expert for determination in accordance with Clause 17.3 and Queensland Rail will not implement the proposed amendments pending the expert's determination.~~

- ~~— In making his determination the expert must have regard to, except in circumstances where consequences are otherwise provided under this Agreement, the costs and benefits accruing to the Operator but excluding any costs associated with other entitlements of Queensland Rail under this Agreement.~~
- ~~— The Operator shall use all reasonable endeavours to minimise the net material financial impact suffered by it due to the proposed amendments.~~
- ~~— Notwithstanding Clause 5.10(e), where any System Wide Requirement is varied on safety grounds, each Party will fund its own costs of implementing the proposed amendments including the equipping of Rollingstock with new or additional equipment such as Signalling and Telecommunications Equipment or making any other modification to Rollingstock.~~
- ~~— At any time following a determination pursuant to Clause 5.10(e), Queensland Rail may elect not to proceed with the proposed amendments.~~
- ~~— The Parties must account to each other in respect of the contributions agreed or determined pursuant to Clause 5.10(e)(ii) following completion of the implementation of the proposed amendments and subsequent modifications to the Operator's systems, equipment or Rollingstock as required by the amendments.~~
- ~~— Where Queensland Rail implements the proposed amendments in accordance with this Clause 5.10, the relevant System Wide Requirement will be altered accordingly following completion of the implementation of the proposed amendments. The Parties must undertake all necessary action and make all necessary amendments to the Interface Risk Management Plan, the Environmental Investigation and Risk Management Report and/or the Operator's Emergency Response Plan in response to the relevant amendments including providing Queensland Rail with a further certificate of compliance where the Operator's Rollingstock or Rollingstock Configurations require modification as a result of a change to a System Wide Requirement. Queensland Rail will allow a reasonable period for the Operator to amend its procedures and plans to comply with any such amended System Wide Requirement, except in the case of emergency circumstances for safety reasons where Queensland Rail may require immediate compliance.~~
- ~~— In the event that Queensland Rail undertakes an Enhancement, Queensland Rail will only be required to vary the Rollingstock Interface Standards to reflect the impact of the Enhancement where the Parties have agreed as to the level and method of contribution to the funding of the Enhancement by the Operator.~~

5.10 Private Facilities

Prior to the commencement of any Train Services, the Operator must demonstrate to the reasonable satisfaction of Queensland Rail that the Operator has entered into

agreements with the owners or operators of the Private Facilities to enable the Operator to operate Train Services in the manner contemplated in this Agreement (“Private Facilities Agreements”). The Operator must use reasonable endeavours to maintain the Private Facilities Agreements in full force and effect for the period the Private Facilities are required for the operation of Train Services.

5.11 Entering and exiting the Network

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

Subject to the terms of any agreement made pursuant to **clause 5.11**, any disputes in relation to a proposed connection agreement for Private Infrastructure will be resolved using the dispute resolution process in the Undertaking.

6 INFRASTRUCTURE MANAGEMENT

6.1 Management and Control of the Nominated Network

Queensland Rail is responsible for the management of the Nominated Network and shall retain control over all activities on the Nominated Network.

6.2 Maintenance of the Nominated Network

- (a) Queensland Rail must carry out Maintenance Work on the Nominated Network such that, subject to any agreed criteria and the Network Management Principles:
 - (i) the Infrastructure is consistent with the Rollingstock Interface Standards; and
 - (ii) the Operator can operate Train Services in accordance with their Scheduled Times.
- (b) Queensland Rail may impose either temporarily or permanently such Operational Constraints as it considers necessary for the protection of any person or any property (including the Infrastructure) or to facilitate the performance of Maintenance Work or Enhancements provided that in exercising its rights under this Clause 6.2(b) Queensland Rail must:
 - (i) use its reasonable endeavours to minimise disruption to Train Services (including giving as much notice as possible and, where possible, providing alternate Scheduled Times having regard to the reasonable requirements of the Operator); and
 - (ii) comply with the relevant procedures specified in the Interface Coordination Plan.

- (c) Except to the extent that an Operational Constraint resulted from a breach by Queensland Rail of this Agreement, any delays or cancellations of Train Services caused by or resulting from Operational Constraints shall not constitute a default by Queensland Rail of its obligations under this Agreement and Queensland Rail will not be liable for any Claims suffered or incurred by or made or brought by or against the Operator as a result of or arising from the imposition of such an Operational Constraint.
- (d) The Operator must notify Queensland Rail as soon as is reasonably practicable of any damage to or disrepair or failure in operation or function of any part of the Infrastructure of which the Operator becomes aware.
- (e) The Operator must provide reasonable cooperation to Queensland Rail in relation to the timetabling of Planned Possessions provided that any such Planned Possessions are consistent with the Network Management Principles and implemented in accordance with the Possession Protocols.

6.3 Inspection by Operator

- (a) Subject to Clause 6.3(b), the Operator may, prior to the initial commencement of Train Services, at its cost and risk, inspect the Infrastructure and circumstances surrounding the Infrastructure comprising the Nominated Network including, but not limited to, fencing and level crossing protection in order to satisfy itself as to the standard of the Infrastructure and assess the operational, environmental and safety risks associated with operation of Train Services on the Infrastructure.
- (b) Any inspection by the Operator under Clause 6.3(a) shall be subject to
 - (i) the Operator providing reasonable written notice to Queensland Rail of its requirement to inspect the Infrastructure and conducting that inspection at reasonable times;
 - (ii) any such inspection being conducted in the presence of a representative of Queensland Rail; and
 - (iii) such other reasonable conditions as may be imposed by Queensland Rail on such inspection including, but not limited to, compliance with Queensland Rail's Safeworking Procedures and Safety Standards;
and shall be conducted in such a manner as to not cause any disruption to any Train Movements or to the undertaking of Maintenance Work or Enhancements.

7 INCIDENT MANAGEMENT

7.1 Operator's Emergency Response Plan

- (a) Prior to the commencement of any Train Services (including any new or varied Train Services) the Operator must develop and submit to Queensland Rail a plan (the "Operator's Emergency Response Plan") which:

- (i) contains the set of procedures developed by the Operator which are adequate for dealing with an Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;
 - (ii) without limiting Clause 7.1(a)(i) includes the matters outlined in Part 3 of **Schedule 6** relevant to the Operator's use of the Nominated Network; and
 - (iii) must at all times during the Term be compatible with the Queensland Rail Emergency Procedures and this Agreement.
- (b) If Queensland Rail is not reasonably satisfied that the Operator's Emergency Response Plan complies with Clause 7.1(a), Queensland Rail must notify the Operator and if the Parties cannot agree on a mutually acceptable course of action to address Queensland Rail's concerns within ten (10) Business Days after the date of Queensland Rail's notice, either Party may refer the matter to an expert in accordance with Clause 17.3. The expert will be required to determine whether or not the Operator's Emergency Response Plan:
- (i) is compatible with the Queensland Rail Emergency Procedures and this Agreement; and
 - (ii) otherwise complies with Clause 7.1(a).
- If the expert determines that the Operator's Emergency Response Plan:
- (iii) is not compatible with the Queensland Rail Emergency Procedures and this Agreement, he must determine how the non-compliance should be rectified and the Operator must rectify the Operator's Emergency Response Plan accordingly; or
 - (iv) is compatible with the Queensland Rail Emergency Procedures and this Agreement, the Operator's Emergency Response Plan must be treated as complying with Clause 7.1(a).
- (c) The Operator must ensure that any amendments to the Operator's Emergency Response Plan comply with the requirements contained in Clause 7.1(a).
- (d) If the Operator intends to amend the Operator's Emergency Response Plan it must notify Queensland Rail of that fact, providing Queensland Rail with details of the proposed amendments and the reasons for them. Within ten (10) Business Days after receipt of that notice Queensland Rail must notify the Operator if Queensland Rail disputes any such proposed amendments, in which case any such dispute shall be resolved in accordance with the procedures set out in Clause 7.1(b).
- (e) No amendment to the Operator's Emergency Response Plan to the extent that it relates to the Operator's operations on the Nominated Network will be effective until it has been made in a manner permitted by this Clause 7.1.
- (f) The Operator must be able to demonstrate to Queensland Rail that procedures are in place which ensure compliance by the Operator with any reporting requirements in the Operator's Emergency Response Plan and, to

the extent relevant, the Queensland Rail Emergency Procedures and that they are being observed.

- (g) The Operator must ensure that at all times sufficient members of the Operator's Staff are appropriately qualified to participate in Investigations and that the names and positions of those members of the Operator's Staff are maintained in the Operator's Emergency Response Plan.

7.2 Obstructions

The Operator must not cause any Obstruction or permit to continue any Obstruction caused by the Operator.

7.3 Notification

- (a) The Operator must notify the Queensland Rail Train Controller as soon as reasonably practicable after the Operator or the Operator's Staff discover or become aware of:
- (i) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures; or
 - (ii) anything which the Operator observes may cause or contribute to the occurrence of an Incident or Obstruction.
- (b) Queensland Rail must notify the Operator of all Incidents involving the Operator's Rollingstock.

7.4 Management of Incident Response

- (a) Queensland Rail will be responsible for the overall coordination and management of the response to an Incident (including notifying all relevant emergency services) so that Restoration and Recovery are effected as soon as practicable.
- (b) The Operator must arrange Recovery and must cooperate with and assist Queensland Rail in Restoration. The Operator will be responsible for effecting timely Recovery in accordance with the Operator's Emergency Response Plan. Where Queensland Rail reasonably believes that more timely recommencement of Train Movements can be achieved by Queensland Rail, then Queensland Rail may, subject to using reasonable efforts to consult with the Operator, take such action as is reasonably necessary (including the use of a Railway Operator's Rollingstock to clear the Operator's Rollingstock) and recover such reasonable direct costs incurred by Queensland Rail in doing so. The Operator must pay to Queensland Rail such reasonable direct costs incurred by Queensland Rail.
- (c) If an Incident occurs the Operator will as soon as reasonably practicable notify Queensland Rail and:
- (i) take action as soon as reasonably practicable in respect of an Incident to prevent or minimise the occurrence of injury to any person or damage to any property (including environmental damage) where there is an imminent risk of such injury or damage but otherwise take no

- action without the prior approval of Queensland Rail, which approval shall not be unreasonably withheld; and
- (ii) comply with the directions of Queensland Rail in respect of the coordination and management of Restoration and Recovery.
- (d) Both Parties must use all reasonable endeavours to ensure that any property damage or delays to the recommencement of Train Movements arising from Restoration or Recovery are minimised provided that Queensland Rail, subject to Queensland Rail using reasonable efforts to consult with the Operator, will have the right to take such action (including to give directions to the Operator and the Operator's Staff and to remove or require the Operator to remove any of its Rollingstock) as Queensland Rail considers reasonably necessary to recommence Train Movements as soon as practicable and, subject to Clause 7.4(d)(ii) and (iv), Queensland Rail shall have no liability for any damage to or loss of freight or Rollingstock caused by such actions.
- (i) Where pursuant to Clause 7.4(d)(i) Queensland Rail seeks to remove or require the Operator to remove any Relevant Rollingstock where Queensland Rail considers such removal reasonably necessary to recommence Train Movements as soon as practicable and such removal would reasonably be expected to cause material damage to or materially increase the damage to the Relevant Rollingstock, Queensland Rail and the Operator must:
- (A) use all reasonable efforts to consult and agree on the removal of the Relevant Rollingstock as soon as reasonably practicable and at least within a period of six (6) hours after the occurrence of the Incident or such longer period as the Parties may agree; and
- (B) if the Parties do not consult or reach agreement within a period of six (6) hours or such longer period as agreed, they will refer the decision to the executive general manager of Queensland Rail and the chief executive officer of the Operator who must in good faith seek to agree a course of action within two (2) hours of the referral to them or such longer period as the Parties may agree.
- (ii) Where the executive general manager of Queensland Rail and the chief executive officer of the Operator do not consult or do not agree within the specified period in Clause 7.4(d)(ii)(B), Queensland Rail must refer its proposed course of action with respect to the removal of the Relevant Rollingstock to the Removal Expert who shall assess whether, having regard to:
- (A) the potential to further damage the Relevant Rollingstock;
- (B) the impact on Queensland Rail's ability to effect Restoration; and
- (C) the time critical nature of the decision,
- (iii) the course of action proposed by Queensland Rail is reasonable.

- (iv) Queensland Rail shall be entitled to progress with the proposed course of action unless the Removal Expert assesses that Queensland Rail's proposed course of action is unreasonable.
- (e) Queensland Rail may, where it is reasonable and practicable in the circumstances to do so, issue a Queensland Rail Train Control Direction to the Operator to provide assistance with clearing any Network Incident including providing Rollingstock, where appropriate, for use by or under the direction of Queensland Rail and undertaking any variation in the operation of a Train Service (including coupling its Rollingstock with Rollingstock of Queensland Rail or another Railway Operator). The Operator must comply with any such Queensland Rail Train Control Direction. The Operator may recover from Queensland Rail such reasonable direct costs incurred in complying with this Clause 7.4(e) as agreed and failing agreement within twenty (20) Business Days after notice by the Operator to Queensland Rail as determined by an expert in accordance with Clause 17.3.
- (f) In assessing the costs to be recovered under Clause 7.4(b) or Clause 7.4(e) for the use of Rollingstock, regard shall be had to any industry or other agreement covering such costs and any payments facilitated by such agreement.
- (g) Except as otherwise provided in this Agreement Queensland Rail will not be liable for any delays, cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the Operator as a result of complying with a request by Queensland Rail pursuant to Clause 7.4(e).

7.5 Investigations

- (a) In the event of an Incident, an Investigation into the Incident in the circumstances set out in **Schedule 8** must be commenced as soon as practicable unless otherwise agreed between the Parties and must be conducted in the manner and by the persons prescribed in **Schedule 8**.
- (b) Each Party must cooperate and ensure their respective staff cooperate fully with any Investigation and the Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the requirements of **Schedule 8**.

8 ENVIRONMENTAL MANAGEMENT AND PROTECTION

8.1 Environmental Management

- (a) The Operator must, prior to the commencement of any Train Services (including any new or varied Train Services):
 - (i) cause a suitably qualified person reasonably acceptable to both Parties to prepare a report ("**Environmental Investigation and Risk Management Report**") containing an environmental investigation component and an environmental risk management component which respectively identify:

- (A) possible risks of Environmental Harm arising out of the proposed use of the Nominated Network by the Operator, including risks associated with those matters identified in Part 3 of Schedule 6; and
- (B) the manner in which the Operator proposes to address the possible risks of Environmental Harm identified in the Environmental Investigation and Risk Management Report as well as the roles and responsibilities, including financial responsibility, for the control measures proposed and an audit regime,
- provided that if the Operator has an existing Environmental Management System it proposes to use in connection with the proposed Train Services on the Nominated Network, the Environmental Investigation and Risk Management Report should also detail the extent to which the Operator believes its existing Environmental Management System addresses the risks identified in the Environmental Investigation and Risk Management Report; and
- (ii) provide a copy of the Environmental Investigation and Risk Management Report to Queensland Rail for its consideration and, if requested by Queensland Rail, a copy of the relevant parts of the Operator's existing Environmental Management System referred to in the Environmental Investigation and Risk Management Report.
- (b) If the Environmental Investigation and Risk Management Report discloses areas of risk which, in the reasonable opinion of Queensland Rail, cannot be adequately managed by the proposals set out in the Environmental Investigation and Risk Management Report or, in the reasonable opinion of Queensland Rail, fails to identify and adequately deal with additional relevant environmental risks, then Queensland Rail may give notice to that effect to the Operator within twenty (20) Business Days after the date on which the Environmental Investigation and Risk Management Report was received by Queensland Rail (or such other period as the Parties, acting reasonably, may agree), detailing the risks not so adequately managed or not so identified or adequately dealt with. If Queensland Rail does not give such notice, the Environmental Investigation and Risk Management Report shall be included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (c) If Queensland Rail gives notice pursuant to Clause 8.1(b) the Operator may respond, by a date agreed by the Parties, with a written proposal which demonstrates how the Operator proposes to manage those risks ("**Operator's Proposal**"). The Operator's Proposal must:
- (i) contain an investigation of the areas of risk and/or additional relevant environmental risks referred to in Clause 8.1(b);
- (ii) _____

- (A) specify risk abatement or attenuation measures which the Operator proposes to undertake in relation to them; and/or
- (B) specify how the Access Charges might contain a component reflecting the cost to Queensland Rail of assuming all or some portion of the risk;
- (iii) in relation to paragraph (ii)(A) specify a timeframe for implementation of those measures; and
- (iv) specify details of any public consultation the Operator proposes to undertake in connection with the implementation of any such measures.
- (d) Queensland Rail may, acting reasonably, accept or reject all or part of the Operator's Proposal.
- (e) If Queensland Rail accepts the Operator's Proposal, then it will be incorporated into and form part of the Environmental Investigation and Risk Management Report which shall be included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (f) If the Operator fails to submit to Queensland Rail an Operator's Proposal by the date agreed by the Parties or if Queensland Rail rejects all or part of the Operator's Proposal, Queensland Rail may advise the Operator of the risks not adequately managed or not identified or adequately dealt with and then either Party may refer the issue of whether the Environmental Investigation and Risk Management Report and/or the Operator's Proposal does or does not adequately manage or does or does not identify or adequately deal with the relevant environmental risks to an expert in accordance with Clause 17.3.
- (g) If the expert determines that the Environmental Investigation and Risk Management Report and/or Operator's Proposal does adequately manage the risks or identifies and adequately deals with the risks, then the Environmental Investigation and Risk Management Report as modified by the Operator's Proposal (if applicable) will be accepted, included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (h) If the expert determines that the Environmental Investigation and Risk Management Report and/or Operator's Proposal does not adequately manage the risks or does not identify and adequately deal with the risks, then provided the Operator amends the Environmental Investigation and Risk Management Report in accordance with the expert's determination and/or recommendations within the time frame specified by the expert, the Environmental Investigation and Risk Management Report as amended will be accepted and included in Part 1 of **Schedule 9** and amendments made to the Agreement (including variations to the Base Access Charges) if applicable.
- (i) If the expert determines that the Environmental Investigation and Risk Management Report and/or Operator's Proposal does not adequately

manage the risks or does not identify and adequately deal with the risks and the Operator fails to amend the Environmental Investigation and Risk Management Report in accordance with the expert's determination and/or recommendations within the time frame specified by the expert, Queensland Rail may terminate this Agreement.

- (i) The Parties agree to implement the determination of the expert.

8.2 Environmental Management System

- (a) The Operator must prior to the commencement of any Train Services (including any new or varied Train Services) have in place an Environmental Management System.

The Environmental Management System prepared by the Operator must:

- (i) have regard to the issues raised in the Environmental Investigation and Risk Management Report and contain procedures for implementing the risk management proposals identified in it. The Environmental Investigation and Risk Management Report includes the results of any expert determination referred to in Clause 8.1(f) or any amendment of the Environmental Investigation and Risk Management Report arising from the recommendations of any environmental audit or review conducted pursuant to Clause 8.7;
- (ii) address all legislative requirements, including the requirements of the Environmental Authorities held by Queensland Rail from time to time that are relevant to the Operator's Train Services; and
- (iii) identify systems (including audit systems) and procedures to address all relevant environmental risks and ensure compliance with all Environmental Laws.
- (b) Prior to the commencement of any Train Services (including any new or varied Train Services), Queensland Rail will ensure that the elements of the Environmental Investigation and Risk Management Report which Queensland Rail is responsible for implementing are incorporated into Queensland Rail's Environmental Management System.

8.3 Carriage of Dangerous Goods on Train Services

- (a) The Operator must ensure that where Dangerous Goods are to be carried on a particular Train Service:
- (i) all requirements of the Dangerous Goods Code are fully complied with (including placement of relevant, accurate and current documentation on Trains);
- (ii) Queensland Rail is advised of the details of the Dangerous Goods (including a description and the applicable Dangerous Goods United Nations (UN) Number) prior to the operation of a Train as part of the Train List; and

(iii) any authorisation or prior approvals required under the Dangerous Goods Code have been obtained and are available for inspection by Queensland Rail if so requested.

(b) The Operator must ensure that, where there is any likelihood of Train Services carrying Dangerous Goods and before any Dangerous Goods can be carried on Train Services, the Operator's Emergency Response Plan prepared in accordance with Clause 7.1 includes procedures for responding to an Incident involving Dangerous Goods of the type to be carried.

8.4 Noise Management during Train Services

(a) In addition to any noise attenuation or management measures which may form part of or be identified in the Environmental Investigation and Risk Management Report, the Operator shall contribute to, as reasonably determined by Queensland Rail, the costs incurred by Queensland Rail in taking noise abatement measures on or adjacent to the Nominated Network considered reasonably necessary by Queensland Rail where the Noise Planning Levels are, or but for the taking of these measures by Queensland Rail, would be exceeded during the Term.

(b) If, during the Term, the Noise Planning Levels are reduced such that noise from the Nominated Network exceeds the new Noise Planning Levels, Queensland Rail may elect, in its absolute discretion, to implement noise abatement measures on the Nominated Network to ensure compliance with the new Noise Planning Levels. The Operator shall contribute to the cost of those noise abatement measures as reasonably determined by Queensland Rail.

(c) If the Operator disputes any determination made by Queensland Rail in accordance with this Clause 8.4 regarding the contribution of costs, either Party may refer that dispute to an expert in accordance with Clause 17.3.

8.5 Spillage of Contaminating Materials

(a) Where:

(i) the activities of the Operator under this Agreement result in any release, spillage or leakage of any Contaminating Material, or Queensland Rail is reasonably of the opinion that those activities are causing or likely to cause contamination or Environmental Harm, and Queensland Rail reasonably considers that action is required to prevent, mitigate or remedy that contamination or Environmental Harm;
or

(ii) Queensland Rail is given a direction, notice or order by a relevant Authority that some action is required to prevent, mitigate or remedy any actual or threatened contamination or Environmental Harm resulting from, or contributed to by, the activities of the Operator under this Agreement,

then Queensland Rail may notify the Operator of the action which is required and the Operator must at its cost, as soon as reasonably practicable after

receiving such notice, implement such action or cause such action to be implemented.

- (b) If, in Queensland Rail's reasonable opinion, any action pursuant to Clause 8.5(a) ought best be undertaken by Queensland Rail, then Queensland Rail may elect to undertake such action and the Operator shall pay to Queensland Rail the costs incurred by Queensland Rail in doing so.
- (c) If the Operator disputes any action taken by Queensland Rail in accordance with this Clause 8.5, either Party may refer the dispute to an expert in accordance with Clause 17.3 and if the expert determines the dispute in favour of the Operator, Queensland Rail will reimburse the Operator for the costs incurred by the Operator as a result of the actions taken by the Operator at Queensland Rail's request (or, if applicable, Queensland Rail will bear the costs incurred by Queensland Rail in accordance with Clause 8.5(b) and shall not be able to recover those costs from the Operator) to the extent determined by the expert.

8.6 Community Liaison and Environmental Complaint Procedures

- (a) Prior to the commencement of any Train Services the Operator shall take all steps necessary to comply with all relevant community liaison requirements required by Law, any Authority or reasonably required by Queensland Rail, and shall invite Queensland Rail to be represented at any community meetings organised by the Operator.
- (b) In the event that Queensland Rail or the Operator receives noise complaints or other complaints dealing with environmental issues in relation to the Nominated Network, both Queensland Rail and the Operator shall inform each other of those complaints as soon as reasonably practicable and shall cooperate in investigating and responding to those complaints.

8.7 Audit and Review of Environmental Investigation and Risk Management Report

- (a) The Operator will provide Queensland Rail with copies of those parts of any environmental audits undertaken by or on behalf of the Operator in respect of its Train Services on the Nominated Network.
- (b) Queensland Rail will provide the Operator with copies of those parts of Queensland Rail's environmental audits that are relevant to the operation of the Operator's Train Services on the Nominated Network.
- (c) If Queensland Rail becomes aware of:
 - (i) any inadequacy of the Environmental Investigation and Risk Management Report due to:
 - (A) any change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
 - (B) any conduct on the part of the Operator which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or

(ii) any non-compliance by the Operator with the Environmental Investigation and Risk Management Report,

then, in addition to any other rights Queensland Rail may have under this Agreement, Queensland Rail may by notice to the Operator direct the Operator to undertake a review of the adequacy of the Environmental Investigation and Risk Management Report and/or the Operator's compliance with it. The review will only deal with:

(i) the extent to which the Environmental Investigation and Risk Management Report appears not to address a change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or

(ii) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or

(iii) the extent of non-compliance by the Operator with the Environmental Investigation and Risk Management Report,

whichever is applicable in the circumstances.

(d) If directed by Queensland Rail to undertake a review in accordance with Clause 8.7(c), the Operator will ensure the review is carried out and will provide Queensland Rail with a copy of the review report within a reasonable time after the review has been completed (and in any case, not later than three (3) Months after the notice from Queensland Rail requiring the review).

(e) The Operator must implement (or cause to be implemented) the reasonable recommendations arising from each review under this Clause 8.7, and the Parties shall amend the Environmental Investigation and Risk Management Report and this Agreement (including any variations to the Base Access Charges) as appropriate.

(f) Either Party may refer any dispute as to the nature or extent of any amendments to the Environmental Investigation and Risk Management Report or this Agreement that ought to be made to an expert for resolution in accordance with Clause 17.3.

8.8 Notification

(a) The Operator must advise Queensland Rail of any failure by the Operator to comply with the Environmental Investigation and Risk Management Report and the Operator's Environmental Management System to the extent relevant to this Agreement as and when the Operator becomes aware of such failure and provide details of how it intends to address the non-compliance. The Operator must remedy such 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 Environmental Protection Agency.

(b) Queensland Rail must advise the Operator of any failure by Queensland Rail to comply with the Operator's Environmental Investigation and Risk Management Report and Queensland Rail's Environmental Management

System to the extent relevant to this Agreement as and when Queensland Rail becomes aware of such failure. Queensland Rail must remedy such non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of the Operator and any action required by the Environmental Protection Agency.

- (c) The Operator must advise Queensland Rail of any failure to comply with its obligations under the *Environmental Protection Act 1994* (Qld), including any notices or directions relating to the operation of Train Services that it receives from the Environmental Protection Agency. Failure by the Operator to comply with its obligations under the *Environmental Protection Act 1994* (Qld), where that failure causes or threatens to cause Serious Environmental Harm, entitles Queensland Rail to terminate in accordance with Clause 20.
- (d) Queensland Rail will notify the Operator of any changes to any Environmental Authorities held by Queensland Rail or variations to any other environmental information provided by Queensland Rail to the Operator relevant to the operation of Train Services.

9 ACCREDITATION

9.1 Evidence of Accreditation

- (a) The Operator must on or before the commencement of any Train Services provide to Queensland Rail evidence of its Accreditation (including all conditions and/or variations).
- (b) Each Party must have and maintain Accreditation to the extent required to perform its obligations under this Agreement and, if requested to do so in writing by the other Party, provide to the other Party copies of documentation evidencing currency, renewal or amendment of its Accreditation within five (5) Business Days of such request.
- (c) Each Party will notify the other as soon as possible of any notice from an Authority affecting or likely to affect its Accreditation and will provide a copy of that notice to the other Party on request.

10 OPERATOR'S STAFF

10.1 Safety of Staff

The Operator will be fully responsible and liable for the health and safety of the Operator's Staff and the personal property of the Operator's Staff, and indemnifies and releases Queensland Rail to the extent permitted by law from any liability in relation to the Operator's Staff except to the extent that such liability is caused by the wilful default or negligence of Queensland Rail or Queensland Rail's Staff.

10.2 Qualifications of Operator's Staff

The Operator must:

- (a) ensure that all risks associated with Safety Related Work (including the competence of all Operator's Staff to safely and properly discharge their

duties related to the exercise of the Operator's rights or performance of its obligations under this Agreement) are addressed in the Interface Risk Assessment;

- (b) ensure that all Operator's Staff hold and keep current all qualifications and accreditations required under any Law and as specified in Part 2 of **Schedule 9** and undertake any additional training from time to time in order to keep current such qualifications and accreditations;
- (c) meet all costs of any training and/or testing required to meet the requirements of this Clause 10.2; and
- (d) keep Queensland Rail advised of the names and position titles of all Operator's Staff engaged in Safety Related Work on the Nominated Network and ensure that all Safety Related Work is performed only by those Operator's Staff whose details have been provided to Queensland Rail in accordance with this Clause 10.2 and who satisfy the requirements of this Clause 10.2.

10.3 Entry onto Land

The Operator must ensure that the Operator's Staff do not enter upon the Land in a manner inconsistent with the Interface Coordination Plan, the Interface Risk Management Plan or the Operator's Emergency Response Plan without the prior written approval of Queensland Rail and that, in the event such approval is given, the relevant Operator's Staff comply with all conditions of the approval and hold the necessary qualifications and accreditations.

11 INTERFACE RISK MANAGEMENT

- (a) Prior to the commencement of any Train Services (including any new or varied Train Services):
 - (i) the Operator must conduct an Interface Risk Assessment jointly with Queensland Rail in order to:
 - (A) identify all reasonably foreseeable Interface Risks to the Operator, Queensland Rail and all persons and property and evaluate the possibility of the Interface Risks occurring and the safety and commercial consequences of those Interface Risks;
 - (B) agree the applicable controls and measures to adequately address the Interface Risks identified (including any training required for the Operator's Staff) and the Party responsible for implementation of such controls and measures and ensuring their on-going effectiveness;
 - (C) agree an audit, inspection and review regime;
 - (D) agree the applicable Safeworking Procedures and Safety Standards having regard to existing Queensland Rail and industry practices;

- (E) agree the Rollingstock Interface Standards (or, if already agreed, agree variations to the Rollingstock Interface Standards); and
- (F) agree any consequential changes to the provisions of the Agreement, including the applicable Access Charges;
- (ii) the Parties must incorporate the above agreed outcomes, as applicable, into:
 - (A) the Interface Risk Management Plan which shall be included in Part 2 of Schedule 9;
 - (B) Part 1 of Schedule 6;
 - (C) Schedule 3; and
 - (D) the relevant provisions of the Agreement; and
- (iii) the Operator is responsible for the development of the Operator's Safety Management System which must incorporate:
 - (A) the risks identified and the controls and measures and other elements included in the Interface Risk Management Plan that the Operator is responsible for implementing; and
 - (B) necessary processes for ensuring that the Operator, its Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Agreement, including the agreed Interface Risk Management Plan.
- (b) If the Parties are unable to agree any element of the Interface Risk Assessment or the Interface Risk Management Plan (including the Rollingstock Interface Standards), each Party may give notice in writing to the other Party of the dispute ("**Dispute Notice**") whereupon either Party may refer the matter in dispute ("**Dispute**") to an expert for resolution in accordance with Clause 17.3. If the matter is not referred to an expert for resolution within ten (10) Business Days after a Party gives a Dispute Notice to the other Party, then at any time thereafter:
 - (i) if the matter has not been referred to the Safety Regulator in accordance with Clause 11(b)(ii) or the QCA in accordance with Clause 11(b)(iii), either Party may still refer the matter to an expert for resolution in accordance with Clause 17.3;
 - (ii) if the matter has not been referred to an expert in accordance with Clause 11(b)(i) or to the QCA in accordance with Clause 11(b)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either Party may refer the matter to the Safety Regulator through any process the Safety Regulator considers appropriate; and
 - (iii) if the matter has not been referred to an expert in accordance with Clause 11(b)(i) or to the Safety Regulator in accordance with Clause 11(b)(ii), then either Party may refer the matter to the QCA (acting with

the advice of the Safety Regulator) for resolution in accordance with Clause 17.6,

provided that if the matter is in the first instance referred to an expert for resolution (whether this occurs during or after the relevant ten (10) Business Day period) and either Party is not satisfied with the determination of the expert, then notwithstanding Clause 17.3(i), either Party may, within twenty (20) Business Days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Clause 11(b)(ii) or the QCA under Clause 11(b)(iii). Any determination made by the QCA or the Safety Regulator (whether or not following a determination by an expert) shall be final and binding on the Parties.

If an expert, the Safety Regulator or the QCA is called upon under this Clause to make a determination the effect of which would be to establish the content of any aspect of the Interface Risk Management Plan, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding principles for the resolution of a Dispute under this Clause that may from time to time be determined by the Safety Regulator.

Where a Dispute is referred to the QCA in accordance with this Clause, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either Party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the Parties a copy of any advice it receives from the Safety Regulator.

Where the QCA seeks advice from the Safety Regulator in relation to a Dispute, the costs of the Safety Regulator shall be borne by the Parties in such proportion as the QCA determines.

- (c) Prior to the commencement of any of the Operator's Train Services, Queensland Rail must incorporate the elements of the Interface Risk Management Plan it has agreed to be responsible for implementing into Queensland Rail's safety management system.
- (d) The Parties must advise each other of any failure to comply with the Interface Risk Management Plan as and when the Party becomes aware of such non-compliance, including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.
- (e) If at any time during the Term, either Party has reasonable grounds to believe that the Interface Risk Management Plan is no longer effective either in managing the Interface Risks it was intended to manage or in managing new or varied Interface Risks (including if the Train Service Description changes), the Parties must conduct a further joint Interface Risk Assessment to review the Interface Risks which are no longer effectively managed by the current Interface Risk Management Plan or the new or varied Interface Risks (as the case may be).

- (f) Where a Party has reasonable grounds to believe that the other Party has not or is not complying with any aspect of the Interface Risk Management Plan (including the Rollingstock Interface Standards) then, in accordance with the provisions of Clause 12, that Party may conduct or require the conduct of an inspection or audit of the relevant aspect of the Operator's Train Services or the Nominated Network (as applicable).
- (g) The Parties shall amend the Interface Risk Management Plan and this Agreement (including making any variations to the Base Access Charges) if, subsequent to an audit or inspection of the Interface Risk Management Plan, the Parties agree that such amendment is required having regard to the findings of such inspection or audit and, failing agreement, either Party may refer the issue of the need for such amendment to an expert for determination in accordance with Clause 17.3.
- (h) Where Queensland Rail and the Operator agree that training of the Operator's Staff is required as a control or part of a control to a particular Interface Risk identified in the Interface Risk Assessment and the Operator can only obtain that training from Queensland Rail, Queensland Rail will provide the Operator with that training and be entitled to recover from the Operator a reasonable commercial charge for providing such training.

12 INSPECTION AND AUDIT RIGHTS

12.1 Rights of Inspection and Audit

In addition to the rights of inspection and audit specified in Clauses 6 and 11(f) and subject to the provisions of this Clause 12, either Party may conduct or require the conduct of an inspection or audit relevant to assessing the other Party's compliance with the Interface Risk Management Plan (including the Rollingstock Interface Standards) and the Safeworking Procedures and Safety Standards periodically as specified in the Interface Risk Management Plan.

12.2 Inspection of Trains and Rollingstock

- (a) Where Queensland Rail reasonably believes that the Operator's Rollingstock or Rollingstock Configurations do not comply with:
- (i) the authorised Rollingstock and Rollingstock Configurations as specified in **Schedule 4**;
 - (ii) the Interface Risk Management Plan (including the Rollingstock Interface Standards); or
 - (iii) any applicable Laws relevant to the Operator's Train Services,
and Queensland Rail cannot otherwise determine whether this is the case, Queensland Rail may inspect any Trains or Rollingstock which is utilised or intended to be utilised in the operation of Train Services or require the Operator to have an inspection conducted and for this purpose Queensland Rail or Queensland Rail's Staff will be entitled at any time to enter and ride on the Operator's Trains or Rollingstock.

- (b) Queensland Rail shall have the right to require any of the Operator's Rollingstock (either loaded or empty) to be available at such location as Queensland Rail may reasonably require, including locations on the Infrastructure but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by Queensland Rail.
- (c) Notwithstanding the provisions of Clause 2.7, if any of the Operator's Rollingstock is reasonably considered by Queensland Rail to be loaded in excess of the limits specified in **Schedule 4** or in an unsafe or insecure manner, then Queensland Rail may at any time require the Operator to discontinue the Train Service or to remove the excess or adjust the load at the Operator's expense. If the Operator fails to immediately remove the excess or adjust the load, Queensland Rail may arrange for its removal or adjustment and the Operator will be responsible for all resultant costs incurred by Queensland Rail.

12.3 Notice of Inspection or Audit

The Party requiring the conduct of an inspection or audit must give the other Party reasonable prior written notice of such inspection or audit except in the case of emergencies or if an event or circumstance referred to in Clauses 19 or 20 has occurred and such notice shall include the following:

- (a) details of the inspection or audit to be carried out;
- (b) the name of the person conducting the inspection or audit;
- (c) the timing and expected duration of the inspection or audit;
- (d) the location of the inspection or audit;
- (e) the grounds upon which the Party requires the inspection or audit; and
- (f) the Party's requirements of the other Party in relation to the inspection or audit.

12.4 Conduct of Inspection or Audit

- (a) Any inspection or audit carried out pursuant to this Agreement may be conducted by the relevant Party, its appointed representative or by a suitably qualified person reasonably acceptable to both Parties, provided that if the inspection or audit would require access to commercially sensitive information of a Party and that Party has a legitimate commercial reason for wanting to withhold access to that information from the other Party, then the inspection or audit shall be conducted by a suitably qualified independent person reasonably acceptable to both Parties who shall be given access to the commercially sensitive information by the Party the subject of the inspection or audit but who shall be prohibited from disclosing that commercially sensitive information to the other Party .
- (b) The Operator shall use reasonable endeavours to ensure that Queensland Rail, its appointed representative or the person appointed to conduct an inspection or audit are entitled to enter and be upon land and premises (whether or not owned or leased by the Operator) on which the Operator's Rollingstock is located from time to time (which location is specified in a

notice pursuant to Clause 12.3) for the purposes of carrying out any inspection or audit or exercising any other right under this Agreement.

- (c) In exercising any right of inspection or audit under this Agreement, a Party must not interfere unreasonably with the other Party's Trains and Rollingstock or Train Movements on the Nominated Network and must use its reasonable endeavours to avoid damage or injury and to minimise any disruption to the other Party's business activities.
- (d) Subject to Clause 12.4(e), a Party conducting an inspection or audit ("Inspecting Party") will not be liable for any delays or cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the other Party as a result of the exercise by the Inspecting Party of its rights under this Clause 12 provided the Inspecting Party complies with Clause 12.4(c).
- (e) The Operator will be liable for and will indemnify Queensland Rail in respect of any Claim made against Queensland Rail by another Railway Operator as a result of a delay or cancellation of a Train service of that other Railway Operator as a result of the exercise by the Operator of its inspection or audit rights under this Clause 12, provided that the Operator will not be liable for, or be required to indemnify Queensland Rail in respect of, any such Claim where:
 - (i) the Operator has complied with Clause 12.4(c) in exercising its inspection or audit rights; and
 - (ii) the inspection or audit reveals that Queensland Rail is in breach of its obligations under this Agreement.

12.5 Cooperation by the Parties

Each Party shall provide all reasonable assistance required by the other Party in conducting any inspection or audit under this Agreement, including allowing a Party, its appointed representative or person appointed to conduct an inspection or audit to discuss any relevant matter with Queensland Rail's Staff or the Operator's Staff (as applicable). A member of Queensland Rail's Staff or the Operator's Staff (as applicable) may be present at the inspection or audit.

12.6 Costs of Inspection or Audit

- (a) The Party who conducts or requires the conduct of an inspection or audit under Clause 6 or an agreed periodic audit shall bear the reasonable costs of conducting the inspection or audit.
- (b) The Party whose operations are inspected or audited under Clause 11(f) or Clause 12.2 shall bear the reasonable costs of conducting the inspection or audit unless it is demonstrated that the stated grounds for requiring the conduct of the inspection or audit did not exist. In circumstances where the stated grounds for such inspection or audit have not been demonstrated to exist, the Party that required the conduct of the inspection or audit shall bear the costs of conducting such inspection or audit.

12.7 Copies of Reports

The Parties must provide each other with a copy of any report of any inspection or audit undertaken pursuant to this Clause 12 in respect of its compliance with the Interface Risk Management Plan (including the Rollingstock Interface Standards).

12.8 Consequences of Inspection or Audit

Unless otherwise agreed, where a Party requires the conduct of an inspection or an audit under Clauses 11(f) or 12.2(a)(ii) of this Agreement, that 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 inspection or audit if, and only if, no reasonable person in the position of the Party who required the conduct of the inspection or audit could have formed the view that the stated grounds for such inspection or audit existed, provided that the other Party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the inspection or audit. The Party who required the conduct of the inspection or audit shall bear the burden of establishing that a reasonable person in its position could have formed that view.

12.9 Parties' Obligations

An inspection or audit by a Party under this Agreement shall not relieve the other Party of its obligations under this Agreement or at Law.

13 INSURANCE BY OPERATOR

13.1 Maintain Insurance Policies

The Operator must prior to the commencement of Train Services at its expense take out and subsequently maintain current at all times during the Term insurance with a Corporation licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to QR Network) those policies of insurance required by this Agreement with an insurer having an insurance financial strength rating of "A" or better by Standard & Poor's or, if Standard & Poor's ceases to exist or to provide such ratings, the rating which most closely corresponds to that rating by another agency or person which is recognised in global financial markets as a major ratings agency.

13.2 Required Insurance Policies

The Operator must take out and maintain insurance for the risks and on the terms specified in **Schedule 7**.

13.3 Disclosure of Insurance Policies

The Operator must provide to Queensland Rail evidence of the insurance policies effected pursuant to this Clause 13 or, if requested by Queensland Rail, copies of such insurance policies, to Queensland Rail's reasonable satisfaction:

- (a) at least ten (10) Business Days prior to the commencement of Train Services;
- (b) upon renewal of each insurance policy during the Term; and
- (c) whenever reasonably requested to do so in writing by Queensland Rail.

13.4 Failure to Disclose Insurance Policies

If the Operator, whenever required to do so under this Agreement, fails to produce to Queensland Rail evidence to the reasonable satisfaction of Queensland Rail of insurances that have been effected or maintained by it, Queensland Rail may :

- (a) effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Queensland Rail; and/or
- (b) terminate this Agreement pursuant to Clause 20.1(g).

13.5 Minimum Terms of Policies

Each of the policies of insurance effected in accordance with this Agreement must, to the extent permitted by Law:

- (a) note the interests of the Operator, any contractor and Queensland Rail;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of Queensland Rail (which consent shall not be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **Schedule 7**.

13.6 Operator Not to Render Policy Void

The Operator must not render any of the insurances effected in accordance with this Clause 13 void or voidable or liable to refusal of any claim.

13.7 Compliance

The Operator must at all times comply with the terms and conditions of all insurance policies effected pursuant to this Clause 13.

13.8 Notice of Potential Claims

In addition to any other obligation on the Operator pursuant to this Agreement, the Operator must notify Queensland Rail as soon as practicable after the occurrence of any claim under any insurance policy required by this Agreement, notify Queensland Rail of that event in reasonable detail and thereafter keep Queensland Rail informed of subsequent developments concerning any claim.

13.9 Operator to pay all excess/deductibles

The Operator must in respect of any claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected in accordance with this Clause 13.

13.10 Settlement of Claims

Upon settlement of a claim under any policy required by this Agreement covering damage to Infrastructure the monies received must be paid to Queensland Rail unless the Operator has already partially or totally indemnified Queensland Rail for the relevant damage, in which case the monies shall be paid to the Operator but only to the extent that Queensland Rail has been indemnified.

14 INDEMNITIES AND LIABILITIES

14.1 Indemnity by Operator

Subject to Clause 14.3, the Operator is solely liable for and releases, indemnifies and will keep indemnified Queensland Rail, its directors and Queensland Rail's Staff against all Claims of any nature suffered or incurred by or made or brought against Queensland Rail, its directors or Queensland Rail's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of Queensland Rail) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of the Operator, the Operator's Customer or Operator's Staff.

14.2 Indemnity by Queensland Rail

Subject to Clause 14.3, Queensland Rail is solely liable for and releases, indemnifies and will keep indemnified the Operator, its directors and Operator's Staff against all Claims of any nature suffered or incurred by or made or brought against the Operator, its directors or the Operator's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of the Operator) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of Queensland Rail or Queensland Rail's Staff.

14.3 Liability to Third Parties

Notwithstanding Clause 14.1 or Clause 14.2, the Operator is solely liable for and releases, indemnifies and will keep indemnified Queensland Rail, its directors and Queensland Rail's Staff against all Claims due to or arising out of this Agreement in respect of damage to or loss of any property or personal injury to or death of any person where such person or property is being transported on Train Services except to the extent that such damage, loss, injury or death is caused by or contributed to (to the extent of the contribution) by the wilful default or any deliberate or negligent act or omission of Queensland Rail or Queensland Rail's Staff. Unless otherwise agreed, the Operator shall extend to Queensland Rail any exclusion or limitation of liability afforded by the Operator's conditions of carriage with its customers and shall provide to Queensland Rail details of the Operator's conditions of carriage relevant to Queensland Rail's liability in place from time to time.

14.4 Liability from Infrastructure Standard

Notwithstanding any other provision of this Agreement, Queensland Rail will not be liable to the Operator or the Operator's Customer and the Operator and the Operator's Customer will not have or make any Claim against Queensland Rail in respect of any loss of or damage to real or personal property, including property of the Operator or the Operator's Customer, or personal injury to or death of any person or any other damage, expense, injury, cost or loss whatsoever arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure except to the extent that such loss, damage, injury, cost or

expense results directly from the failure of Queensland Rail to perform its obligations under Clause 6.2(a) or Queensland Rail's negligence in performing those obligations.

14.5 Defence of Claims

The Parties shall render each other, and the Operator will procure the Operator's Customer to render, all reasonable assistance in the defence of any Claim made against a Party by a Third Party arising out of any Incident or other event giving rise to a Claim.

14.6 Continuation of Indemnities

The releases and indemnities contained in this Clause 14 for the benefit of either Party continue in full force and effect as to any Claims occurring or arising from any act occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

14.7 Determination of Liability

In the event of an Incident involving the Operator or any other event which results or could result in a Claim by or against the Operator, the Operator's Customer or Queensland Rail, liability as between the Operator and Queensland Rail shall for the purposes of this Clause 14 be determined:

- (a) as agreed between the Parties;
- (b) failing such agreement within one (1) Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed pursuant to Clause 14.8; or
- (c) where the amount of the Claim exceeds the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) and either Party is dissatisfied with the report of the loss adjuster, by a Court of competent jurisdiction.

14.8 Loss Adjuster

Where a matter is to be referred to a loss adjuster in accordance with Clause 14.7 then the following provisions of this Clause shall apply:

- (a) The loss adjuster shall be appointed by the Parties, or in default of such appointment within ten (10) Business Days after the need to appoint a loss adjuster, by the President of The Chartered Institute of Loss Adjusters Australasian Division.
- (b) In any event, the loss adjuster shall:
 - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
 - (ii) have no interest or duty which conflicts or may conflict with his function as a loss adjuster, he being required to fully disclose any such interest or duty before his appointment; and
 - (iii) not be an employee of the Operator or Queensland Rail or of a Related Body Corporate of either Party.

- (c) The loss adjuster appointed pursuant to this Clause 14.8 shall not be permitted to act until he has given written notice of the acceptance of his appointment to both Parties.
- (d) Any loss adjuster appointed pursuant to this Clause 14.8 shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and the performance of his duties.
- (e) Any person nominated as a loss adjuster hereunder shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the Commercial Arbitration Act 1990 (Qld), shall not apply to him or his determination or the procedures by which he may reach his determination.
- (f) Each Party must ensure to the best of its ability that the loss adjuster is given the opportunity to interview any employee, agent or contractor (including employees, agents or contractors of the Operator's Customer) involved in or with knowledge of the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (g) Each Party must make available to the loss adjuster any files, documents, data, recordings or other information that may be of use to, or is requested by, the loss adjuster for the purposes of his investigation.
- (h) The loss adjuster will determine the quantum of the relevant Claim and the liability of the Operator and/or Queensland Rail in respect of such Claim and shall provide a copy of his report on such matters to each of the Parties within a reasonable time after his appointment.
- (i) In the absence of manifest error, the decision of the loss adjuster shall be final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00).

14.9 Costs

The costs of the loss adjuster shall be borne by the Parties in such proportions as liability is determined by the loss adjuster or where the liability is determined by a Court, in such proportions as liability is determined by the Court.

15 LIMITATION OF LIABILITY

15.1 No Liability for Consequential Loss

Except as otherwise expressly provided in Clauses 12.8 and 19.3(b), neither Party shall in any circumstances be liable to the other for (and the indemnities in Clauses 14.1 and 14.2 shall not extend to) any Consequential Loss.

15.2 Limitation on Claims

Neither Party shall make any Claim against the other in respect of the neglect or default of that Party under the Agreement unless:

- (a) notice of the Claim has been given to the other within twelve (12) Months of the occurrence of the event or circumstance out of which such Claim arises; and
- (b) the amount of the Claim exceeds ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in respect of any one event or cause of action or series of related events or causes of action (provided that if this condition is satisfied then the Party may proceed for the full amount of the Claim and is not limited to only so much of the Claim as exceeds the required threshold of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)).

15.3 Claims in respect of non-provision of Access

The Operator shall not have or make any Claim against Queensland Rail in respect of the non-provision of Access or cancellation of any Train Service unless, and shall only have a claim to the extent that:

- (a) a Train Service is cancelled as a result of a failure by Queensland Rail to make the Infrastructure available for the Operator to operate the Train Service at the Scheduled Time in the Train Schedule and Queensland Rail was unable to schedule the Train Service at a reasonable alternative time; and
- (b) the failure by Queensland Rail to make the Infrastructure available was a result of a breach of this Agreement by Queensland Rail, or negligence on the part of Queensland Rail; and
- (c) the failure by Queensland Rail to make the Infrastructure available is not attributable to:
 - (i) the Operator or the Operator's Customer;
 - (ii) another Railway Operator (other than Queensland Rail);
 - (iii) a Force Majeure Event;
 - (iv) Major Periodic Maintenance of (including Enhancements to) the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
 - (v) any action taken by Queensland Rail, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
 - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5** and the total number of Train Services cancelled in a Billing Period as a result of a failure by Queensland Rail to make the Infrastructure available exceeds the Allowable Threshold; or
 - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**, but the non-provision of Access or cancellation of Train Services is of a

magnitude which is beyond the scope of that performance and adjustments regime.

15.4 Claims in respect of delays to Train Movements

Neither Party (the “Affected Party”) shall have or make any Claim against the other Party (the “Defaulting Party”) in respect of delays to Train Movements unless, and shall only have a Claim to the extent that:

- (a) the delay was a result of a breach of this Agreement by the Defaulting Party, or negligence on the part of the Defaulting Party; and
- (b) the delay is not attributable to:
 - (i) the Affected Party (or the Operator’s Customer where the Operator is the Affected Party);
 - (ii) another Railway Operator (other than the Defaulting Party);
 - (iii) a Force Majeure Event;
 - (iv) Major Periodic Maintenance of (including Enhancements to) the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
 - (v) any action taken by Queensland Rail, acting reasonably, in response to an emergency or a genuine safety risk; and
- (c) either:
 - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**; or
 - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and **Schedule 5**, but the delays are of a magnitude which is beyond the scope of that performance and adjustments regime.

16 MATERIAL CHANGE

16.1 Meaning of Material Change

In this Clause 16:

- (a) “Material Change” means a:
 - (i) Change in Relevant Taxes;
 - (ii) Change in Law;
 - (iii) change in the funding from governments in respect of that part of the Nominated Network specified in Part 4 of **Schedule 2**; or
 - (iv) matter deemed to be a Material Change under Clause 22.18(b); and
- (b) “Net Financial Effect” means the net effect in financial terms of a Material Change on Queensland Rail in relation to performing its obligations or exercising its rights under this Agreement including any offsetting benefits or

adverse effects directly or indirectly connected to the Material Change. Any change in the funding from governments in respect of the Nominated Network which is adverse to Queensland Rail shall, to the extent that change affects the financial position of Queensland Rail, be deemed to be an additional cost to Queensland Rail of performing its obligations under this Agreement.

16.2 Adjustment for a Material Change

- (a) If there is no Reference Tariff applicable to the relevant Train Service under this Agreement then:
- (i) if at any time after the date of this Agreement a Material Change occurs which affects the financial position of Queensland Rail or the cost to Queensland Rail of performing its obligations under this Agreement, Queensland Rail may notify the Operator giving details of the Net Financial Effect of the Material Change;
 - (ii) within ten (10) Business Days after receipt of a notice under Clause 16.2(a)(i), the Parties shall meet and negotiate in good faith any appropriate adjustments to the amounts payable under this Agreement in order to remove as far as practicable the Net Financial Effect of the Material Change and return Queensland Rail to the position it would have been in had it not been for the Material Change. If the Parties do not reach agreement within twenty (20) Business Days of Queensland Rail's notice, the matter will be referred to an expert for determination in accordance with Clause 17.3.
- (b) If a Reference Tariff is applicable to the relevant Train Service under this Agreement then the relevant Reference Tariff Schedule will provide for the consequences of Material Change.

16.3 Parties' Obligations

The Parties' obligations under this Agreement will continue notwithstanding the existence of a Material Change.

17 DISPUTES

17.1 Method

If any claim, dispute or question ("Dispute") arises under this Agreement or in relation to the Access Rights then unless otherwise expressly provided to the contrary in this Agreement such Dispute shall be resolved in accordance with this Clause 17 and either Party may give to the other Party to the Dispute a notice in writing ("Dispute Notice") specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 17.

17.2 Chief Executive Resolution

- (a) Except as otherwise provided in this Agreement, the Parties hereby agree that any Dispute shall be referred in the first instance and in any event within five (5) Business Days of the Dispute Notice to the executive general manager of Queensland Rail (or his nominee) and the chief executive officer

of the Operator (or his nominee) for the purposes of this Clause 17.2 for resolution.

- (b) If the Dispute is not resolved within ten (10) Business Days, the relevant Dispute may by agreement between Queensland Rail and the Operator be referred for resolution by an expert in accordance with Clause 17.3 or by arbitration in accordance with Clause 17.4.

17.3 Expert

Where any matter may be referred to an expert pursuant to Clause 17.2 or is required by this Agreement to be referred to an expert then except as otherwise provided for in this Agreement, the matter must be referred for determination by a person:

- (a) who is appointed by the Parties, or in default of such appointment within ten (10) Business Days after either Party giving notice in writing to the other Party requiring the appointment of an expert then that person is to be nominated at either Party's request by:
- (i) if the Parties agree that the Dispute is of a financial nature, the President for the time being of CPA Australia;
 - (ii) if the Parties agree that the Dispute is of a non-financial nature, the President for the time being of the Engineers Australia – Queensland Division; and
 - (iii) in any other case, by the President for the time being of the Queensland Law Society Incorporated;
- (b) who has appropriate qualifications and practical experience having regard to the nature of the Dispute;
- (c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;
- (d) who is not an employee of the Operator, the Operator's Customer or Queensland Rail or of a Related Body Corporate of any of them;
- (e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment;
- (f) who shall have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties or submitted by the Parties as soon as reasonably practicable at his request and who must provide both Parties with a copy of his determination in the form of a report within a reasonable time after his appointment;
- (g) who shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;

- (h) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration (including, without limitation, the *Commercial Arbitration Act 1990* (Qld)) shall not apply to him or his determination or the procedures by which he may reach his determination;
- (i) whose decision, in the absence of manifest error, shall be final and binding upon the Parties; and
- (j) whose costs (and the costs of any advisers to the expert) shall be borne by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).

Any determination made by an expert must be consistent with the provisions of this Agreement.

17.4 Arbitration

The Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Operator and Queensland Rail and failing agreement upon such arbitrator within ten (10) Business Days after the date of written notice from one Party to the other requiring the appointment of an arbitrator then to an arbitrator appointed by the President of the Institute of Arbitrators. Every such reference shall be an arbitration within the meaning of the *Commercial Arbitration Act 1990* (Qld), and subject to the provisions relating to arbitration contained in that Act.

17.5 Determination by Court

If any Dispute is not resolved in accordance with Clause 17.2 nor referred to an expert in accordance with Clause 17.3, nor referred to arbitration by agreement of the Parties in accordance with Clause 17.4, nor referred to the QCA in accordance with Clause 17.6, then the Dispute shall be referred to the courts of the State.

17.6 Queensland Competition Authority (QCA)

The Parties may agree to refer and where required by this Agreement shall refer any Dispute to the QCA.

18 FORCE MAJEURE

18.1 Claim of Force Majeure

If by reason of a Force Majeure Event occurring either Party is wholly or partially unable to carry out its obligations under this Agreement (other than an obligation to pay monies), that Party must, as soon as it becomes aware of the Force Majeure Event, give to the other Party prompt written notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) details of the Force Majeure Event and that part of the Nominated Network affected;
- (b) details of the obligations affected;

- (c) details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to remedy the situation; and
- (d) an estimate of the time during which the Party will be unable to carry out its obligations due to the Force Majeure Event.

No Party will be obliged to settle any strike, lockout or other labour dispute on terms not acceptable to it.

18.2 Suspension of obligations

If by reason of a Force Majeure Event affecting all or any part of the Nominated Network either Party is delayed or prevented from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay monies) then the obligations of that Party will be suspended during that time and to the extent that the performance of such obligations is prevented or hindered by the Force Majeure Event.

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 this Access Agreement. Without limiting the foregoing, the Operator will be relieved from obligations in respect of the payment of Access Charges to the extent that Access Rights are affected by a Force Majeure Event [in accordance with **schedule 3**]. 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.

18.3 Duty to Mitigate

Each Party will use all reasonable diligence to remedy or overcome the effect of the Force Majeure Event as soon as possible and will attempt to identify alternative viable means of providing the Access Rights affected and to mitigate the effect of the Force Majeure Event.

18.4 End of period of Force Majeure

Subject to Clauses 18.5 and 18.6, the suspension of the obligations of the Parties due to a Force Majeure Event ends when the Party that issued the notice of the Force Majeure Event is able to resume full performance of its obligations under this Agreement at which time it must issue a notice to the other Party advising that it intends to recommence the performance of its obligations and must thereafter recommence the performance of its obligations.

18.5 Termination for Loss or Damage to Nominated Network

- (a) In the event that any part of the Nominated Network specified in Part 2 of **Schedule 2** is damaged or destroyed by a Force Majeure Event and in Queensland Rail's reasonable opinion the cost of repairing such damage or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network, Queensland Rail may by written notice advise the Operator of:

- (i) the estimated cost of effecting the necessary repairs or replacement;
and

- (ii) Queensland Rail's intention to not repair or replace the relevant part of the Nominated Network unless the Operator and any other Railway Operator using that part of the Nominated Network pay the amounts specified by Queensland Rail towards the cost of effecting the necessary repairs or replacement.
- (b) If the Operator gives notice to Queensland Rail advising that it will bear the whole, or that part requested by Queensland Rail, of the cost of necessary repairs or replacement, then Queensland Rail will proceed with the repairs or replacement within a reasonable time after receipt by Queensland Rail from the Operator of payment of the relevant amount subject to reaching agreement with any other Railway Operator using the affected part of the Nominated Network. Where the Operator pays to Queensland Rail the whole of the estimated cost, Queensland Rail must, upon completion of the necessary repairs or replacement, refund to the Operator any amount by which the amount paid by the Operator exceeds the actual cost and the Operator shall pay to Queensland Rail the amount by which the actual cost exceeds the amount paid by the Operator.
- (c) If within 3 months after receipt of a notice from Queensland Rail under Clause 18.5(a) the Operator has not given notice to Queensland Rail pursuant to Clause 18.5(b) indicating that it will pay the whole, or that part requested by Queensland Rail, of the cost of the necessary repairs or replacement, Queensland Rail shall have the right to terminate this Agreement by giving not less than twenty (20) Business Days' notice in writing to the Operator without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

18.6 Termination after extended Force Majeure Event

If by reason of a Force Majeure Event a Party ("affected Party") is rendered unable to perform its obligations under this Agreement for a period of more than three (3) consecutive Months, the Parties must meet in an endeavour to identify any alternative viable means to provide the suspended Access Rights and failing an alternative means being agreed upon within one (1) Month of the end of the three (3) Month period the other Party may terminate this Agreement by twenty (20) Business Days' written notice to the affected Party and the provisions of this Agreement relating to termination set out in Clauses 20.4 and 20.5 apply without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

19 SUSPENSION

19.1 Right of Suspension

- (a) Queensland Rail may, by notice in writing to the Operator prior to or immediately following the suspension, suspend the right of the Operator to operate some or all of the Train Services upon the occurrence of any one or more of the following events or circumstances:

- (i) the Operator fails to pay when due any amount payable under this Agreement and such default continues for five (5) Business Days after notice from Queensland Rail to the Operator of the default;
- (ii) the Operator fails to meet or comply with:
 - (A) any of its obligations under Clauses 5, 7, 8 or 11 (with the exception of Clauses 5.1(a)(v), 7.3 and 8.6) of this Agreement and Queensland Rail is of the reasonable opinion that such failure either:
 - a. adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Operator) or other users of the Infrastructure (including Infrastructure Service Providers); or
 - b. has caused or is likely to cause an increased risk to the safety of any person or material risk to property; or
 - (B) the Train Service Description and Queensland Rail is of the reasonable opinion that such failure either:
 - a. adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Operator) or other users of the Infrastructure (including Infrastructure Service Providers) and that Queensland Rail has sought to avoid such adverse effects by rescheduling Trains and changing Train priority in accordance with the Network Management Principles provided that Queensland Rail will not be obliged to take any action that may cause any additional cost or risk to Queensland Rail or an adverse impact on any Railway Operator (other than the Operator); or
 - b. has caused or is likely to cause an increased risk to the safety of any person or material risk to property;
- (iii) an Insolvency Event occurs in relation to the Operator;
- (iv) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations generally under this Agreement;
- (v) the Operator fails to comply with the requirements of a notice given by Queensland Rail (within the reasonable time specified in that notice) requiring the Operator to cease conduct which in the reasonable opinion of Queensland Rail is causing or threatening to cause Serious Environmental Harm or Material Environmental Harm;
- (vi) the Operator fails to effect or maintain the insurances required under Clause 13.2 of this Agreement and such default continues for five (5) Business Days after notice from Queensland Rail to the Operator of the default;

- (vii) the Operator fails to establish, maintain or replace the Security as required under this Agreement and such default continues for five (5) Business Days after notice from Queensland Rail to the Operator of the default;
- (viii) the Operator fails to provide, prior to the departure of the Train pursuant to Clause 5.5, information that is reasonably required by Queensland Rail in relation to the relevant Train in accordance with Part 2 of Schedule 10;
- (ix) the Operator purports to Assign any of its rights or interests in this Agreement other than as permitted in this Agreement;
- (x) the Operator is in default of the due performance of any other obligation under this Agreement, and such default continues for twenty (20) Business Days after notice from Queensland Rail to the Operator of the default;
- (xi) the events or circumstances referred to in Clause 20.1(b), (c) or (f) exist.

Such suspension shall continue until such time as the Operator has remedied the relevant default and, where appropriate, taken action to prevent its recurrence.

(b) Queensland Rail may suspend the right of the Operator to operate any Train Services on the Nominated Network in the event of breach or, acting reasonably, anticipated breach by the Operator of:

- (i) any Laws relating to rail safety relevant to the operation of Train Services;
- (ii) Queensland Rail Train Control Directions given in a manner not inconsistent with the Network Management Principles;
- (iii) Safeworking Procedures; or
- (iv) Safety Standards,

and Queensland Rail is of the reasonable opinion that such breach has caused or such anticipated breach is likely to cause, an increased risk to the safety of any person or material risk to property.

Such suspension may be effected by notice in writing prior to or immediately following the suspension and shall continue until such time as the breach is rectified or, in the event of anticipated breach, the Operator has demonstrated that it is in compliance. The Operator must ensure that upon such suspension the relevant Operator's Staff immediately ceases to perform functions on the Nominated Network until such time as the suspension is lifted by Queensland Rail.

(c) Queensland Rail may suspend the operation of the Operator's Rollingstock or Rollingstock Configurations:

- (i) for actual non-compliance with applicable Laws, the authorisation under **Schedule 4** for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where the Operator has failed to rectify such non-compliance within a reasonable period of time; or
- (ii) for actual non-compliance or (acting reasonably) anticipated non-compliance with applicable Laws, the authorisation under **Schedule 4** for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property.

Such suspension may be effected by notice in writing to the Operator prior to or immediately following the suspension and shall continue until the Operator has rectified the non-compliance or, in the event of anticipated non-compliance, the Operator has demonstrated that it is in compliance.

19.2 Details of Suspension

Where Queensland Rail has a right under this Clause 19 to suspend rights of the Operator, the notice of suspension given in writing by Queensland Rail to the Operator must set out :

- (a) the rights of the Operator which are affected by the suspension;
- (b) the reasons for the suspension; and
- (c) the actions the Operator must take to have the suspension lifted.

19.3 Effect of Suspension

- (a) The suspension of any rights does not affect or suspend any other obligation of the Operator, including the obligation to pay Access Charges under this Agreement and shall be without prejudice to Queensland Rail's other rights and remedies in respect of that or any other default.
- (b) Where Queensland Rail suspends some or all of the Operator's Train Services, Queensland Rail will be liable to the Operator in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, no reasonable person in Queensland Rail's position could have formed the view that the stated grounds for the suspension existed, provided that the Operator must use all reasonable endeavours to mitigate the loss or damage arising from the suspension. Queensland Rail shall bear the burden of establishing that a reasonable person in Queensland Rail's position could have formed that view.

20 TERMINATION

20.1 Termination by Queensland Rail

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, Queensland Rail may, by notice in writing to the

Operator, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) the Operator fails to pay when due any amount payable under this Agreement and such default continues for twenty (20) Business Days after notice from Queensland Rail to the Operator of the default;
- (b) the Operator fails to comply in any material respect with:
 - (i) any obligations under Clauses 5, 7, 8 or 11 (with the exception of Clauses 7.3 and 8.6) of this Agreement; or
 - (ii) any Queensland Rail Train Control Direction within the control of the Operator, any Safeworking Procedures or Safety Standard, and such default continues for, or the Operator has failed to take reasonable action to prevent recurrence of the default within, twenty (20) Business Days after notice from Queensland Rail to the Operator of the default;
- (c) the Operator fails to comply in any material respect with the Train Service Description and fails to demonstrate to the reasonable satisfaction of Queensland Rail, within 3 months after notice from Queensland Rail to do so, that the Operator will consistently comply with the Train Service Description for the remainder of the Term provided that Queensland Rail, acting reasonably, has determined not to vary the Train Service Description having regard to relevant factors including:
 - (i) the impact on other users of the Infrastructure (including Infrastructure Service Providers); and
 - (ii) the efficient utilisation of the Infrastructure;
- (d) an Insolvency Event occurs in relation to the Operator and such default continues for a period of 3 months;
- (e) the Operator's Accreditation is suspended, cancelled or amended so that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Agreement, and such default continues for twenty (20) Business Days after notice from Queensland Rail to the Operator of the default;
- (f) where the Environmental Protection Agency gives the Operator a direction, notice or order about the conduct of the Operator in relation to the operation of Train Services which causes or threatens to cause Serious Environmental Harm and the Operator fails, within the time:
 - (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or
 - (ii) otherwise agreed to by the Environmental Protection Agency,
to
 - (iii) comply with the direction, notice or order, as modified by any court order (if applicable); or

(iv) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Protection Agency in relation to the requirements of the direction, notice or order,

and such failure continues for twenty (20) Business Days after notice by Queensland Rail to the Operator to remedy such failure;

(g) the Operator fails to effect or maintain the insurances required under Clause 13.2 of this Agreement and such default continues for twenty (20) Business Days after notice from Queensland Rail to the Operator of the default;

(h) the Operator fails to establish, maintain or replace the Security as required under this Agreement and such default continues for twenty (20) Business Days after notice from Queensland Rail to the Operator of the default;

(i) the Operator purports to Assign any of its rights or interests in this Agreement other than as permitted by this Agreement;

(j) the Operator is in default of the due performance of any other obligation under this Agreement, and such default continues for 3 months after notice from Queensland Rail to the Operator of the default,

provided that Queensland Rail has first exercised its corresponding right of suspension under Clause 19.1.

20.2 Termination for Change in Control

Queensland Rail may terminate this agreement immediately if:

(a) there is a Change in Control; and

(b) the Operator has not obtained Queensland Rail's prior consent to that Change in Control in accordance with clause 21.2 which will apply.

20.3 Termination by the Operator

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, the Operator may, by notice in writing to Queensland Rail, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

(a) an Insolvency Event in relation to Queensland Rail occurs and such default continues for a period of 3 months;

(b) Queensland Rail's Accreditation is cancelled such that it cannot perform its obligations generally under this Agreement, and such default continues for twenty (20) Business Days after notice from the Operator to Queensland Rail of the default;

(c) Queensland Rail fails to pay when due any amount payable under this Agreement and such default continues for twenty (20) Business Days after notice from the Operator to Queensland Rail of the default;

- (d) Queensland Rail is in default of the due performance of any other obligation under this Agreement and such default continues for 3 months after notice from the Operator to Queensland Rail of the default.

20.4 Grounds for Termination to be specified

A notice of termination given under Clauses 20.1 or 20.2 must set out the grounds for the termination.

20.5 Obligations and other rights upon termination or expiration

- (a) Neither termination of this Agreement by a Party pursuant to this Clause 20 nor expiration of this Agreement prejudices:
- (i) a Party's right to make a Claim or recover damages or avail itself of other remedies under this Agreement or at Law; or
 - (ii) either Party's rights to recover monies due to it under this Agreement.
- (b) Upon termination of this Agreement Queensland Rail and the Operator shall be released from all further obligations or liabilities under this Agreement except in respect of any antecedent breach of this Agreement on their respective parts. Any liability in respect of such antecedent breach shall be limited in the manner provided in this Agreement.

20.6 Removal of Rollingstock following termination

- (a) Immediately on expiration of the Term, and as soon as practicable following termination of this Agreement for any other reason, the Operator must, at the Operator's cost, remove all of the Operator's Rollingstock from the Nominated Network.
- (b) If the Operator fails to remove the Operator's Rollingstock from the Nominated Network, Queensland Rail may serve notice on the Operator demanding the removal of Rollingstock within a specified time.
- (c) If the Operator fails to remove any of the Operator's Rollingstock from the Nominated Network the subject of the notice of demand within the time specified in the notice of demand issued by Queensland Rail in accordance with Clause 20.5(b), Queensland Rail is entitled to remove the Rollingstock and recover the reasonable costs of removal from the Operator.
- (d) The Operator is liable, and will indemnify Queensland Rail, for any costs incurred by Queensland Rail in relation to any damage or obstruction caused to the Infrastructure or the Nominated Network by the Operator in removing any Rollingstock in accordance with this Clause.
- (e) The Operator shall comply with all reasonable directions issued by Queensland Rail in relation to the removal of the Rollingstock in accordance with this Clause.

21 ASSIGNMENT

21.1 Assignment by Queensland Rail

~~Queensland Rail may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the Operator provided that Queensland Rail procures the Assignee to covenant with the Operator by deed to be bound by and to perform the obligations of Queensland Rail under this Agreement to the extent of the rights and obligations Assigned to the Assignee. Upon the Assignee entering into that deed Queensland Rail will be released and discharged from further liability under this Agreement in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.~~

- (a) With the prior written consent of the Operator, which will not be unreasonably withheld, Queensland Rail may assign, novate, transfer or otherwise deal with (Assign) its rights and obligations under the Access Agreement to any person who is responsible and has the expertise and financial capacity needed to operate and maintain the rail infrastructure and comply with the obligations of Queensland Rail under this Agreement.
- (b) It will be unreasonable for the Operator to withhold its consent to an assignment or novation if this Access Agreement is proposed to be assigned or novated to an entity which:
 - (i) has an investment grade credit rating of at least BBB; and
 - (ii) has the necessary expertise to operate and maintain the rail infrastructure and discharge the obligations of Queensland Rail under this agreement.
- (c) On the Assignee executing and delivering to the Operator 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.

21.2 Assignment by the Operator

- (a) The Operator may Assign the whole of its rights and obligations under the Access Agreement with the prior consent of Queensland Rail, which will not be unreasonably withheld, provided that the Assignee
 - (i) enters into a deed of covenant with Queensland Rail and agrees to be bound by and to perform the Access Holder's obligations under the Access Agreement
 - (ii) satisfies Queensland Rail (acting reasonably) that the assignee has the financial and other relevant resources to enable it to discharge the obligations of the access holder under this Agreement in respect of the assigned rights.
- (b) On the Assignee executing and delivering to Queensland Rail a deed covenanting to be bound by and to perform the access holders obligations under the Access Agreement, the access holder will be released and

discharged from further liability under the Access Agreement in respect of obligations that the Assignee has undertaken to perform.

- ~~Subject to the following provisions of this Clause 21.2, the Operator shall not Assign its rights or obligations, or any part thereof, under this Agreement without the prior written consent of Queensland Rail, which consent may not be unreasonably withheld.~~
- ~~The Operator may, provided it is not in default in the performance or observance of any of its obligations under this Agreement, Assign the whole of its rights and obligations under this Agreement to:~~
 - ~~a Related Body Corporate of the Operator which is Accredited to operate Train Services and is otherwise capable of performing the obligations of the Operator under this Agreement provided that the Operator shall remain liable for the performance of the duties, responsibilities and obligations assumed by the Assignee and provided however that performance by the Assignee will pro tanto discharge the Operator from liability for performance of those duties, responsibilities and obligations that are Assigned; or~~
 - ~~a person other than a Related Body Corporate of the Operator with the prior written consent of Queensland Rail, provided that such consent will not be unreasonably withheld if Queensland Rail is satisfied that such person:~~
 - ~~is financially sound;~~
 - ~~is Accredited to operate Train Services; and~~
 - ~~is otherwise capable of performing the obligations of the Operator under this Agreement.~~
- ~~Any Assignment by the Operator of its rights or obligations under this Agreement will be conditional upon and will not take effect until the Assignee covenants with Queensland Rail by deed, in such terms as Queensland Rail may reasonably require, to be bound by and to perform the obligations of the Operator under this Agreement.~~
- ~~Except where the Operator is a company the shares in which are quoted by the Australian Stock Exchange Limited, any change in shareholding of the Operator altering the effective control of the Operator will be deemed to be an Assignment of this Agreement.~~
- ~~The Operator shall not:~~
 - ~~register, record or enter in its books any transfer of any share or shares in the capital of the Operator;~~
 - ~~deal with any beneficial interest in any such share or shares;~~
 - ~~issue any new share or shares; or~~
 - ~~take or attempt to take any action~~
 - ~~having the effect:~~

- ~~_____ of altering the control of the Operator ; or~~
- ~~_____ that the shareholders of the Operator at the date of this Agreement together beneficially hold or control less than 51% of the voting rights of capital in the Operator,~~
- ~~(c) _____ until the requirements of this Clause 21.2 have been complied with.~~

21.3 Charging

A Party (“Chargor”) may create a Charge over all of its rights under this Agreement in favour of a recognised financial institution (“Chargee”) to secure financial accommodation provided to the Chargor in relation to its obligations under this Agreement, provided that the Chargee shall first covenant in writing in favour of the other Party (“Non-Charging Party”), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee will comply with the provisions of this Clause 21 as if it were originally a party hereto, and will not exercise any power of sale of the rights and/or obligations of the Chargor under the Agreement except in accordance with this Clause 21.

22 GENERAL

22.1 Variation/Amendment

Except as otherwise provided in this Agreement any variation or amendment to this Agreement must be in writing signed by both Parties.

22.2 Confidentiality

The Parties shall comply with the provisions of the confidentiality deed set out in Schedule 12.

22.3 Intellectual Property

All material supplied or made available by one Party (“the Supplier”) to the other Party remains the intellectual property of the Supplier and cannot be reproduced nor used for any purpose other than the purpose for which it was supplied without the approval of the Supplier.

22.4 Entire Agreement

- (a) This Agreement, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever and no Party will be liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:

- (i) affects the meaning or interpretation of this Agreement; or
- (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

22.5 Non-merger

Each representation, covenant and obligation under this Agreement continues in full force and effect until such representation, obligation or covenant is satisfied or completed.

22.6 Authority to enter into Agreement

- (a) The Parties represent and warrant to and covenant with each other that they have full power to enter into and perform their obligations under this Agreement and that this Agreement constitutes valid and binding obligations on the Parties respectively enforceable in accordance with its terms.
- (b) If this Agreement is executed by an attorney the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Agreement.

22.7 Interpretation not to disadvantage a Party

In the interpretation of this Agreement no rules of construction shall apply to the disadvantage of one Party on the basis that that Party put forward this Agreement or any part thereof.

22.8 Relationship

- (a) The relationship between the Parties is entirely contractual and nothing in this Agreement creates or is to be taken to create any partnership, joint venture or relationship of employer and employee between the Parties or any of them.
- (b) This Agreement is for the exclusive benefit of the Parties and does not create any rights in any Third Parties.

22.9 Notices

(a) Form of Notice

Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Agreement (other than a Queensland Rail Train Control Direction or a direction from the Queensland Rail Commander) ("**Notice**") must be in writing and signed by an authorised officer of that Party and may, if so agreed by Queensland Rail, be in electronic form.

(b) Method of Service

A Notice may be given by:

- (i) being personally delivered on a Party;
- (ii) being left at the Party's current address for service;
- (iii) being sent to the Party's current address for service by pre-paid ordinary mail; or

(iv) being sent by facsimile transmission to the Party's current facsimile number for service provided that a copy of the notice is then delivered by one of the means described above.

(c) Deemed Notice

A Notice is deemed given if:

- (i) personally delivered, upon delivery;
- (ii) posted to an address in Australia, three (3) Business Days after posting;
- (iii) sent by facsimile, on the next day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number.

(d) Addresses for Service

(i) Each Party's address for service is:

Queensland Rail:

Address:

Facsimile

Attention:[Executive General Manager], Queensland Rail Pty Ltd

Operator

Address:[***]

Facsimile:[***]

Attention:[***]

(ii) A Party may from time to time change its particulars of service by giving written notice of that change to the other Party

22.10 Certificate

A certificate signed by any duly authorised officer of Queensland Rail as to a matter or as to a sum payable to Queensland Rail in connection with this Agreement is prima facie evidence of the matter stated in it or the sum payable.

22.11 Costs

Subject to any express provision in this Agreement to the contrary, each Party bears its own legal and other expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

22.12 Stamp Duty

- (a) The Operator is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it.
- (b) If Queensland Rail pays any stamp duty (including any fine or penalty) on or relating to this Agreement or any document executed under or in connection

with it, the Operator must reimburse Queensland Rail the amount paid upon demand.

22.13 Waiver and Exercise of Rights

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) No failure or delay by either Party to exercise any right or remedy under this Agreement may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Agreement does not constitute a waiver of succeeding defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Agreement does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Agreement.

22.14 Computation of Time

Where time is to be reckoned by reference to a day or event, that day or the day of the event will be excluded.

22.15 Severance of invalid or illegal terms

- (a) If any term of this Agreement, or its application to any Party, person or circumstance is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatsoever, then:
 - (i) that term or its application to such Party, person or circumstance is severable from this Agreement;
 - (ii) the remainder of this Agreement, excluding the severed part, remains in force and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
 - (iii) to the extent permissible by law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this Clause as to a replacement term. If the Parties cannot agree upon a replacement term, this Agreement is continued in accordance with Clause 22.15(a)(i) and (ii).

22.16 Rights Cumulative

Subject to any express provision in this Agreement to the contrary, the rights of any Party under this Agreement are cumulative and are in addition to any other rights of that Party.

22.17 Approvals and Consents

Subject to any express provision in this Agreement to the contrary, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement.

22.18 Ownership of Land

The Operator acknowledges that the land identified in Part 5 of **Schedule 2**:

- (a) is not owned or controlled by Queensland Rail; and
- (b) is not land the entry to which is included within the definition of "Access" in 's Access Undertaking (as those provisions are amended, varied or replaced from time to time),

and agrees that in respect of that land owned or controlled by another person ("Landowner") then:

- (c) the Operator will comply with the requirements of the Landowner in relation to that land as notified to the Operator by Queensland Rail from time to time;
- (d) if, after the date of this Agreement, there is a change in the costs incurred by Queensland Rail due to the requirements of the Landowner in respect of that land, then that change shall be deemed to be a Material Change; and
- (e) if Queensland Rail's rights in respect of that land are terminated for any reason other than the default of Queensland Rail of any agreement that affects Queensland Rail's use of that land or other than by agreement with the Landowner, then Queensland Rail may by notice to the Operator suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that land.

22.19 Implementation of Agreement

Each Party must promptly execute all documents and do all such acts and things as is necessary or desirable to implement and give full effect to the provisions of this Agreement.

22.20 Schedules

In the event that the content of a Schedule requires variation or replacement in accordance with this Agreement, Queensland Rail shall issue to the Operator a replacement Schedule which shall upon issue be substituted for and replace the relevant Schedule in this Agreement. Nothing in a Schedule shall be varied in any way except by the issue of a replacement Schedule by Queensland Rail in accordance with this Clause.

22.21 Governing Law and Jurisdiction

This Agreement shall be interpreted according to the Laws for the time being in force in the State and each of the Parties submits to the jurisdiction of the courts of the State and the jurisdiction of all courts competent to hear appeals therefrom and waives any right to object to any proceedings being brought in those courts.

22.22 Most Favoured Nation Status

- (a) If the Operator believes on reasonable grounds that:

(i) Queensland Rail has entered into an access agreement with another Railway Operator for a Train service that transports the same specified commodity in the same specified geographic area as a Train Service provided in accordance with this Agreement (“Like Train Service”); and

(ii) the Access Charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in Queensland Rail’s Access Undertaking.

the Operator may provide written notification to Queensland Rail which must include the reasons why the Operator considers this to be the case.

(b) Within 1 month of receipt of such notification, Queensland Rail must advise the Operator:

(i) whether or not Queensland Rail agrees that the access agreement with the other Railway Operator is for a Like Train Service and, if not, the reasons why Queensland Rail considers this to be the case;

(ii) if Queensland Rail agrees that the access agreement with the other Railway Operator is for a Like Train Service, whether or not Queensland Rail agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in the Queensland Rail Access Undertaking and, if not, the reasons why Queensland Rail considers that the access charge applicable to the Like Train Service has not been developed in contravention of the limits on price differentiation; and

(iii) if Queensland Rail agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation then within 3 months of advice provided pursuant to Clause 22.22(b) Queensland Rail must advise the Operator:

(A) whether or not Queensland Rail has been able to vary the access charge applicable to the Like Train Service such that it no longer contravenes the limits on price differentiation set out in Queensland Rail’s Access Undertaking; or

(B) if Queensland Rail has not been able to vary the access charge applicable to the Like Train Service that Queensland Rail agrees to the reduction of the Access Charge payable by the Operator including the amount of the proposed reduced Access Charge.

(c) If the Operator does not agree with Queensland Rail’s response to its notification, the dispute shall be referred to an expert for resolution in accordance with Clause 17.3.

(d) If:

(i) another Railway Operator provides Queensland Rail with notification that it believes that some or all of the Operator’s Train Services are a Like Train Service to a Train service operated by the other Railway

Operator, and that the Access Charge has been developed in contravention of the limits on price differentiation set out in Queensland Rail's Access Undertaking; and

(ii) Queensland Rail agrees that this Agreement is for a Like Train Service and that any Access Charge under this Agreement has been developed in contravention of the limits on price differentiation set out in Queensland Rail's Access Undertaking.

then Queensland Rail has the right by notice to the Operator to vary the Access Charge such that it no longer contravenes the limits on price differentiation set out in Queensland Rail's Access Undertaking.

EXECUTION

Executed in Queensland

SIGNED for and on behalf of)

QUEENSLAND RAIL LIMITED)

in the presence of:)

Witness Signature

Print Name Print Name

[the OPERATOR]

in the presence of:)

Witness Witness

Print Name Print Name

Note: Queensland Rail will require the Operator to execute this Agreement either:

(a) under seal; or

(b) under s127(i) of the Corporations Act; or

(c) under a duly executed Power of Attorney.

SCHEDULE 1

TRAIN SERVICE ENTITLEMENTS

PART 1 TRAIN SERVICE DESCRIPTION

1.1 Train Service Characteristics

The following tables define the characteristics of Train Services which characteristics shall form part of the Train Service Description.

Commodity: Coal
Sectional Run Times: See Clause 1.2
Special Operating Restrictions: See Clause 1.5

System:

<u>Origin</u>	<u>Destination</u>	<u>Distance (km)</u>	<u>Time at Origin Loading Facility (hrs)</u>

Notes: Origin is denoted as the mine and/or Queensland Rail terms for the location at which the mine loads Trains
Train Services run loaded between Origin and Destination and empty between Destination and Origin.

For Train Services with the above characteristics, the time at the Destination unloading facility is as per the following table.

<u>Destination Unloading Facility</u>	<u>Time at Destination Unloading Facility (hrs)</u>

For Train Services with the above characteristics, the average Time at Depot and the Other Dwell Time are as per the following table:

<u>System</u>	<u>Time at Depot (hrs)</u>	<u>Other Dwell Time (hrs)</u>

1.2 Sectional Running Times

The Sectional Running Times to be achieved by coal system Trains are set out in Table 1.2 below:

Table 1.2 -Sectional Running Times:

<u>From</u>	<u>To</u>	<u>Sectional Running Time</u>	
		<u>Direction Empty (minutes)</u>	<u>Direction Loaded (minutes)</u>

Note: A Diagram illustrating the location of each Section can be found in **Schedule 2**.

[Operator to provide details of Sectional Running Times]

1.3 Train Service Levels

The number of Nominated Weekly Train Services for the relevant coal system Train that Queensland Rail will provide to the Operator from the Commitment Date are set out in Table 1.3 below:

Table 1.3: Train Service Levels

<u>Service Levels</u>	<u>No. of Train Services</u>
<u>Nominated Weekly Train Services</u> ¹	
<u>Nominated Monthly Train Services (31 days)</u> ¹	
<u>Nominated Monthly Train Services (30 days)</u> ¹	
<u>Nominated Monthly Train Services (29 days)</u> ¹	
<u>Nominated Monthly Train Services (28 days)</u> ¹	
<u>Nominated Annual Train Services</u> ¹	

¹ NB: A Train Service is a One Way Train Service

¹ This formula for ATP assumes that, for a Train Service operating in the West Moreton System, the Train Service operates within an single System. If a Train Service operates in the West Moreton System and requires access to more than one System ("Cross System Train Service"), the calculation of ATP will involve calculating a

The above Train Service Levels will be converted into timetables using the process referred to in paragraph 2.2(i) of the Scheduling Principles set out in **Schedule 10**.

1.4 Transit Times

The target Average Below Rail Transit Time Factor is set out below:

<u>Coal</u>	<u>Target Average Below Rail Transit Time Factor (%)</u>

1.5 Special Operating Restrictions

In scheduling Train Services in accordance with the Network Management Principles, Queensland Rail will comply with the following special operating restrictions:

[Specific operating restrictions to be agreed]

1.6 Cycle Description

With the following exceptions, the Train Services Cycle description is the most direct route over the Nominated Network between the Origins and Destinations and Destinations and Origins (as described in Paragraph 1.1).

Note: Where there is duplicated Track or multiple roads (eg yards), Queensland Rail will have the ability to schedule the Train over any of the Tracks or roads.

Exceptions

[To be agreed]

1.7 Stowage

[To identify any agreed short term Stowage requirements additional to that provided in the relevant Reference Tariff Schedule]

separate ATP for that Train Service for each Individual Coal System and then aggregating those separate amounts. If the Train Service is a Cross System Train Service, Queensland Rail may vary the formula of ATP to reflect this.

1.8 Permitted Movements on the Nominated Network

[To detail any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times]

SCHEDULE 2

NOMINATED NETWORK

PART 1 EXTENT OF NOMINATED NETWORK

For the purposes of this Agreement the Nominated Network on which the Operator will be entitled to operate Train Services will be described by a combination of diagram and/or table but does not include freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

[Diagram/table to be inserted as applicable]

PART 2 PARTS OF NOMINATED NETWORK SUBJECT TO CLAUSE 18.5

The following line sections to the extent they form part of the Nominated Network as specified in Part 1 of this **Schedule 2** will be subject to the provisions of Clause 18.5 of the Agreement:

1 _____ [To be inserted if applicable]

PART 3 TRAIN CONTROL CENTRES AND SIGNAL CABINS

The movement of the Operator's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins as follows:

[Diagram to be inserted]

PART 4 PARTS OF THE NOMINATED NETWORK SUBJECT TO CLAUSE 16.1(a)(iii)

1 _____ [To be inserted if applicable]

PART 5 LAND IN WHICH OTHER PARTIES HAVE AN INTEREST (Clause 22.18)

1 _____

2 _____ [To be inserted if applicable]

PART 6 WEIGHBRIDGES AND OVERLOAD DETECTORS (Clause 2.7)

1 WEIGHBRIDGES CERTIFIED FOR BILLING PURPOSES:

<u>Location</u>	<u>Owner/Operator</u>	<u>Weighbridge “In Motion Trade Certificate” Electronic Weighing and Billing</u>

_____ The tolerances are those required to achieve certification.

2 AGREED OPERATIONAL WEIGHBRIDGES AND OVERLOAD DETECTORS

<u>Location</u>	<u>Owner/Operator</u>	<u>1. Tolerance</u>
		<u>+/- (x)%</u>

~~2.~~ SCHEDULE 3

~~3.~~ CALCULATION OF ACCESS AND OTHER CHARGES

~~(iii)~~ Calculation of Access Charges and other charges

1 Access Charge Inputs

- (a) The Access Charge Inputs (as at the Commencement Date) to apply for specific Train Services are as set out below.

Origin	Destination	Access Charge Inputs		
		Variable rate AT ₁ (\$/1000gtk)	Fixed rate AT ₂ (\$/Train Path)	QCA Levy ² QL (\$/Net Tonne)

Miscellaneous train services ³	Access Charge Input
	Miscellaneous train service rate (\$/tkm ⁴)
Unscheduled repositioning of Rollingstock within the Applicable Network described in schedule .	
All other such relocations and movements	

The QCA Levy is a fee imposed by the QCA on the beneficiaries of the QCA's regulatory services. This levy will be reviewed and endorsed by the QCA annually.

³ For clarity, a miscellaneous train service to which the miscellaneous train service rates apply will be treated as a special type of ad hoc train service for the purposes of this agreement including the application of the Network Management Principles and are comprised in 'Ad Hoc Train Services' as referred to under the Network Management Principles.

⁴ Where tkm is a reference to train kilometre – that is, each kilometre or part thereof travelled on the Network by the Train(s) or Rollingstock involved. For example, if the relevant miscellaneous train service rate is \$X/tkm and the total tkm for in respect of those miscellaneous train services is 1000, then the relevant charge will be X multiplied by 1000.

~~(d)~~(b) The Access Charge Inputs will be varied or escalated in accordance with clauses 1 and 1 of this schedule and clause [146](#), as applicable.

2 CPI escalation

2.1 Calculation of CPI escalation

Unless otherwise agreed between the Parties, the Access Charge Inputs (other than the QCA Levy), and any other charges or rates expressed in this agreement as being subject to escalation, will escalate on each 1 July during the Term (**Escalation Date**), in accordance with the following formula:

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

Where:

- ACI_n** means the amount of the relevant Access Charge Input (or other charge or rate) that commences to apply on the relevant Escalation Date;
- ACI_{n-1}** means the amount of the relevant Access Charge Input (or other charge or rate) applicable immediately prior to the relevant Escalation Date;
- CPI_n** means the CPI for the Quarter which commenced six months prior to the relevant Escalation Date;
- CPI_{n-1}** means the CPI for the Quarter which commenced 18 months prior to the relevant Escalation Date.

2.2 Review of CPI

- (a) 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 [1.12-1](#)** of this **schedule 3**,
- then either Party may notify the other Party that the CPI is required to be replaced.
- (b) After a notice is given in accordance with clause [1.1\(a\)2-2\(a\)](#) of this schedule [3](#):
- (i) the Parties will negotiate in good faith for the purpose of agreeing to vary or replace the CPI; and
 - (ii) if the Parties fail to agree within 30 days after that notice is given, then the matter must be referred to an Expert for determination in accordance with **clause [1.147-3](#)**.
- (c) For clarity, if the Parties reach agreement, or the Dispute is resolved, after the relevant Escalation Date, the Parties agree to retrospectively adjust any Access Charges (or other relevant amounts) invoiced since that date

to be consistent with that agreement, or the resolution of the Dispute, in accordance with **clause 1.14.6**.

- (d) This clause [1.12.2](#) is subject to clause [1.146.4](#) and does not apply to the extent that the CPI is, or is proposed to be, varied in accordance with clause [1.146.4](#).

3 Variation of QCA Levy

Queensland Rail may, from time to time, vary the Access Charge Input for the QCA Levy by giving notice in writing to the Operator of that variation. However, that Access Charge Input must only be varied by Queensland Rail if the QCA:

- (a) requires a change in the QCA Levy;
- (b) has approved a different allocation of the QCA Levy amongst different types of train services; or
- (c) otherwise approves that variation.

4 Calculation of invoice for access

4.1 Invoice calculations

The amount of the invoice for charges payable by the Operator to Queensland Rail under this agreement for a relevant month is calculated in accordance with the following formula:

$$TC = AC \times (1 + GST) + G$$

where:

TC is the total amount of charges payable by the Operator for the relevant month;

AC is the sum of VC, FC and QCAL for each Train Service for the relevant month and, if the relevant month is:

the last month of the Year; or

the month in which this agreement has expired or terminated,

TP;

FC is the fixed charge component for the relevant Train Service calculated by the formula:

$$AT_2 \times rtp$$

where:

rtp has the meaning given to that term in the Access Undertaking in relation to the relevant Train Service; and

AT₂ is the amount specified as such in **clause 14** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

VC is the variable charge component for the relevant Train Service calculated by the formula:

$$AT_1 \times \frac{gtk}{1000}$$

where:

gtk is the gross tonne kilometres for the relevant Train Service calculated in accordance with **clause 1.15.2** of this **schedule 3**; and

AT₁ is the amount specified as such in **clause 14** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

QCAL is the QCA Levy component for the relevant Train Service which is calculated by the formula:

$$QL \times nt$$

where:

QL is the amount specified as such in **clause 14** of this **schedule 3** for the relevant Train Service applicable for the relevant month as varied from time to time in accordance with this agreement; and

nt is the net tonnes for the relevant Train Service calculated in accordance with **clause 1.1(a)(i)5.3** of this **schedule 3**;

TP is the take or pay charge for the relevant Year which is the greater of zero and the amount calculated by the formula:

$$\left(\left(AT_1 \times \frac{gtk}{1000} \right) + AT_2 \right) \times NTNO \times 0.8$$

where:

AT₁ is the amount specified as such in **clause 14** of this **schedule 3**, as escalated, or varied, from time to time in accordance with this agreement, for the relevant Train Service as applicable on the last day of the relevant Year;

AT₂ is the amount specified as such in **clause 14** of this **schedule 3**, as escalated, or varied, from time to time in accordance with this agreement, for the relevant Train Service as applicable on the last day of the relevant Year;

gtk is the average gross tonne kilometres for the relevant Train Services calculated in accordance with **clause 1.15.2** of this **schedule 3**; and

NTNO is the amount calculated by the formula:

$$NTNO = TSEY - TSOY - TSQRCY$$

where:

TSEY is the number of Train Services that the Operator was entitled to operate for the Year under this agreement;

TSOY is the number of Train Services that the Operator operated for the Year under this agreement; and

TSQRCY is the number of relevant Train Services which failed to operate for the Year under this agreement due to a Queensland Rail Cause;

GST is the rate of GST (expressed as a decimal) applicable at the time the supply is made; and

G is the sum of any other amount due and payable under this Agreement including charges for GST not already factored in by the formula for AC including, but not limited to, interest, payment for ad-hoc train services and miscellaneous train services not calculated in AC above, any Adjustment Charges (as defined in the Access Undertaking) and any other adjustments (positive or negative).

5 Interpretation

5.1 Train Services operate in the period in which they commence to operate

For the purposes of [clause 1.14.4](#) of this [schedule 3](#), a Train Service is taken to have operated in the month or a Year in which it commenced operation from its origin even if that Train Service does not reach its destination until the next month or Year.

5.2 Gross tonne kilometres

- (a) The gross tonnes (**gt**) for a Train Service is calculated as the sum of:
- (i) the maximum gross mass as specified in the Train Control System for each locomotive comprised in the Train Service;
 - (ii) if the Train Service is operated loaded or partly loaded, the maximum gross mass as specified in the Train Control System for each wagon comprised in the Train Service (for clarity, an empty wagon in a loaded Train Service will be treated as a loaded wagon);
 - (iii) if the Train Service is operated empty, the tare mass as specified in the Train Control System for each wagon comprised in the Train Service; and
 - (iv) for all other Rolling Stock, the maximum gross mass specified in the Train Control System for each item of such Rolling Stock comprised in the Train Service.
- (b) The gross tonne kilometres (**gtk**) for a Train Service is determined as:
- (i) the multiple of the **gt** for the Train Service and the distance travelled in kilometres by the Train Service, provided that there has been no change in the **gt** of the Train Service over the relevant haulage distance being assessed; or

- (ii) where there has been a change in gt for the Train Service over the relevant haulage distance (refer to average haul distance as listed in **schedule 2**) being assessed, the gtk must be determined separately for each part of the haulage distance for which there is a different gt and then each such gtk is aggregated to determine the total gtk for the Train Service over the relevant haulage distance.

5.3 Net tonnes

The net tonnes (nt) for a Train Service is equal to the gt for the Train Service calculated in **clause 1.1(a)5-2(a)** of this **schedule 3** less the sum of:

- (a) the maximum gross mass as specified in the Train Control System for each locomotive comprised in the Train Service;
- (b) the tare mass as specified in the Train Control System for each wagon comprised in the Train Service; and

for all other Rolling Stock, the tare mass specified in the Train Control System for each item of such Rolling Stock comprised in the Train Service.

5.4 Adjustment to payments

Where a change in Access Charges is to be backdated and the charge, and relevant date for commencement of the charge have been approved by the QCA, the payments due to Queensland Rail will be adjusted accordingly and as appropriate an adjusting payment will be made to Queensland Rail or a refund will be paid to the Operator.

SCHEDULE 4

AUTHORISED ROLLINGSTOCK AND ROLLINGSTOCK CONFIGURATIONS

Clause 5.9

PART 1 AUTHORIZED ROLLINGSTOCK

The Operator must provide a certificate from a suitably qualified person as per clause 5.9, certifying that the Rollingstock is compliant with the Interface Risk Management Plan (including the Rollingstock Interface Standards), or if non-compliances exist, can be operated to an acceptable level of risk by implementing the relevant controls in the Interface Risk Management Plan. Other controls listed in the Interface Risk Management Plan relevant to the compatibility of Rollingstock with the Network must also be implemented in order to gain authorisation.

Derivatives of generic classes of Rollingstock that are operated from time to time may also be covered by that Rollingstock's certification provided that the operating characteristics or safety aspects of the derivative Rollingstock are not materially different to the certified Rollingstock.

The Operator is authorised to use the classes of Rollingstock nominated in the Train Route Acceptance Certificates (annexed hereto as Annexure 'A') on the route/s specified on the Train Route Acceptance Certificates or a valid authority to travel.

The Operator must document the interface characteristics of the Rollingstock in the certificate of compliance.

Upon receipt of the above certifications, Network will authorise the Rollingstock by recording the Rollingstock details in the Vizirail rollingstock database including the individual Rollingstock numbers.

Inclusion in this Part 1 is not sufficient for operation on the Nominated Network (or any other parts of the Infrastructure) and specific authorisation for the Rollingstock in this Part 1 as part of a Rollingstock Configuration in Part 2 is required prior to any operation of Train Services.

PART 2 AUTHORIZED ROLLINGSTOCK CONFIGURATIONS

The Operator must provide a certificate from a suitably qualified person as per clause 5.9, certifying that the Rollingstock Configurations are compliant with the Interface Risk Management Plan (including the Rollingstock Interface Standards), or if non-compliances exist, can be operated to an acceptable level of risk by implementing the relevant controls in the Interface Risk Management Plan. Other controls listed in

the Interface Risk Management Plan relevant to the compatibility of Rollingstock Configurations with the Network must also be implemented in order to gain authorisation.

Upon receipt of the above certifications, Queensland Rail will authorise the Rollingstock Configurations by issuing Train Route Acceptance Certificates (annexed hereto as Annexure 'A').

The Train Route Acceptance Certificates describe the authorised Rollingstock Configurations in terms of the maximum Train parameters available for the route/s specified on the Train Route Acceptance Certificates and all suitable arrangements and combinations of available authorised Rollingstock that will still ensure train route compatibility.

PART 3 RELEVANT ROLLINGSTOCK (Clause 7.4(d)(ii))

[To be inserted as applicable]

SCHEDULE 5

PERFORMANCE LEVELS

Clause 5.6

Performance Measurement and Incentives

Network Performance Indicators

<u>Network Key Performance Indicator</u>	<u>Reporting Scope</u>	<u>Responsibility for performance</u>	<u>Reporting Frequency</u>	<u>Reporting Level</u>
<u>Network Performance</u>				
<u>Transit Time – Infrastructure Configuration Capability⁵</u>	<u>Coal Trains Only⁶</u>	<u>[Queensland Rail] Industry RCG</u>	<u>Quarterly</u>	<u>Pricing Zone</u>
<u>Transit Time – Infrastructure Practical Capability⁷</u>	<u>Coal Trains Only⁸</u>	<u>[Queensland Rail]</u>	<u>Quarterly</u>	<u>Pricing Zone</u>
<u>Maximum Axle load⁹</u>	<u>Coal only</u>	<u>[Queensland Rail] Industry RCG</u>	<u>Quarterly</u>	<u>Pricing Zone</u>
<u>Maximum Speed¹⁰</u>	<u>Coal only</u>	<u>[Queensland Rail] Industry RCG</u>	<u>Quarterly</u>	<u>Pricing Zone</u>
<u>Train Length¹¹</u>	<u>Coal only</u>	<u>[Queensland</u>	<u>Quarterly</u>	<u>Pricing</u>

⁵ Separate reporting will be undertaken in relation to an Indicative Service (or an average of Interim Indicative Services as applicable) over each Pricing Zone. Reported performance will only relate to that on the Network.

⁶ A measure of transit time over the Network, delivered by the infrastructure given its configuration (as measured by Transit Time – Infrastructure Configuration Capability) and maintenance requirements (including the simulated transit time impact of temporary speed restrictions). The transit time impact of temporary speed restrictions is determined by applying the temporary speeds restrictions in place on the Network to a simulation model designed to determine the total of time lost by reference Indicative Service subject to each temporary speed restriction. Reported on the basis of average speed.

⁷ Separate reporting will be undertaken in relation to an Indicative Service (or an average of Interim Indicative Services as applicable) over each Pricing Zone. Reported performance will only relate to that on the Network.

⁸ Lowest at any point in a Pricing Zone.

⁹ Lowest at any point in a Pricing Zone.

¹⁰ Lowest at any point in a Pricing Zone. Pricing Zone 1 is reliant on Port capability.

<u>Network Key Performance Indicator</u>	<u>Reporting Scope</u>	<u>Responsibility for performance</u>	<u>Reporting Frequency</u>	<u>Reporting Level</u>
		<u>Rail]</u> <u>Industry RCG</u>		<u>Zone</u>
<u>System Performance</u>				
<u>Transit Time – Scheduled/Actual</u> ¹²	<u>Coal Trains Only</u>	<u>[Queensland Rail]</u> <u>Industry</u>	<u>Quarterly</u>	<u>Pricing Zone</u>
<u>Infrastructure Maintenance Requirement (planned/actual)</u> ¹³	<u>[Queensland Rail]</u> <u>Requirements</u>	<u>[Queensland Rail]</u>	<u>Quarterly</u>	<u>Pricing Zone</u>
<u>Coal Chain Losses – [Queensland Rail] cause</u> ¹⁴	<u>Coal only</u>	<u>[Queensland Rail]</u>	<u>Quarterly</u>	<u>Network</u>
<u>Coal Chain Losses – non-[Queensland Rail] cause</u> ¹⁵	<u>Coal only</u>	<u>Industry</u>	<u>Quarterly</u>	<u>Network</u>
<u>Workable Alignment</u>				
<u>Coal Throughput (tonnes)</u> ¹⁶ – <u>actual/planned</u>	<u>Coal only</u>	<u>Industry</u>	<u>Quarterly</u>	<u>Network</u>
<u>Rail Capacity Group</u>				
<u>Project Implementation Delay</u> ¹⁷ <u>(not Prudent)</u>	<u>RCG Projects</u>	<u>[Queensland Rail]</u>	<u>Quarterly</u>	<u>Network</u>
<u>Track Condition</u> ¹⁸				

¹¹ A measure of transit time required by and used by the market. Difference between schedule and actual Network entry time and Network exit time. Reported on the basis of average speed.

¹² Path usages required by [Queensland Rail]. Measured by reference to the long term planning requirement (as determined during annual sculpting), short term adjustments (daily train plan) and actual requirements.

¹³ Path usages unavailable or cancelled due to actual system losses arising from [Queensland Rail]. Measured by reference to the long term planning requirement (as determined in accordance with System Assumptions), short term adjustments (daily train plan) and actual requirements. Refer System True Up prescribed at Schedule 2 of the Indicative Access Holder Agreement.

¹⁴ Path usages unavailable or cancelled due to actual system losses arising from parties other than [Queensland Rail]. Measured by reference to the long term planning requirement (as determined in accordance with System Assumptions), short term adjustments (daily train plan) and actual requirements. Refer System True Up prescribed at Schedule 2 of the Indicative Access Holder Agreement.

¹⁵ Actual/planned port inbound receipts as reported by HVCCC, plus sum of all actual/planned domestic coal moved on the Network.

¹⁶ Delay arising under section 9.6(e)(iii) to the extent where any interest in respect of construction is not deemed Prudent under that section.

¹⁷ To be measured by Track Quality Index (TQI) and averaged over each Segment. The TQI is calculated over 100m sections, using 0.5m raw data from the AK car. TQI is the sum of the standard deviations (x3) in each rail for a 20m inertial top (average over left and right rail), horizontal alignment (versine over a 10m chord (average over left and right rail)), twist over 2.0m and gauge.

<u>Network Key Performance Indicator</u>	<u>Reporting Scope</u>	<u>Responsibility for performance</u>	<u>Reporting Frequency</u>	<u>Reporting Level</u>
<u>Track quality measured by index</u>	<u>Not available for individual AHAs</u>	<u>[Queensland Rail]</u>	<u>Quarterly</u>	<u>Pricing Zone</u>
<u>Unit Cost</u>				
<u>Infrastructure Maintenance¹⁹ per GTK</u>	<u>Not available for individual AHAs</u>	<u>[Queensland Rail]</u>	<u>Annually</u>	<u>Network</u>
<u>Network Control and Operations Cost²⁰ per train km</u>	<u>Not available for individual AHAs</u>	<u>[Queensland Rail]</u>	<u>Annually</u>	<u>Network</u>
<u>Operating Cost²¹ per GTK</u>	<u>Not available for individual AHAs</u>	<u>[Queensland Rail]</u>	<u>Annually</u>	<u>Network</u>
<u>Capital Cost²² per GTK²³</u>	<u>Coal Only Not available for individual AHAs</u>	<u>[Queensland Rail] Industry RCG</u>	<u>Annually</u>	<u>Network</u>

¹⁸ Total annual expenditure associated with infrastructure maintenance directly identified with, or allocated to the Network determined in accordance with section 4.

¹⁹ Total annual expenditure associated with network control, transit management, logistics, terminal operations, operations planning and management directly identified with, or allocated to the Network determined in accordance with section 4.

²⁰ Total annual expenditure associated with infrastructure maintenance, network control and operations cost and system management functions directly identified with, or allocated to the Network determined in accordance with section 4.

²¹ Depreciation and return based on RAB Floor Limit determined in accordance with section 4.

²² Contracted coal GTK.

¹ For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of Train Services per specified period of time.

² See Footnote 2 below

SCHEDULE 6

SAFEWORKING PROCEDURES, SAFETY STANDARDS, EMERGENCY PROCEDURES & ENVIRONMENTAL STANDARDS

Clauses 7.1 and 8.1

PART 1 SAFWORKING PROCEDURES / SAFETY STANDARDS

1.1 Queensland Rail's Safeworking Procedures

Queensland Rail's Safeworking Procedures that apply to the Nominated Network are as detailed in:

[To be identified in and completed after the Risk Assessment]

Queensland Rail's Safeworking Procedures and Safety Standards form part of Queensland Rail's safety management system and may be altered from time to time by Queensland Rail in the manner prescribed in the Agreement and advised in accordance with Part 6 of **Schedule 10**.

1.2 Line Sections

The following specific Safeworking Procedures are in operation for the line sections and station yards that comprise the Nominated Network as detailed below:

<u>System</u>	<u>From</u>	<u>To</u>	<u>Safeworking Procedures</u>

1.3 Localised Areas

For localised areas such as station yards, Queensland Rail station masters, signalmen or similar officers may be responsible for giving Queensland Rail Train Control Directions.

1.4 High Visibility Clothing

High visibility clothing is to be constructed from high daytime visibility (Class F) materials, orange (special purpose) in colour. During the hours of darkness or when working in tunnels or low light weather conditions or between 1700 - 0800 hours, the high visibility clothing shall include shall include retroreflective (Class R) material. The retroreflective material is to be at least 50mm wide and is to consist of two parallel strips around the body and in the case of a garment with sleeves a signal parallel strip around the upper arms. The colour and materials are to conform to AS/NZS 1906.4:1997 *Retroreflective materials and devices for road traffic control purposes: Part 4: High-visibility material for safety garments.*

1.5 Wearing of High Visibility Clothing

The Operator's Staff and visitors shall wear high visibility clothing:

- (a) when on Queensland Rail's Right of Way;
- (b) in other work situations where high visibility clothing will reduce the risk of coming into contact with moving Trains, vehicles or plant; and
- (c) protective headwear must be worn at emergency sites.

High visibility clothing is not required to be worn by the Operator's Staff under the following conditions:

- (a) when the movement of Trains is within a building (such as a diesel shed) and within its defined boundaries is subject to control mechanisms;
- (b) when visitors are proceeding in a direct route on designated walkways to defined locations to access high visibility clothing;
- (c) when the movement of people is directed clear of the track by fencing, barriers or signs and escort is provided by a member of the Operator's Staff who is familiar with the local area and operating procedures;
- (d) when a person's duties require them to work within the public areas; or
- (e) when the Operator's Staff and visitors are within the confines of operational Rollingstock.

1.6 Compliance

The Operator is responsible for:

- (a) ensuring the Operator's Staff and visitors are instructed in the provisions of this Part 1 of **Schedule 6**;
- (b) ensuring the Operator's Staff and visitors comply with this Part 1 of **Schedule 6**;
- (c) specifying which form of high visibility clothing shall be adopted, having regard to local conditions and the nature of the work performed;
- (d) ensuring that the Operator's Staff familiarise themselves with local management standards prior to working in situations other than on Queensland Rail's Right of Way; and,
- (e) ensuring that the Operator's Staff inspect, wear and maintain high visibility clothing correctly by:

- checking for deterioration due to wear, damage, fading and cleanliness;
- not wearing backpacks or similar items over any high visibility clothing so that the high visibility clothing is concealed; and,
- ensuring high visibility vests or shirts are securely fastened.

PART 2 NETWORK EMERGENCY PROCEDURES

Queensland Rail will provide the Operator with a copy of the Queensland Rail Emergency Procedures (as amended from time to time) which detail the procedures developed by Queensland Rail for dealing with a Network Incident.

PART 3 ENVIRONMENTAL MANAGEMENT STANDARDS

3.1 Clause 8.1 of this Agreement requires an Environmental Investigation and Risk Management Report to be prepared to identify all the risks of Environmental Harm arising out of the use of the Nominated Network by the Operator including those environmental issues identified in this Part 3. The issues identified in this Part 3 are to be taken as the minimum environmental issues to be addressed and the Environmental Investigation and Risk Management Report should not be restricted only to the issues included in this list. The Report should have regard to any appropriate Australian Standard dealing with Risk Assessment.

3.2 The risks to be considered and addressed as a minimum in the Environmental Investigation and Risk Management Report are:

A WATER QUALITY MANAGEMENT

The Operator must consider the impact of its operations on stormwater systems and natural waterways. In doing so, all relevant water quality standards and regulations should be met.

In the Environmental Investigation and Risk Management Report the Operator must nominate all sensitive surrounding environments including important wetlands, rivers, creeks, lakes and dams within close proximity of their proposed operations (and stating whether they are fresh or salt water).

The Operator should consider reviewing existing water quality monitoring information that may be available at loading/unloading locations and along the intended route of operation. For example, the Qld Department of Environment and Resource Management (DERM) provide a water streamflow/quality monitoring and information dissemination service on its website:

http://www.derm.qld.gov.au/water/monitoring/current_data/index.php

In conjunction with the Australian and New Zealand Environment and Conservation Council (ANZECC) Guidelines for Fresh and Marine Water Quality (2000), such water quality monitoring information may be useful to define acceptable standards for water quality at locations in the Environmental Investigation and Risk Management Report.

B AIR POLLUTION MANAGEMENT

The Operator must consider the impact of its operations on air quality. In doing so, all relevant air quality standards and regulations should be met.

The Operator must undertake an assessment of the likelihood for dust and/or exhaust emissions to cause nuisance at the nearest sensitive receptors. Sensitive receptors are:

- (i) any form of dwelling/home;
- (ii) a library, childcare centre, kindergarten, school, college, university or educational institution; and
- (iii) a hospital, surgery or other medical institution.

Information about the type and chemical composition of product may also be useful in determining its potential to generate dust.

Queensland Rail will indicate whether there have been any complaints about dust and/or exhaust emissions in the area of the operation.

C CONTAMINATED LAND MANAGEMENT

The Operator must consider the impact of the operation on land contamination. In doing so, all practicable control measures to prevent the contamination of land should be undertaken. The requirements of Clause 8.5 of the Agreement shall be a minimum.

Contamination levels refer to those investigation threshold levels detailed in the guidelines for the Assessment of Contaminated land (Chem Unit 1991) or by other standards considered acceptable by the relevant Authorities.

D NATURE CONSERVATION

The Operator must consider the impact of the operation on flora and fauna.

The Operator must review existing DERM regional ecosystem information relevant to the route of operation and identify any locations within 100 metres of the rail corridor that are listed as rare or vulnerable or endangered regional ecosystems.

Information on all regional ecosystems mapping is available at:
http://www.derm.qld.gov.au/wildlife-ecosystems/biodiversity/regional_ecosystems/index.php

The Environmental Investigation and Risk Management Report must include an assessment of the risk associated with wildfires being caused by exhaust/sparks from the Operator's Rollingstock.

E MANAGEMENT OF HAZARDOUS SUBSTANCES AND DANGEROUS GOODS

The Operator must consider the environmental impacts associated with the management of hazardous substances and dangerous goods by the Operator. In particular, the Operator must ensure that Queensland Rail's

requirements for the management of hazardous substances and dangerous goods are complied with.

The requirements of Clause 8.3 of the Agreement are a minimum requirement and the Operator must address any further environmental impacts not specifically addressed by Clause 8.3.

F WASTE MANAGEMENT

The Operator must consider the impact of any waste produced by the operation. In doing so, any collection, removal, transport and disposal of any waste generated during operations must comply with all relevant government and local authority requirements.

G ENVIRONMENTAL NOISE MANAGEMENT

The Operator must consider the impact of any noise produced by its proposed operations. In particular, the operator must meet the requirements of the Rail Noise Plan (refer to in the Environmental Protection Policy (Noise)) and, where appropriate, must comply with Queensland Rail's requirements for meeting the Rail Noise Plan referred to above.

H ENVIRONMENTAL MONITORING

The Operator must address the requirements of an environmental monitoring to ensure that the environmental standards are met.

I EDUCATION, AWARENESS AND TRAINING

The Operator must consider the impact of the level of employee training with particular emphasis on the implementation of the Environmental Investigation and Risk Management Report.

J COMPLAINT HANDLING

The Operator must consider how it will handle complaints that it receives concerning the impact of its operation upon any of the environmental issues listed above.

SCHEDULE 7

INSURANCE

Clause 13

Required Operator's Insurances

(a) Public liability insurance

(i) to cover the legal liability of the insured arising out of or in connection with the performance of this Agreement by the Operator whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than THREE HUNDRED AND FIFTY MILLION DOLLARS (\$350,000,000) and with a self-insured retention not to exceed [to be inserted] for any one loss or an aggregate deductible of not more than [to be inserted];

(ii) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date; and

(iii) to cover the Operator's rail operations and associated activities on the Nominated Network.

(b) Employees - Insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of any Operator's Staff.

(c) Carrier liability insurance in relation to the legal liability of the insured arising out of the transport of goods by Train Services to a sum insured of not less than TEN MILLION DOLLARS (\$10,000,000) and with a deductible not to exceed [to be inserted] for any one loss.

(d) Motor Vehicle (non-Act) insurance to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of this Agreement by the Operator or Operator's Staff and must include:

(i) third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000); and

(ii) a Dangerous Goods extension with a maximum sum insured as required by statute.

- (e) Motor Vehicle insurance to cover the statutory liability in respect of personal injury arising out of or in connection with the use by the Operator or the Operator's Staff of all vehicles in the performance of their obligations under this Agreement.
- (f) Insurances effected pursuant to (a) and (d) of this Schedule must:
- (i) include a principal's indemnity endorsement specifically noting Queensland Rail as an insured party in respect of its interest arising out of or under this Agreement;
 - (ii) include a cross liability clause;
 - (iii) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
 - (iv) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

SCHEDULE 8

NETWORK'S INVESTIGATION procedures

Clause 7.5

PART 1 ESTABLISHMENT OF INVESTIGATION

1.1 Routine Investigation

- (a) Incident Severity Levels 1 and 2 are classified as general Incidents requiring Queensland Rail a routine Investigation and shall be managed by Queensland Rail but conducted by the Operator on terms of reference provided by Queensland Rail unless otherwise agreed by the Parties. SAF/STD/0012/COM Accident and Incident Reporting, Recording and Investigation sets out the reporting requirements for various Incident Severity Levels.
- (b) The Operator shall provide Queensland Rail with a copy of any report produced as a result of a routine Investigation conducted under this Clause 1.1 and the Parties shall cooperate in the implementation of all recommendations reasonably made as part of that report.

1.2 Major Investigation

- (a) Incident Severity Levels 3, 4, 5 and 6 are classified as major Incidents requiring a major Investigation. SAF/STD/0012/COM Accident and Incident Reporting, Recording and Investigation sets out the reporting requirements for various Incident Severity Levels.
- (b) Major Investigations conducted under Clause 1.2(a) of this Schedule will be undertaken jointly by the Parties. Management of the Investigation will be facilitated by Queensland Rail who will appoint the chairperson and who will advise the Department of Transport of the make-up of the Investigation team and its terms of reference.
- (c) A major Investigation will be set up as soon as possible following the Incident and the Parties will be required to have a representative at the site of the Incident within four (4) hours (or such other time as the Parties may agree) of notification to Queensland Rail of the Incident.

1.3 Membership of Investigating Teams

- (a) All members of Investigation teams, whether the Investigation is conducted in accordance with Clauses 1.1 or 1.2 of this Schedule, will be required to be appropriately qualified.

- (b) Investigation teams shall not include any persons directly involved in the relevant Incident or the Recovery or Restoration.
- (c) In the case of a joint Investigation conducted under Clause 1.2 of this Schedule, each Party shall nominate at least one representative and use reasonable efforts to ensure that the members of the Investigation team have collectively the skills and expertise to address the range of operational and Infrastructure issues likely to be encountered. The Parties may agree to the inclusion of additional members in the Investigation team for this purpose.
- (d) The lead investigator of a major Investigation panel must be trained and certified in Queensland Rail's accident/Incidents investigators course.
- (e) The need for independent team membership will be considered for major Investigations. A pool of interstate railway investigators exists and may be called upon where it is thought a degree of independence would be helpful to the Investigation.
- (f) In cases where worker death has occurred, the terms of reference and team composition shall be determined in conjunction with the Queensland Rail's Chief Risk Officer.
- (g) Where a major Investigation is undertaken to satisfy requirements of the Transport Infrastructure Act and the Department of Transport reporting guidelines, the chairperson must be registered with the Queensland Rail's Chief Risk Officer as an authorised investigator.

1.4 Terms of Reference for Investigations

- (a) The terms of reference issued by Queensland Rail for any routine Investigation in accordance with Clause 1.1 of this Schedule will be to determine the cause of the Incident and to stipulate what action has been or will be taken to prevent recurrence.
- (b) The terms of reference issued by Queensland Rail for any major Investigation in accordance with Clause 1.2 of this Schedule shall, as a minimum, be to :
- i. ascertain probable causes;
 - ii. assess contributing factors;
 - iii. review current procedures for ensuring system integrity;
 - iv. make draft recommendations;
 - v. estimate direct and associated costs; and
 - vi. consider whether immediate remedial actions are required.
- (c) Additional terms may be added if agreed by the Parties or if determined in accordance with paragraph 1.3(f) of Part 1 of this Schedule.

PART 2 MAJOR INVESTIGATIONS REPORTS

A copy of the final reports of a major Investigation will be supplied to each Party. Each Party will be responsible for consideration and action on recommendations that are under the control of that Party. In the case of a fatal accident a copy of the report will also be sent to the Coroner.

PART 3 REVIEW OF INVESTIGATIONS

- (a) The Department of Transport has the right to call for an independent review of major Investigations in certain circumstances.
- (b) Under the Transport Infrastructure Act, the Minister for Transport may establish or re-establish a Board of Enquiry about an Incident that has happened on or involving a railway and which the Minister considers a serious Incident.

SCHEDULE 9

**ENVIRONMENTAL INVESTIGATION AND
RISK MANAGEMENT REPORT &
INTERFACE RISK MANAGEMENT PLAN**

**PART 1 ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT
REPORT**

Clause 8.1

[To be inserted]

PART 2 INTERFACE RISK MANAGEMENT PLAN

Clause 11 (a)

[To be inserted]

SCHEDULE 10

INTERFACE COORDINATION PLAN

NOT USED – REFER TO SCHEDULE B OF THE UNDERTAKING

SCHEDULE 11

**ANCILLARY SERVICES AND OTHER
CHARGES**

SCHEDULE 12

CONFIDENTIALITY DEED

[Unless otherwise agreed, this deed shall be the confidentiality deed set out in Schedule B of Queensland Rail's Access Undertaking]

SCHEDULE 13

ACCESS INTERFACE DEED

QUEENSLAND RAIL LIMITED

[Insert Customer]

Access Interface Deed

Contents

1.	Interpretation	1
1.1	Definitions	1
1.2	Construction	2
1.3	Headings	3
2.	No liability for Consequential Loss	3
2.1	Railway Manager not liable for Consequential Loss	3
2.2	Customer not liable for Consequential Loss	4
3.	Assignment	4
4.	General	4
4.1	Duty	4
4.2	Legal Costs	4
4.3	Amendment	4
4.4	Waiver and exercise of rights	4
4.5	Governing law and jurisdiction	5
4.6	Liability	5
4.7	Counterparts	5
4.8	Entire understanding	5

Date

PARTIES

QUEENSLAND RAIL LIMITED ABN 71 132 181 090 [insert address] (Railway Manager)

[insert] of [insert address] (Customer)

BACKGROUND

- 3 The Customer and the Operator are parties to the Rail Haulage Agreement.
- 4 The Railway Manager and the Operator are parties to the Access Agreement.
- 5 The Parties wish to enter into this Deed to create a contractual relationship between the Railway Manager and the Customer and record their agreement in respect of circumstances in which they will be liable to each other for loss suffered in connection with the provision or utilisation of Access.
-

AGREED TERMS

1 Interpretation

1.1 Definitions

In this Deed:

Access Agreement means the *Access Agreement [insert]* between the Railway Manager and the Operator dated on or about the date of this Deed.

Access Rights means entitlements, rights and interests granted by the Railway Manager to the Operator under the Access Agreement which are required to enable the Operator to provide the Haulage Services.

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

Consequential Loss means, subject to paragraph (e) and (f) below:

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

but **Consequential Loss** does not include:

(e) a loss (including a loss arising out of a Claim by a third party) in respect of:

(i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or

(ii) personal injury to or death of any person; or

(f) in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims.

Deed means this Access Interface Deed.

Haulage Services means the haulage services provided by the Operator to the Customer under the Rail Haulage Agreement.

Infrastructure has the meaning given in the Access Agreement.

Operator means [insert]

Party means a party to this Deed.

Rail Haulage Agreement means the agreement between the Operator and the Customer for the provision of rail haulage services to the Customer and for which purpose the Operator requires the Access Rights.

Staff of a party, means the employees, contractors and agents of the party and any other person under the control or supervision of the party which is involved in:

(a) in the case of the Railway Manager, any activity associated with the Access Agreement, the Infrastructure or the provision of Access Rights; and

(b) in the case of the customer, any activity associated with:

(i) the haulage services provided by the Operator to the Customer under the Rail Haulage Agreement; or

(ii) the Customer's mine or other production facility (if any) to which the haulage services provided by the Operator under the Rail Haulage Agreement relate.

1.2 Construction

Unless expressed to the contrary, in this Deed:

(a) words in the singular include the plural and vice versa;

(b) any gender includes the other genders;

(c) if a word or phrase is defined its other grammatical forms have corresponding meanings;

(d) "includes" means includes without limitation;

- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Brisbane;
 - (vii) "\$" or "dollars" is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (x) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Deed; and
- (g) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Headings

Headings do not affect the interpretation of this Deed.

2 Relations between the Parties

2.1 No liability for Consequential Loss

The Railway Manager and customer are not liable to the other Party and must not make any Claim against the other Party under or in connection with the Access Agreement, the Access Rights or the Infrastructure in respect of any Consequential Loss whether as a result of:

- (a) the performance, non-performance or breach of the Access Agreement or any other obligation;

- (b) the standard of or any failure of or defect in the Infrastructure;
- (c) negligence;
- (d) breach of warranty or representation; or
- (e) any other act, omission or circumstance whatsoever.

2.2 Indemnities between Customer and the Railway Manager

- (a) Subject to Clauses 2.1 and 2.4, the Customer is solely liable for and releases, indemnifies and will keep indemnified the Railway Manager, its directors and the Railway Manager's Staff against all Claims of any nature suffered or incurred by or made or brought against the Railway Manager, its directors or the Railway Manager's Staff due to or arising out of the Access Agreement or this Deed in respect of any loss of or damage to or destruction of real or personal property (including property of the Railway Manager) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of the Customer.
- (b) Subject to Clauses 2.1 and 2.4, the Railway Manager is solely liable for and releases, indemnifies and will keep indemnified the Customer, its directors and the Customer's Staff against all Claims of any nature suffered or incurred by or made or brought against the Customer, its directors or the Customer's Staff due to or arising out of the Access Agreement or this Deed in respect of any loss of or damage to or destruction of real or personal property (including property of the Customer) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of the Railway Manager.

2.3 Extent of Queensland Rail's liability to Customer for non-Consequent Loss

Subject to Clauses 2.1, 2.4 and 2.5, the Railway Manager will be liable to the Customer for any Claim to the same extent that the Railway Manager would have been liable for that Claim under the Access Agreement if the Claim was made by the Operator.

2.4 Exclusions of Liability in Access Agreement apply

For the purposes of Clauses 2.2 and 2.3, each provision of the Access Agreement that directly or indirectly has the purpose or effect of regulating, excluding or limiting the liability of, or the making of a Claim against, the Railway Manager or the Operator (including limiting what conduct will constitute a breach and setting out when and how a Claim may be brought including any preconditions to doing so) will also operate to regulate, exclude or limit the liability of, or the making of a Claim against, the Railway Manager or the Customer by the other Party.

2.5 Application of References to Operator in Access Agreement

For the purposes of applying Clauses 2.3 and 2.4, all references to the Operator in relevant provisions of the Access Agreement will be deemed to include reference to the Customer, except to the extent that any such provision refers to or requires the Operator or the Railway Manager and the Operator to agree anything which shall only be deemed to be a reference to the Customer where:

- (a) the matter to be agreed relates to the Claim or subject of the Claim by the Customer; and
- (b) the matter has not, prior to the Claim, been agreed by the Railway Manager and the Operator for the purposes of the Access Agreement.

3 Assignment

A Party must not assign its interests under the Access Agreement or the Rail Haulage Agreement (as applicable) to another person (*intended assignee*) unless the intended assignee has first executed and delivered to the other Party a deed of assumption, in a form acceptable to the other Party, acting reasonably, under which the intended assignee undertakes to be bound by the terms of this Deed.

4 General

4.1 Duty

- (a) The Customer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a Party other than the Customer pays any duty (including any fine or penalty) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it, the Customer must pay that amount to the paying Party on demand.

4.2 Legal costs

Except as expressly stated otherwise in this Deed, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Deed.

4.3 Amendment

This Deed may only be varied or replaced by a document executed by the Parties.

4.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.

- (b) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

4.5 Governing law and jurisdiction

- (e) This Deed is governed by and is to be construed in accordance with the laws applicable in Queensland.
- (f) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

4.6 Liability

An obligation of two or more persons binds them separately and together.

4.7 Counterparts

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

4.8 Entire understanding

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

Executed as a deed.

Executed by QUEENSLAND RAIL)
LIMITED:)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed by [insert])
)

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Agreed terms

1 Term

This agreement:

- (a) commences on the Commencement Date; and
- (b) terminates on the Termination Date (except to the extent that any provisions of this agreement are expressed or implied to survive the expiry or termination of this agreement).

2 Grant

Queensland Rail grants to the Operator the non-exclusive right to operate Train Services on the Network commencing on the Commitment Date until the Termination Date subject to, and in accordance with, this agreement (**Access Rights**).

3 Accreditation

- (a) The Operator must, on the Commitment Date (or such later date as agreed by Queensland Rail) and then for the remainder of the Term, hold the Accreditation necessary for it to operate the Train Services in accordance with this agreement.
- (b) The Operator must:
 - (i) on or before the Commitment Date (or such later date as agreed by Queensland Rail), satisfy Queensland Rail (acting reasonably) of its compliance with **clause 3(a)**; and
 - (ii) ensure that Queensland Rail is and continues to be provided with:
 - (A) all of the material details of that Accreditation that are relevant to the operation of the Train Services or the exercise of rights or performance of obligations under this agreement; and
 - (B) all relevant supplementary material to ensure those details remain correct and complete during the Term (including any notice from an Authority affecting or likely to affect the Operator's Accreditation and the relevant details of any renewal, suspension, amendment, restriction or termination).
- (c) The Operator must not operate Rolling Stock on the Network unless the Operator holds the Accreditation necessary to do so and then must do so in accordance with that Accreditation and this agreement.

- ~~(d) For clarity, the agreement of Queensland Rail to a later date under **clause 3(a)** or **(b)(i)** does not waive, defer or otherwise affect the Operator's obligation to pay Access Charges or any other amount to Queensland Rail in accordance with this agreement.~~

~~4~~ **Payment obligations**

~~4.1~~ **Access Charges**

- ~~(a) The Operator must pay to Queensland Rail the Access Charges at the times and in the manner set out in this agreement and any other charges or amounts payable in accordance with this agreement.~~

- ~~(b) Commencing on the Commitment Date:~~

~~(i) after the last day of each calendar month during the Term; and~~

~~(ii) where this agreement has expired or terminated, after that expiration or termination,~~

~~Queensland Rail will provide to the Operator an invoice for the Access Charges and any other charges or amounts payable by the Operator under this agreement for that month or at or after the time of expiration or termination (as applicable).~~

- ~~(c) For clarity:~~

~~(i) the amount of the Access Charges will include any adjustments for Queensland Rail Cause calculated in accordance with **schedule 3** and, despite any other term of this agreement, Queensland Rail will not otherwise be liable, and the Operator will have no other right, remedy or Claim against Queensland Rail, in relation to Queensland Rail Cause;~~

~~(ii) Queensland Rail will review and amend **schedule 3** (including to vary or escalate Access Charges Inputs) from time to time in accordance with this agreement (including the processes set out in **schedule 3** and **clause 16**); and~~

~~(iii) subject to **clauses 4.1(c)(i)** and **(ii)**, neither the exercise of any right, nor performance or non-performance of any obligation, by Queensland Rail under this agreement affects the Operator's obligation to pay Access Charges or the calculation of those Access Charges.~~

~~4.2~~ **Obligation to make payments**

- ~~(a) Unless this agreement provides otherwise, the due date for the payment of an amount payable by a Party under this agreement is that date which is ten Business Days from the invoice date (as shown on the invoice) for that amount from the other Party.~~

- ~~(a) — After a Party receives an invoice from the other Party for an amount payable in accordance with this agreement the paying Party must, on or prior to the due date for the payment of that amount, either:
 - ~~(i) — pay the other Party an amount equal to the amount payable as shown on the invoice; or~~
 - ~~(ii) — if the paying Party disputes on a bona fide basis all or part of the amount payable as shown on the invoice:
 - ~~(A) — pay by the due date the amount not in dispute and 50% of the amount in dispute; and~~
 - ~~(B) — give notice in writing to the other Party that it disputes the amount payable as shown on the invoice and a detailed statement as to the reasons for disputing the amount payable.~~~~~~

4.3 — Method of payment

~~A Party must pay any amounts payable to the other Party in accordance with this agreement in Australian currency by:~~

- ~~(a) — direct deposit into an account nominated by the invoicing Party for that purpose; or~~
- ~~(b) — such other method as the invoicing Party may reasonably require from time to time.~~

4.4 — Disputing payments

- ~~(a) — If a Party has paid the amounts and given a notice in accordance with **clause 4.2(b)(ii)** then, unless the Parties resolve the dispute in accordance with **clause 17.2**, the dispute must be referred for determination by an Expert under **clause 17.3**.~~
- ~~(b) — Upon resolution of any dispute between the Parties about the calculation of an amount payable as shown on an invoice, if the amount payable as agreed by the Parties or determined by an Expert or a court is more or less than the amount that was paid, then the difference must be paid or refunded by the relevant Party to the other Party within five Business Days after the resolution of the dispute together with interest on that amount calculated in accordance with **clause 4.5** (provided that for the purpose of calculating that interest the due date for payment is deemed to be the date when the amount in dispute would have been due and payable but for the dispute).~~

4.5 — Interest on overdue payments

- ~~(a) — If any amount which a Party is required to pay to another Party under this agreement is not paid on or before the due date for payment, interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.~~

- ~~(b) — Interest will be calculated at the Interest Rate and must be paid monthly. Any interest accrued but unpaid at the end of each month will be capitalised and will thereafter itself bear interest.~~

~~4.6 — Adjustments~~

- ~~(a) — If any change, escalation or variation in the Access Charges is backdated, or otherwise relates, to a date on or before the date on which particular Train Services were operated in accordance with this agreement, then the Access Charges paid or payable in respect of those Train Services must be adjusted by the Parties to pass through that change, escalation or variation.~~
- ~~(b) — After taking account of the adjustment referred to under **clause 4.6(a)**:~~
- ~~(i) — if there has been an under-recovery of Access Charges by Queensland Rail, then the Operator must pay the amount of that under-recovery to Queensland Rail; and~~
 - ~~(ii) — if there has been an over-recovery of Access Charges by Queensland Rail, then Queensland Rail must refund the amount of that over-recovery to the Operator.~~
- ~~(c) — For clarity, if Queensland Rail has issued an invoice for Train Services but the Operator has not yet paid that invoice, then Queensland Rail may issue a replacement or additional invoice for the purposes of giving effect to **clauses 4.6(a) and (b)**.~~
- ~~(d) — Any adjustment of an Access Charge in accordance with this **clause 4.6** will include interest calculated in accordance with **clause 4.5** as though the adjustment was due and payable on the date when that Access Charge was originally due and payable.~~
- ~~(e) — This **clause 4.6** does not apply in relation to an Adjustment Charge (as defined in the Access Undertaking) which is incorporated in any Access Charge in accordance with **schedule 3** and the Access Undertaking.~~

~~4.7 — Interim take or pay notices~~

- ~~(a) — Queensland Rail may, from time to time, give the Operator a statement of the accrued Take or Pay Charge liability in respect of a particular period. If such a statement is given, Queensland Rail and the Operator will meet, or otherwise discuss, that statement in good faith to seek to agree the accrued Take or Pay Charge liability in respect of that period.~~
- ~~(b) — Queensland Rail may, from time to time, give the Operator a notice under this **clause 4.7(b)** that states the accrued Take or Pay Charge liability in respect of a particular period (**Interim Take or Pay Notice**).~~
- ~~(c) — An Interim Take or Pay Notice is taken to be conclusive evidence of the accrued Take or Pay Charge liability in respect of the relevant period, subject to the resolution of any dispute by the Operator in respect of that Interim Take or Pay Notice.~~

- ~~(d) If the Operator wishes to dispute any matter set out in an Interim Take or Pay Notice, then any Dispute Notice to be given by the Operator under **clause 17** must be given within ten Business Days (or such longer period as agreed by Queensland Rail) after the relevant Interim Take or Pay Notice was given to the Operator. Where the Operator does not give a Dispute Notice within that time period, the Operator is taken to agree that the matters in the relevant Interim Take or Pay Notice are correct.~~
- ~~(e) Where an Interim Take or Pay Notice is disputed under **clause 4.7(d)** and that dispute has been finally resolved in a way that requires amendments to that Interim Take or Pay Notice, then Queensland Rail will give the Operator an amended Interim Take or Pay Notice (to replace the original Interim Take or Pay Notice) that is consistent with the resolution of the dispute.~~
- ~~(f) Where two or more Interim Take or Pay Notices relate in whole or part to the same period:
 - ~~(i) if there is any inconsistency between those Interim Take or Pay Notices in respect of that period, then the most recent Interim Take or Pay Notice prevails to the extent of that inconsistency; and~~
 - ~~(ii) if there is no inconsistency between those Interim Take or Pay Notices in respect of that period, then the Operator has no right to dispute the accrued Take or Pay Charge liability for that period under any of those Interim Take or Pay Notices except to the extent that the Operator still has a right to dispute the earliest of those Interim Take or Pay Notices under **clause 4.7(d)** (including where the Operator has already commenced such a dispute).~~~~
- ~~(g) Despite any other provision in this agreement to the contrary and without limitation to **clause 4.7(d)**, the Operator has no right to, and must not, dispute the calculation of a Take or Pay Charge in respect of a Year to the extent that the Take or Pay Charge has been calculated in a manner consistent with the relevant Interim Take or Pay Notices relating to that Year.~~

~~5 Network management~~

~~5.1 Maintenance~~

- ~~(a) Queensland Rail will maintain the Network in a condition such that the Operator can operate Train Services in accordance with this agreement.~~
- ~~(b) Queensland Rail may at any time, without the need to obtain the Operator's consent, perform Rail Infrastructure Operations.~~
- ~~(c) Queensland Rail reserves the right to permit third parties to carry out Third Party Works on, under or over the land on which the Network is located. The Operator agrees that Queensland Rail has no liability to the Operator nor will the Operator make a Claim against Queensland Rail for~~

~~any costs, expenses, losses or damages incurred by the Operator in relation to or as a consequence of Third Party Works.~~

~~5.2 Train Control~~

- ~~(a) Queensland Rail will provide, and has exclusive responsibility for, Train Control in respect of the Network.~~
- ~~(b) Queensland Rail may exercise Train Control by issuing Train Control Directions to the Operator and the Operator's Associates.~~
- ~~(c) In exercising Train Control, Queensland Rail may:
 - ~~(i) delay, alter, add, cancel, re-route or re-schedule a Train Service; and~~
 - ~~(ii) alter the Scheduled Times for Train Services in the Train Schedule.~~~~
- ~~(d) The Operator must:
 - ~~(i) comply with Train Control Directions;~~
 - ~~(ii) ensure that:
 - ~~(A) Train drivers are contactable by the Train Controller to receive Train Control Directions using communications systems which comply with the Operating Requirements Manual; and~~
 - ~~(B) all of the Operator's Trains are equipped with means of communication to permit the Operator's Associates to comply with this agreement;~~~~
 - ~~(iii) notify the Train Controller as soon as the Operator becomes aware that it is not possible for the Operator (or the Operator's Associates) to comply with a Train Control Direction or the Operator (or the Operator's Associates) has not complied with a Train Control Direction; and~~
 - ~~(iv) notify the Train Controller as soon as the Operator becomes aware of any changes or delays in Train Services or any circumstances which have affected or may affect Train Control including the ability of any Train Service to conform to its Scheduled Times.~~~~
- ~~(e) Without limitation to **clauses 5.2(c) or 5.3(b)** and despite any other provision of this agreement, Queensland Rail may treat other train services preferentially to the Operator'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 Period becoming delayed.~~~~

~~5.3 Compliance~~

~~(a) Queensland Rail must observe and comply with:~~

- ~~(i) all applicable Laws, to the extent that the Laws relate to Queensland Rail's performance of its obligations or exercise of its rights under this agreement;~~
- ~~(ii) the lawful requirements of relevant Authorities, to the extent that those requirements relate to Queensland Rail's performance of its obligations or exercise of its rights under this agreement;~~
- ~~(iii) this agreement;~~
- ~~(iv) the Network Management Principles;~~
- ~~(v) the Operating Requirements Manual; and~~
- ~~(vi) the Access Undertaking, to the extent that the Access Undertaking relates to Queensland Rail's performance of its obligations or exercise of its rights under this agreement;~~

~~and, in the event of any inconsistency between them, in the above order to the extent of the inconsistency.~~

~~(b) For clarity:~~

- ~~(i) Queensland Rail may (in its absolute discretion) do, or not do, anything in order to comply with **clause 5.3(a)**; and~~
- ~~(ii) to the extent that Queensland Rail does so, Queensland Rail:
 - ~~(A) does not breach this agreement even if doing so is inconsistent with this agreement; and~~
 - ~~(B) is not liable to the Operator whether in contract, in tort (including negligence), under any Law or otherwise.~~~~

~~6 Train operations~~

~~6.1 Operation of Train Services~~

~~The Operator must only operate Train Services in accordance with this agreement (including the Train Service Description and any Train Control Directions) unless the Operator:~~

- ~~(a) has obtained the prior written approval of Queensland Rail (for example, an authority to travel) including any terms and conditions of that approval in addition to or varying this agreement in respect of those Train Services (including in respect of the Access Charges applicable); and~~
- ~~(b) complies with that approval and those terms and conditions in operating the Train Services.~~

~~6.2 Compliance~~

~~(a) The Operator must observe and comply with:~~

- ~~(i) — all applicable Laws and Authorisations, to the extent that the Laws and Authorisations relate to the Operator's performance of its obligations or exercise of its rights under this agreement;~~
- ~~(ii) — the lawful requirements of relevant Authorities, to the extent that those requirements relate to the Operator's performance of its obligations or exercise of its rights under this agreement;~~
- ~~(iii) — this agreement;~~
- ~~(iv) — the Network Management Principles;~~
- ~~(v) — the Operating Requirements Manual;~~
- ~~(vi) — all Train Control Directions;~~
- ~~(vii) — the relevant requirements of:
 - ~~(A) — any Authorisation; and~~
 - ~~(B) — any other consent, approval, lease, licence or other authority;~~held by or applying to Queensland Rail, or to which Queensland Rail is a party, from time to time in relation to the Network, other relevant facilities (if any) or land to which the Operator is provided access by Queensland Rail in accordance with this agreement (provided Queensland Rail has notified the Operator of those relevant requirements);~~
- ~~(viii) — the Operator's Emergency Management Plan, except to the extent it is inconsistent with anything in **clauses 6.2(a)(i) to (vii)**; and~~
- ~~(ix) — the Access Undertaking, to the extent that the Access Undertaking relates to the Operator's performance of its obligations or exercise of its rights under this agreement.~~

~~and, in the event of any inconsistency between them, in the above order to the extent of the inconsistency.~~

~~(b) — Without limitation to **clause 6.2(a)**, the Operator must:~~

- ~~(i) — not access or be upon the Network (or the land on which the Network is located) for any purpose other than to exercise its rights and to comply with its obligations in accordance with this agreement;~~
- ~~(ii) — at all times act in accordance with Prudent Practices;~~
- ~~(iii) — do everything necessary in accordance with Prudent Practices to avoid causing or contributing to any nuisance, annoyance or disturbance to Queensland Rail or the occupiers or users of the Network, or land adjacent to the Network;~~
- ~~(iv) — not do or omit to do anything that would cause or contribute to the Network (or the land on which the Network is located) not being~~

~~clean, presentable, well maintained and in good repair, appearance and condition;~~

- ~~(v) not cause or allow any rubbish, substance or thing²⁴ to be deposited or released on or about the Network (or the land on which the Network is located) except as expressly required by the Operating Requirements Manual or any Train Control Directions;~~
- ~~(vi) obtain and maintain all necessary Authorisations required for the Operator to exercise the Operator's rights or comply with the Operator's obligations under this agreement;~~
- ~~(vii) not interfere with, hinder or prejudice:
 - ~~(A) Queensland Rail's conduct of its operations;~~
 - ~~(B) Queensland Rail's or any other Rail Transport Operator's use of the Network; or~~
 - ~~(C) the functions and obligations of Queensland Rail as a Railway Manager (including under Queensland Rail's Accreditation);~~~~
- ~~(viii) ensure that its Rolling Stock operate safely, and otherwise be responsible for the operation of its Rolling Stock, on the Network; and~~
- ~~(ix) without limitation to **clause 6.2(b)(viii)**, ensure that the operation of its Rolling Stock (including the loading, unloading and cleaning of its Rolling Stock) is undertaken in a manner that:
 - ~~(A) does not affect:
 - ~~(1) the safe operation of the Rolling Stock or the Network; or~~
 - ~~(2) the operations or activities of Queensland Rail or other Rail Transport Operators; and~~~~
 - ~~(B) ensures that all things on or in the Operator's Rolling Stock remain on or in the Operator's Rolling Stock (and, if applicable, are secured in position) during transit.~~~~
- ~~(c) The Operator must notify Queensland Rail of any failure, or likely failure, by the Operator to comply with this agreement as soon as practicable after the Operator becomes aware of that failure or likely failure.~~

~~6.3 Compliance with Scheduled Time~~

~~The Operator must only operate Train Services in accordance with the applicable Scheduled Times and the relevant Train Schedule unless:~~

²⁴ ~~But excluding exhaust gases and other substances required to be released in accordance with Prudent Practices for the purposes of operating the Operator's Rolling Stock.~~

- ~~(a) — the Operator is expressly permitted or required to do otherwise in accordance with this agreement, the Operating Requirements Manual, the Network Management Principles or a Train Control Direction; or~~
- ~~(b) — the Parties agree otherwise.~~

~~6.4 — Alterations to Train Services~~

- ~~(a) — If the Operator is not able to operate a Train Service in accordance with its Scheduled Time, then:
 - ~~(i) — the Operator must, as soon as practicable prior to the time when that Train Service was scheduled for operation, notify Queensland Rail that it is not able to operate that Train Service and the reason for its inability; and~~
 - ~~(ii) — if the Operator has complied with **clause 6.4(a)(i)**, then Queensland Rail will use reasonable endeavours to provide an alternative Scheduled Time for the relevant Train Service unless this would:
 - ~~(A) — alter the Scheduled Times for other Train Movements; or~~
 - ~~(B) — result in Queensland Rail incurring additional costs or expenses.~~~~~~
- ~~(b) — If Queensland Rail provides an alternative Scheduled Time for a Train Service in accordance with **clause 6.4(a)(ii)**, the Operator must notify Queensland Rail immediately whether the Operator accepts that alternative Scheduled Time. If the Operator accepts that alternative Scheduled Time, then the Operator must operate the Train Service in accordance with that alternative Scheduled Time. For clarity, **clause 6.4(a)** does not apply to that alternative Scheduled Time.~~
- ~~(c) — If the Operator is not able to operate a Train Service in accordance with its Scheduled Time or an alternative Scheduled Time made available in accordance with **clause 6.4(a)(ii)** (or has not immediately notified Queensland Rail accepting such an alternative Scheduled Time), Queensland Rail may authorise the operation of another Train Movement at that Scheduled Time.~~

~~6.5 — Operator to supply information~~

- ~~(a) — The Operator must provide and maintain all software, hardware and associated communication links necessary to ensure, to Queensland Rail's satisfaction, an effective interface between the Operator's and Queensland Rail's information systems as nominated by Queensland Rail. The interface with Queensland Rail's information systems will be subject to any requirements and controls specified by Queensland Rail (in its absolute discretion) including to protect the integrity and confidentiality of those information systems and the information contained in them.~~

- ~~(b) The Operator must provide information to Queensland Rail as required in accordance with the Operating Requirements Manual (including any details in relation to Train Services or contact and other details for interface coordination).~~

~~6.6 Queensland Rail may supply Data~~

- ~~(a) The Parties acknowledge that Queensland Rail may from time to time collect data in respect of the Operator's Rolling Stock (Data).~~
- ~~(b) Queensland Rail may from time to time, in its absolute discretion, provide the Operator with access to the Data. The Operator will be responsible for all costs related to the transfer, conversion, modification and storage of any Data made available to the Operator by Queensland Rail.~~
- ~~(c) Despite any other provision in this agreement, if the Operator receives any data from Queensland Rail that is not in respect of the Operator's Rolling Stock, then the Operator must:
 - ~~(i) immediately notify Queensland Rail, providing details of the relevant data;~~
 - ~~(ii) not use the data for any purpose;~~
 - ~~(iii) not disclose the data to any person; and~~
 - ~~(iv) comply with all directions given by Queensland Rail in relation to that data including the deletion, redirection or return of that data.~~~~
- ~~(d) Any intellectual property rights in relation to the Operator's business or Train Services that are discovered or developed, or otherwise come into existence, in connection with the Data are assigned to and vest in Queensland Rail or its nominee on creation and Queensland Rail grants to the Operator a free-of-charge, non-exclusive and irrevocable licence until the expiry or termination of this agreement to use, exploit, copy, improve, modify and share with third parties those intellectual property rights.~~
- ~~(e) The Operator must undertake its own due diligence and investigations in relation to any Data made available by Queensland Rail. Queensland Rail does not warrant the accuracy or completeness or the standard of care taken in the collection of Data. The Operator acknowledges that Queensland Rail does not owe it any duty of care and that it will satisfy itself as to the accuracy, completeness or veracity of the Data which Queensland Rail makes available to it.~~

~~6.7 Authorisation of Rolling Stock and Train Configurations~~

- ~~(a) The Operator must only operate a Train Service using Rolling Stock or a Train Configuration in respect of which the Operator has:
 - ~~(i) provided to Queensland Rail:
 - ~~(A) a certificate by a suitably qualified person, approved by Queensland Rail and appointed by and at the cost of the~~~~~~

~~Operator, that the Operator's Rolling Stock and Train Configurations comply with the IRMP; and~~

~~(B) — relevant documentation (including reports on trials and/or commissioning tests) demonstrating to the satisfaction of Queensland Rail that the Operator's Rolling Stock and Train Configurations comply with the IRMP;~~

~~(Certification); and~~

~~(ii) — obtained from Queensland Rail a notice indicating that Queensland Rail is satisfied with that Certification for the purposes of those Train Services.~~

~~If the Operator obtains a notice referred to in **paragraph (ii)** that is subject to conditions (including conditions relating to the period for which that notice will apply), then the Operator must comply with those conditions and must only operate a Train Service in accordance with those conditions and while that notice applies.~~

~~(b) — During the Term, if the Operator wishes to modify any of the Rolling Stock or Train Configurations used for Train Services, then the Operator must not use any such Rolling Stock or Train Configurations unless and until:~~

~~(i) — the IRMP has been reviewed in accordance with **clause 7** in relation the modified Rolling Stock or Train Configurations;~~

~~(ii) — the Operator has complied with **clause 6.7(a)** in relation to the modified Rolling Stock or Train Configurations, as applicable; and~~

~~(iii) — the Parties have agreed any amendments to this agreement (including varying the methodology, rates or other inputs for calculating Access Charges) reasonably necessary to reflect the authorisation and use of the modified Rolling Stock or Train Configurations on the Network.~~

6.8 — Operating Requirements Manual

~~(a) — **Clauses 6.8(b) to (e)** do not commence while:~~

~~(i) — the rail transport infrastructure (as defined in the TIA) used by Train Services forms part of the Network and the Access Undertaking applies in respect of persons seeking access to it; and~~

~~(ii) — the Access Undertaking:~~

~~(A) — defines the term 'Operating Requirements Manual'; and~~

~~(B) — sets out a process that Queensland Rail must comply with in relation to making amendments to the Operating Requirements Manual.~~

~~(b) — Queensland Rail may amend the Operating Requirements Manual from time to time but if in Queensland Rail's opinion (acting reasonably) those~~

- ~~amendments will materially adversely affect the Operator then Queensland Rail will only do so after:~~
- ~~(i) providing reasonable notice of the proposed amendment to the Operator; and~~
 - ~~(ii) consulting with the Operator in relation to the amendment.~~
- ~~(c) A notice issued by Queensland Rail under **clause 6.8(b)** must include details of:~~
- ~~(i) the proposed amendments including the proposed implementation date; and~~
 - ~~(ii) the period during which the Operator can consult with Queensland Rail in relation to the proposed amendments.~~
- ~~(d) Without limiting the matters that Queensland Rail must consider when deciding whether to proceed with any proposed amendments, Queensland Rail must consider any submissions from the Operator.~~
- ~~(e) If Queensland Rail amends the Operating Requirements Manual, Queensland Rail must:~~
- ~~(i) notify the Operator of the amendments 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 the Operator 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.~~
- ~~(f) **Clauses 6.8(b) to (d)** will not apply to amendments made to the Operating Requirements Manual by Queensland Rail:~~
- ~~(i) 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).~~
- ~~(g) If Queensland Rail amends the Operating Requirements Manual in accordance with this **clause 6.8**, 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.~~

- ~~(h) Queensland Rail has no liability (on any basis whatsoever including in negligence) to the Operator 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:
 - ~~(i) that compliance with the relevant provisions of the Undertaking in relation to making amendments to the Operating Requirements Manual (or, if applicable, this **clause 6.8**) was required; and~~
 - ~~(ii) that it was acting in compliance with those provisions of the Undertaking (or, if applicable, this **clause 6.8**) in amending the Operating Requirements Manual.~~~~

~~6.9 Entering and exiting the Network~~

- ~~(a) The Operator is solely responsible for and bears the cost and risk of obtaining and maintaining any rights to access or use Private Infrastructure that are necessary in order to enter or exit the Network or otherwise operate the Train Services in accordance with this agreement.~~
- ~~(b) Despite any other provision in this agreement, the Operator is not relieved of any obligations under this agreement (and must continue to comply with all of its obligations under this agreement) even if the Operator cannot or does not obtain or maintain any such rights.~~

~~6.10 Notification of damage or disrepair~~

~~The Operator must notify Queensland Rail as soon as practicable of any damage to, disrepair of or failure in the operation or function of any part of the Network of which the Operator becomes aware.~~

~~7 Interface risk management~~

- ~~(a) Each Party must observe and comply with the IRMP.~~
- ~~(b) The Operator must use reasonable endeavours to not do anything or permit anything to be done which may give rise to Interface Risks that are not addressed in the IRMP. If the Operator does something or permits something to be done that gives rise to, or is likely to give rise to, Interface Risks that are not addressed in the IRMP, the Operator must notify Queensland Rail as soon as practicable after that thing is done or permitted to be done.~~
- ~~(c) If a Party fails to comply with the IRMP it must notify the other Party of the non-compliance as and when it becomes aware of such non-compliance. The notice must include details of the nature of the non-compliance and how the non-complying Party has rectified or intends to rectify the non-compliance.~~

- ~~(d) — The Parties must upon the reasonable request at any time by either Party, but no less than once in any 12-month period, jointly review the IRMP, and amend it (including by replacing it) as necessary, to ensure all Interface Risks are effectively managed including by:
 - ~~(i) — adopting and implementing appropriate controls and measures to adequately address all Interface Risks;~~
 - ~~(ii) — identifying the Party responsible for the implementation of such controls and measures and ensuring their ongoing effectiveness;~~
 - ~~(iii) — identifying the applicable safeworking procedures and safety standards to be adhered to including Queensland Rail's safety policies and procedures and the Operating Requirements Manual;~~
 - ~~(iv) — identifying the environmental procedures and standards to be adhered to including relevant elements of Queensland Rail's environmental management system and the Operating Requirements Manual; and~~
 - ~~(v) — satisfying the requirements under the TRSA for an interface agreement (as defined in the TRSA) or under any other relevant Laws relating to health or safety.~~~~
- ~~(e) — For the purposes of a review referred to in **clause 7(d)**:
 - ~~(i) — if either Party is not satisfied that all relevant Interface Risks have been identified for the IRMP, then the Parties will undertake a joint Interface Risk Assessment as part of such a review; and~~
 - ~~(ii) — if the Parties are not able to agree any matter in relation to such a review, either Party may treat that inability to agree as a Dispute for the purposes of **clause 17**.~~~~
- ~~(f) — Where the IRMP identifies that training of the Operator's Associates is required and the Operator can only obtain that training from Queensland Rail, then:
 - ~~(i) — Queensland Rail will provide the Operator with that training; and~~
 - ~~(ii) — the Operator must pay to Queensland Rail a reasonable commercial charge, as determined by Queensland Rail, for doing so.~~~~
- ~~(g) — For clarity, the Operator must not use any Rolling Stock or Train Configuration in operating a Train Service unless the IRMP has either been:
 - ~~(i) — prepared on the basis of the Train Services being operated using that Rolling Stock or Train Configuration (as applicable); or~~
 - ~~(ii) — reviewed in accordance with this **clause 7** in relation to that Rolling Stock or Train Configuration (as applicable).~~~~

~~8 Environmental and emergency management plan requirements~~

~~8.1 Dangerous Goods~~

~~The Operator must not carry Dangerous Goods on any Train Service.~~

~~8.2 Environmental damage~~

~~Where Queensland Rail becomes aware of:~~

~~(a) any:~~

~~(i) Environmental Harm; or~~

~~(ii) event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Harm,~~

~~as a result of the activities of the Operator, which in Queensland Rail's opinion (acting reasonably), could result in Queensland Rail or any other person incurring any liability or being subjected to a direction of any Authority (**Damage**); and~~

~~(b) Queensland Rail:~~

~~(i) considers that action or intervention is required; or~~

~~(ii) is given a direction by an Authority that action or intervention is required,~~

~~to prevent, mitigate or remedy that Damage,~~

~~then:~~

~~(c) Queensland Rail may notify the Operator of that requirement and, where practicable, any action or intervention that Queensland Rail or, if applicable, the relevant Authority considers necessary to prevent, mitigate or remedy the Damage; and~~

~~(d) as soon as practicable after receiving such a notice, the Operator will:~~

~~(i) comply with the requirements of the applicable Authority and any other requirements specified by Queensland Rail in that notice; and~~

~~(ii) take whatever other action or intervention is required to prevent, mitigate or remedy that Damage.~~

~~8.3 Operator's Emergency Management Plan~~

~~(a) Prior to the commencement of any Train Services (including any new or varied Train Services) the Operator must develop a proposed Operator's Emergency Management Plan which:~~

~~(i) details procedures that are adequate to manage an Incident including all actions to be taken to prevent, minimise or mitigate any threat or danger to any person or property including:~~

- ~~(A) — the matters outlined in the Operating Requirements Manual, from time to time, relevant to the management of Network Incidents — for example, safety, emergency and environment matters; and~~
 - ~~(B) — any matters otherwise referred to in this agreement for inclusion in such a plan;~~
- ~~(ii) — at all times during the Term is compatible with this agreement and the Queensland Rail Emergency Procedures; and~~
- ~~(iii) — is consistent with Prudent Practices,~~
~~and obtain a notice from Queensland Rail that it has no objection to that plan.~~
- ~~(b) — As soon as practicable after receiving the proposed Operator's Emergency Management Plan, Queensland Rail must either notify the Operator that it:
 - ~~(i) — has no objections; or~~
 - ~~(ii) — has objections (including details of those objections),~~
~~to the proposed Operator's Emergency Management Plan.~~~~
- ~~(c) — If Queensland Rail notifies the Operator, under **clause 8.3(b)**, that Queensland Rail has objections, then:
 - ~~(i) — the Operator must develop an amended plan in accordance with **clause 8.3(a)**; and~~
 - ~~(ii) — **clause 8.3(b)** and this **clause 8.3(c)** will apply in respect of that amended plan.~~~~
- ~~(d) — If the Operator intends to amend the Operator's Emergency Management Plan, then:
 - ~~(i) — the Operator must notify Queensland Rail and provide Queensland Rail with details of the proposed amendments and the reasons for them;~~
 - ~~(ii) — **clauses 8.3(a) to (c)** will also apply in respect of those amendments as if they were a proposed Operator's Emergency Management Plan; and~~
 - ~~(iii) — those amendments will not be effective unless and until the Operator has obtained a notice from Queensland Rail that it has no objection to those amendments.~~~~
- ~~(e) — The Operator must ensure procedures are in place, and are implemented, which ensure compliance by the Operator with any reporting requirements in the Operator's Emergency Management Plan and, to the extent relevant, the Queensland Rail Emergency Procedures.~~

~~8.4 Obstructions~~

- ~~(a) The Operator must not cause or contribute to any Obstruction or permit to continue any Obstruction to the extent caused or contributed to by the Operator.~~
- ~~(b) Queensland Rail may do anything that it considers necessary:~~
- ~~(i) to remove, rectify, mitigate or otherwise deal with any Obstruction;~~
 - ~~or~~
 - ~~(ii) to recommence Train Movements where there is or was an Obstruction,~~
- ~~including to move, or remove from the Network, any of the Operator's Rolling Stock that is causing or contributing to an Obstruction or preventing or hindering Train Movements. To the extent that an Obstruction is caused or contributed to by the Operator, the Operator must pay Queensland Rail's costs and expenses incurred by Queensland Rail in relation to that Obstruction (including costs and expenses for doing anything under this **clause 8.4(b)**) and those costs and expenses will be a debt due and owing by the Operator to Queensland Rail.~~
- ~~(c) Queensland Rail will use reasonable endeavours to consult with the Operator, prior to exercising any right under **clause 8.4(b)**, where Queensland Rail intends to interfere with the Operator's Rolling Stock or any other thing for which the Operator is responsible. A failure by Queensland Rail to consult with the Operator does not affect the validity of anything done by Queensland Rail under **clause 8.4(b)**.~~
- ~~(d) If Queensland Rail gives a Train Control Direction to the Operator to assist Queensland Rail to remove, rectify, mitigate or otherwise deal with an Obstruction caused or contributed to by another Rail Transport Operator (including to use any of the Operator's Rolling Stock to move, or remove from the Network, any Rolling Stock of another Rail Transport Operator), Queensland Rail will reimburse to the Operator its reasonable direct costs and expenses of providing such assistance.~~

~~8.5 Notification~~

- ~~(a) Queensland Rail will notify the Operator of any Network Incident that may reasonably be expected to materially adversely affect the Operator's Train Services as soon as practicable after the Network Incident comes to Queensland Rail's attention.~~
- ~~(b) As soon as practicable after the Operator or the Operator's Associates become aware of:~~
- ~~(i) any Incident;~~
 - ~~(ii) any Environmental Harm;~~
 - ~~(iii) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in Environmental Harm;~~

- ~~(iv) any Obstruction;~~
- ~~(v) any breach or suspected breach of any safeworking procedures, safety standards or other safety requirements set out in the Operating Requirements Manual; or~~
- ~~(vi) anything which the Operator observes may cause or contribute to the occurrence of any matter referred to in **clauses 8.5(b)(i) to (v)**, **(Notifiable Events)**, the Operator must notify Queensland Rail of that Notifiable Event (including any action or intervention taken or being taken by the Operator).~~

~~8.6 Noise mitigation~~

- ~~(a) In addition to any noise mitigation or management requirements under the IRMP, the Operator must pay to Queensland Rail a contribution, as reasonably determined by Queensland Rail, to the costs and expenses incurred by Queensland Rail in relation to any noise mitigation or management measures on the Network, or land adjacent to the Network, that are considered necessary by Queensland Rail:
 - ~~(i) in accordance with Prudent Practices; or~~
 - ~~(ii) to comply with any noise levels or limits applicable from time to time.~~~~
- ~~(b) Queensland Rail will use reasonable endeavours:
 - ~~(i) to consult with the Operator prior to Queensland Rail electing to implement noise mitigation or management measures on the Network, or land adjacent to the Network, to comply with any applicable noise levels or limits from time to time; and~~
 - ~~(ii) to notify the Operator of how it will determine the Operator's contribution to its costs and expenses in relation to any noise mitigation or management measures.~~~~
- ~~(c) For clarity, the applicable noise levels or limits will be those that are 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.~~

~~9 Queensland Rail's inspection and audit rights~~

- ~~(a) Subject to **clause 9(b)**, Queensland Rail may at any time give a notice to the Operator requiring an inspection or audit for the purpose of assessing:
 - ~~(i) the Operator's compliance with this agreement; or~~
 - ~~(ii) whether any one or more of the individual wagons used by the Operator in the provision of a Train Service is loaded:
 - ~~(A) in excess of its rated carrying capacity; or~~~~~~

- ~~(B) in an unsafe or potentially unsafe manner.~~
- ~~(b) Queensland Rail must use reasonable endeavours in exercising its rights under **clause 9(a)**:~~
- ~~(i) to minimise the disruption to the Operator's Train Services; and~~
 - ~~(ii) to avoid damage or injury to the Operator's business activities.~~
- ~~(c) In conducting an inspection or audit under **clause 9(a)**, Queensland Rail may require the Operator, and the Operator must comply with Queensland Rail's requirements, to do anything reasonably necessary in order for Queensland Rail to conduct that inspection or audit, including to divert or delay a Train Service or to make any part of any relevant Train available for inspection or weighing.~~

~~10 Risk and indemnities~~

~~10.1 Operator's indemnity~~

~~The Operator indemnifies Queensland Rail against all Claims which may be brought against or made upon Queensland Rail and all Losses which Queensland Rail suffers or incurs:~~

- ~~(a) to the extent caused, or contributed to, by:~~
- ~~(i) a breach of this agreement; or~~
 - ~~(ii) any act or omission,~~
- ~~by the Operator, the Operator's Associates or any Operator's Customer;~~
- ~~(b) in respect of damage to or loss of any property or personal injury to or death of any person in connection with or in relation to the Train Services, the Operator's Rolling Stock or Train Movements except to the extent that such damage, loss, injury or death is caused, or contributed to, by any negligent act or omission of Queensland Rail;~~
- ~~(c) in connection with or in relation to any Obstruction, to the extent caused, or contributed to, by the Operator;~~
- ~~(d) in connection with or in relation to any Claims by an Operator's Customer in connection with or in relation to:~~
- ~~(i) the entry into, performance or non-performance of this agreement by any Party or the exercise of a right under this agreement by any Party; or~~
 - ~~(ii) the Network (including the operation or maintenance of the Network), the Operator's rights under this agreement or the Train Services (including any delay or failure of Train Services to operate); or~~
- ~~(e) in connection with or in relation to Claims by third parties:~~

- ~~(i) with whom the Operator has shared any Data (whether in its original, converted or a modified form) including any liability to an Authority whether or not caused, or contributed to, by any act or omission (including negligence) of Queensland Rail (or its officers, employees, contractors or agents); or~~
- ~~(ii) arising out of the Operator use of any Data or of any intellectual property rights referred to in **clause 6.6(d)**.~~

~~10.2 — Assistance in defence of Claims arising from Network Incidents~~

~~Each Party must provide reasonable assistance to the other Party in the defence of any Claim made against that other Party by a third party arising out of any event in connection with a Network Incident.~~

~~10.3 — Operator responsible for Operator's Associates~~

- ~~(a) The Operator may allow any of the Operator's Associates to exercise any of the Operator's rights or to comply with any of the Operator's obligations under this agreement.~~
- ~~(b) The Operator is responsible for the conduct of the Operator's Associates in exercising any of the Operator's rights or complying with any of the Operator's obligations as if that conduct was the conduct of the Operator itself.~~
- ~~(c) If the Operator delegates or subcontracts the exercise or performance of any of its rights or obligations under this agreement to any person, then:
 - ~~(i) the Operator remains fully responsible for the exercise or performance of the delegated or subcontracted (as applicable) rights or obligations; and~~
 - ~~(ii) any conduct of any delegate or subcontractor (as applicable) will be taken to be the conduct of the Operator.~~~~

~~11 — Limitations on liability~~

~~11.1 — No liability for Consequential Loss~~

- ~~(a) Subject to **clause 11.1(b)**, despite any other provision in this agreement neither Party is liable to the other Party for any Consequential Loss suffered or incurred by, or Claimed against, the other Party.~~
- ~~(b) The indemnity in **clause 10.1** extends to and includes Consequential Loss suffered or incurred by Queensland Rail arising out of any Claim by a third party including an Operator's Customer but does not otherwise extend to Consequential Loss suffered or incurred by Queensland Rail.~~

~~11.2 — Exclusion of liability~~

~~To the extent permitted by law all and any liability of Queensland Rail (and its officers, employees, contractors and agents) in relation to:~~

- ~~(a) any loss (including deterioration) of any thing carried by a Train Service;~~

- ~~(b) — any matter for which the Operator bears or assumes risk or liability (including any matter in relation to or in connection with any of the Operator's representations or warranties under **clause 21**);~~
- ~~(c) — anything done by Queensland Rail, or that Queensland Rail fails or omits to do, under **clauses 8.4(b) or (c)**;~~
- ~~(d) — any exercise of a right, or compliance with an obligation, by Queensland Rail in accordance with this agreement (including any delay or cancellation of Train Services which results from that exercise or compliance); or~~
- ~~(e) — any Data (whether in its original, converted or a modified form) including any collection, transfer or provision of, or other dealing with, any Data and any use of that Data;~~

~~is excluded or, if it cannot be excluded, is limited to \$1.00. This **clause 11.2** applies whether the liability arises in contract, in tort (including negligence), under any Law or otherwise.~~

11.3 — Claims in respect of Train Movements

~~Neither Party (**Affected Party**) will have or make any Claim against the other Party (**Defaulting Party**) in respect of delays to Train Movements unless, and will only have a Claim to the extent that:~~

- ~~(a) — the delay was a result of a breach of this Agreement by the Defaulting Party, or negligence on the part of the Defaulting Party; and~~
- ~~(b) — the delay is not attributable to:
 - ~~(i) — the Affected Party;~~
 - ~~(ii) — another Rail Transport Operator (other than the Defaulting Party);~~
 - ~~(iii) — a Force Majeure Event;~~
 - ~~(iv) — a Planned Possession, Urgent Possession or Emergency Possession of the Network in a manner consistent with the Network Management Principles;~~
 - ~~(v) — Rail Infrastructure Operations scheduled in a manner consistent with the Network Management Principles; or~~
 - ~~(vi) — any action taken by Queensland Rail, acting reasonably, in response to an emergency or a genuine safety risk; and~~~~
- ~~(c) — either:
 - ~~(i) — the Parties have not agreed upon and implemented a regime to address the delays to Train Movements; or~~
 - ~~(ii) — the Parties have agreed upon and implemented a regime to address the delays to Train Movements, but the delays are of a magnitude which is beyond the scope of that regime.~~~~

~~11.4 — Limitation on Claims~~

- ~~(a) — A Party must not make any Claim against the other Party under, in relation to or arising out of this agreement, its subject matter, any breach of this agreement or any act or omission of the other Party unless:
 - ~~(i) — notice and full details of the Claim have been given to the other Party within two years after the occurrence of the event or circumstance out of which such Claim arises; and~~
 - ~~(ii) — the amount of the Claim exceeds \$500,000 in respect of any one event or cause of action or series of related events or causes of action (and, for clarity, the amount of any Claim is not limited to the amount exceeding that threshold).~~~~
- ~~(b) — A Party must use best endeavours to provide the other Party with notice and full details of any such Claim within 12 months after the occurrence of the event or circumstance out of which such Claim arises.~~

~~11.5 — Failure to pay amounts~~

~~No exclusion or limitation of liability, or restriction on the existence of or ability to make any Claim, in this **clause 11** applies to Claims made by one Party against the other for monies due and payable in accordance with this agreement including, for example, under **clause 4**.~~

~~11.6 — Claims in respect of non-provision of access~~

~~The Operator will not have, and must not make, any Claim against Queensland Rail in respect of the non-provision of access or the cancellation of any Train Service (**Claim Event**) unless, and will only have a Claim to the extent that each of the following is satisfied:~~

- ~~(a) — the Claim Event was a result of a breach of this agreement by, or the negligence of, Queensland Rail;~~
- ~~(b) — the Claim Event is not attributable (in whole or part) to:
 - ~~(i) — the Operator;~~
 - ~~(ii) — another Rail Transport Operator (other than Queensland Rail);~~
 - ~~(iii) — a Force Majeure Event;~~
 - ~~(iv) — a Planned Possession, Urgent Possession, Emergency Possession or Rail Infrastructure Operations or other works related to such a Possession;~~
 - ~~(v) — an event, incident or circumstance on Private Infrastructure; or~~
 - ~~(vi) — any action taken by Queensland Rail (acting reasonably) or by an Authority in response to or as a consequence of a safety risk, a Network Incident, an emergency, a Claim by a third party, personal injury to or death of any person on or near the Network, any Rolling Stock or any land or other thing on or near the Network;~~~~

- ~~(c) — a Train Service is cancelled due to Queensland Rail failing to make the Network available for the Operator to operate the Train Service at the Scheduled Time and Queensland Rail was not able to offer a reasonable alternative Scheduled Time;~~
- ~~(d) — the total number of Train Services cancelled in the relevant month as a result of a failure by Queensland Rail to make the Network available exceeds 10% of the total number of Train Services that the Operator was entitled to operate during that month in accordance with this agreement; and~~
- ~~(e) — the Claim Event does not constitute (in whole or part) Queensland Rail Cause.~~

~~12 — Suspension~~

~~12.1 — Right of suspension~~

- ~~(a) — Queensland Rail may, by notice in writing to the Operator, immediately suspend the right of the Operator to operate some or all of the Train Services upon the occurrence of any one or more of the following events or circumstances:
 - ~~(i) — any event or circumstance described in **clauses 13.1(a) to (j)** occurs;~~
 - ~~(ii) — the Operator fails to comply with a notice given by Queensland Rail requiring the Operator (within the reasonable time specified in that notice) to cease conduct that Queensland Rail considers (acting reasonably) is causing or threatening to cause Serious Environmental Harm or Material Environmental Harm (as those terms are defined in the *Environmental Protection Act 1994 (Qld)*); or~~
 - ~~(iii) — the Operator has failed, or in Queensland Rail's opinion the Operator will, or intends to fail, to comply with:
 - ~~(A) — any Law, Train Control Direction or Operating Requirements Manual relating to the operation of Train Services; or~~
 - ~~(B) — any obligation of the Operator under this agreement.~~~~~~
- ~~(b) — Such a suspension will continue until such time as the Operator has satisfied Queensland Rail that:
 - ~~(i) — the relevant event or circumstance has been remedied or, if applicable, has been avoided and will not occur; and~~
 - ~~(ii) — where appropriate, that the Operator has taken action to prevent the recurrence of that event or circumstance.~~~~

~~12.2 — Details of suspension~~

~~A notice of suspension given by Queensland Rail to the Operator in accordance with this **clause 12** must set out:~~

- ~~(a) — the rights of the Operator which are affected by the suspension;~~
- ~~(b) — the reasons for the suspension; and~~
- ~~(c) — the actions the Operator must take to have the suspension lifted.~~

~~12.3 — Effect of suspension~~

~~The suspension of any rights by Queensland Rail in accordance with this clause 12:~~

- ~~(a) — is revocable at any time by Queensland Rail;~~
- ~~(b) — has no effect upon obligations, debts or liabilities which have accrued before that suspension took effect;~~
- ~~(c) — does not affect or suspend any other obligation of the Operator, including the obligation to pay Access Charges relating to the period of the suspension; and~~
- ~~(d) — is without prejudice to Queensland Rail's other rights and remedies in respect of the relevant default, event or circumstance.~~

~~13 — Default and termination~~

~~13.1 — Termination by Queensland Rail~~

~~Subject to clause 13.3, without limiting any other rights of termination in this agreement or otherwise existing at Law, Queensland Rail may, by notice in writing to the Operator, immediately terminate this agreement upon the occurrence of any one or more of the following events or circumstances:~~

- ~~(a) — the Operator fails, in any material respect, to perform or comply with this agreement;~~
- ~~(b) — the Operator fails to pay when due any amount payable, or to provide and maintain Security, in accordance with this agreement;~~
- ~~(c) — an Insolvency Event occurs in relation to the Operator;~~
- ~~(d) — Queensland Rail ceases to hold the Sublease, any other Land Tenure or any other right or interest that authorises, permits or otherwise entitles Queensland Rail:
 - ~~(i) — to grant or otherwise confer on the Operator all or any of the rights referred to in this agreement; or~~
 - ~~(ii) — to enter into or perform this agreement;~~~~
- ~~(e) — there are no Access Rights under this agreement including as a result of reductions or relinquishments in accordance with clause 19;~~
- ~~(f) — a Repeated Breach exists;~~
- ~~(g) — the Operator purports to Assign or Charge its rights or interest in this agreement other than in accordance with clause 20;~~

- ~~(h) — the Operator fails to comply with the Train Service Description without first obtaining the prior written consent of Queensland Rail;~~
- ~~(i) — the Operator fails to comply with the IRMP or any other safety related obligation under this agreement; or~~
- ~~(j) — the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations or exercise its rights under this agreement.~~

~~13.2 — Termination by the Operator~~

~~Subject to **clause 13.3**, without limiting any other rights of termination in this agreement or otherwise existing at Law, the Operator may, by notice in writing to Queensland Rail, immediately terminate this agreement upon the occurrence of any one or more of the following events or circumstances:~~

- ~~(a) — an Insolvency Event occurs in relation to Queensland Rail;~~
- ~~(b) — Queensland Rail fails to pay when due any amount payable under this agreement; or~~
- ~~(c) — Queensland Rail fails, in any material respect, to perform or comply with this agreement other than where this agreement excludes Queensland Rail's liability for that failure or limits that liability to \$1.00, or where Queensland Rail is not otherwise liable under this agreement for that failure.~~

~~13.3 — Remedy~~

- ~~(a) — If an event or circumstance set out in **clause 13.1** or **13.2** (except **clauses 13.1(c) to (f)** and **clause 13.2(a)**) (**Event**) occurs then the relevant Party (**Terminating Party**) may only terminate this agreement if:
 - ~~(i) — the Terminating Party serves a notice (**Notice to Remedy**) on the other Party (**Defaulting Party**) notifying the Defaulting Party of the Event, providing details of the Event and requiring the Defaulting Party:
 - ~~(A) — to remedy the Event (if the Event is capable of being remedied); or~~
 - ~~(B) — to take action to ensure such an Event does not recur (if the Event is not capable of being remedied),~~and specifying a reasonable period in which to do the things in **paragraph (A)** or **(B)**, as applicable having regard to the nature of the Event (**Relevant Period**) — however, if the Event is one in:
 - ~~(C) — **clause 13.1(b)** or **13.2(b)**, then the Relevant Period must be ten Business Days; or~~
 - ~~(D) — **clause 13.1(a)** or **13.2(c)**, then the Relevant Period must be 20 Business Days; and~~~~~~

- ~~(ii) — the Defaulting Party does not, within the Relevant Period, if the Event:
 - ~~(A) — is capable of being remedied, remedy the Event; or~~
 - ~~(B) — is not capable of being remedied, take action to ensure such an Event does not recur and pay, if applicable, reasonable compensation to the Terminating Party in respect of the Event.~~~~
- ~~(b) — If Queensland Rail is the Defaulting Party and compensation is payable under **clause 13.3(a)(ii)(B)**, then that compensation is subject to any limits and exclusions of liability under this agreement that may apply in relation to the relevant Event.~~

13.4 — Termination for Change in Control

Queensland Rail may terminate this agreement immediately if:

- ~~(a) — there is a Change in Control; and~~
- ~~(b) — the Operator has not obtained Queensland Rail's prior consent to that Change in Control.~~

13.5 — Obligations and other rights upon termination or expiration

- ~~(a) — A Party's right:
 - ~~(i) — to make a Claim or recover damages or avail itself of other remedies under this agreement or at Law; or~~
 - ~~(ii) — to recover monies due to it under this agreement, including Access Charges,~~~~

~~is not prejudiced by:~~

 - ~~(iii) — the termination or expiry of this agreement (including any termination under this **clause 13**); or~~
 - ~~(iv) — the forbearance by a Party in exercising any rights under this **clause 13**.~~
- ~~(b) — The expiry or termination of this agreement:
 - ~~(i) — does not affect the provisions expressed or implied to operate, survive or have effect after such expiry or termination; and~~
 - ~~(ii) — is without prejudice to any Claim or right of action already accrued to any Party in respect of any breach of this agreement.~~~~

13.6 — Removal of Rolling Stock following termination

- ~~(a) — Immediately on expiration of the Term, and as soon as practicable after termination of this agreement for any other reason, the Operator must, at the Operator's cost and risk, remove from the Network all of the Operator's Rolling Stock used in relation to operating Train Services.~~
- ~~(b) — If the Operator fails to remove the Operator's Rolling Stock from the Network:~~

- ~~(i) Queensland Rail may give a notice to the Operator demanding the removal of Rolling Stock by a time specified by Queensland Rail; and~~
- ~~(ii) if the Operator fails to remove that Rolling Stock by that time, Queensland Rail may remove that Rolling Stock and recover the reasonable costs of doing so from the Operator.~~
- ~~(c) The Operator is liable, and indemnifies Queensland Rail, for all costs and expenses incurred by Queensland Rail in relation to any damage caused to the Network by the Operator in removing any Rolling Stock.~~
- ~~(d) The Operator must comply with all Train Control Directions, and all other directions issued by Queensland Rail (acting reasonably), in relation to the removal of the Rolling Stock in accordance with this **clause 13.6**.~~

~~14 Insurance~~

~~14.1 Obligation to obtain and maintain Insurance~~

~~The Operator must:~~

- ~~(a) effect, or cause to be effected, before the Commitment Date; and~~
 - ~~(b) maintain, or cause to be maintained, until the expiry of the Term, insurance in accordance with Prudent Practices having regard to the Operator's activities, works, obligations and responsibilities under this agreement (including insurances covering all risks of an insurable nature in respect of which the Operator is obliged to indemnify Queensland Rail under this agreement) provided that such insurances must include (without limitation):~~
 - ~~(c) a public liability policy of insurance:~~
 - ~~(i) that covers the Operator and each of the Operator's agents, consultants, contractors and their sub-contractors (each an **Insured Party**);~~
 - ~~(ii) for an amount of not less than \$350 million per occurrence;~~
 - ~~(iii) the coverage of which includes (without limitation)~~
 - ~~(A) the rights, interests and liability in respect of any Claim against an Insured Party arising out of:~~
 - ~~(1) any damage or loss occurring to any property; and~~
 - ~~(2) injury (including death) to any person,~~
- ~~arising out of or in connection with any thing done or omitted to be done in the performance or purported performance of this agreement²⁵; and~~

²⁵ Including, without limitation, Claims arising out of or in relation to the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water

- ~~(B) the Operator's operations and activities on the Network; and~~
- ~~(iv) that has a maximum deductible for any one claim of \$500,000;~~
- ~~(d) a carrier liability policy of insurance:~~
 - ~~(i) that covers the Operator's liability in relation to goods being transported by Train Services;~~
 - ~~(ii) for an amount of not less than \$10 million per occurrence; and~~
 - ~~(iii) that has a maximum deductible for any one claim of \$500,000; and~~
- ~~(e) all other insurances that the Operator or the Operator's agents, consultants, contractors and their sub-contractors are required by Law to hold in relation to or in connection with the exercise of rights or the performance of obligations under this agreement.~~

14.2 Insurer

The Operator must ensure that any Insurance effected and maintained in accordance with **clause 14.1** is with an insurer having an insurance financial strength rating of "A" or better by Standard & Poor's or, if Standard & Poor's ceases to exist or to provide such ratings, the rating which most closely corresponds to that rating by another agency or person which is recognised in global financial markets as a major ratings agency.

14.3 Essential terms and conditions

The Operator must ensure that, to the extent permitted by Law, all Insurances effected and maintained in accordance with **clause 14.1** must:

- ~~(a) note the interests of Queensland Rail; and~~
- ~~(b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amend the cover provided without the written consent of Queensland Rail (which consent must not be unreasonably withheld or delayed).~~

14.4 Payment of premium and deductibles

The Operator:

- ~~(a) must pay when due all premiums, charges and other expenses necessary for effecting and maintaining in force the Insurances; and~~
- ~~(b) is responsible for the payment of all policy deductibles or excesses for Insurances.~~

14.5 No prejudicial action by the Operator

The Operator must not do or permit anything to be done (including any omission) which:

- ~~(a) may result in any Insurance being vitiated or rendered void or voidable;~~
- ~~or~~

where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening.

- ~~(b) — would give rise to an entitlement by the insurer to avoid payment of any claim in whole or in part.~~

14.6 — Disclosure of Insurance

- ~~(a) — The Operator must provide to Queensland Rail evidence of the insurance policies effected pursuant to this **clause 14** or, if requested by Queensland Rail, copies of such Insurances, to Queensland Rail's reasonable satisfaction:
 - ~~(i) — at least ten Business Days prior to the Commitment Date;~~
 - ~~(ii) — upon renewal of each Insurance during the Term; and~~
 - ~~(iii) — whenever reasonably requested to do so in writing by Queensland Rail.~~~~
- ~~(b) — If the Operator, whenever required to do so under this agreement, fails to produce to Queensland Rail evidence to the satisfaction of Queensland Rail (acting reasonably) of Insurances that have been effected or maintained by it, Queensland Rail may:
 - ~~(i) — effect and maintain the Insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Queensland Rail; or~~
 - ~~(ii) — terminate this agreement under **clause 13.1(a)**.~~~~

14.7 — Compliance

~~The Operator must at all times comply with the terms of all Insurances effected under this **clause 14**.~~

14.8 — Claims

- ~~(a) — In addition to any other obligation on the Operator, the Operator must:
 - ~~(i) — notify Queensland Rail as soon as practicable after the occurrence of any claim, or an event that may give rise to a claim, under any Insurance (including providing reasonable details of the claim or the event); and~~
 - ~~(ii) — keep Queensland Rail informed of subsequent developments concerning any claim.~~~~
- ~~(b) — Upon settlement of a claim under any Insurance covering damage to the Network the monies received must be paid to Queensland Rail unless the Operator has already partially or totally indemnified Queensland Rail for the relevant damage, in which case the monies will be paid to the Operator but only to the extent that Queensland Rail has been indemnified.~~

14.9 — Insurance not a limit of Operator's liability

~~The Operator's compliance with any Insurances does not limit the Operator's liabilities or obligations under this agreement.~~

~~15~~ Security

~~15.1~~ Obligation to provide Security

~~(a)~~ The Operator must:

~~(i)~~ on or before the Commitment Date, provide to Queensland Rail security in the form set out in ~~clause 15.1(b)~~ for the Security Amount; and

~~(ii)~~ thereafter maintain that security (including for any increased or decreased amount or any top up) in accordance with this ~~clause 15,~~

~~(Security).~~

~~(b)~~ Security must be in the form of:

~~(i)~~ a bank guarantee that:

~~(A)~~ is unconditional and irrevocable and in favour of Queensland Rail;

~~(B)~~ is issued by an Australian institution:

~~(1)~~ authorised to carry on a banking business and entitled to call itself a 'bank' pursuant to the *Banking Act 1959* (Cth); and

~~(2)~~ which has a credit rating of "A" or better by Standard & Poor's or, if Standard and Poor's ceases to exist or to provide such credit ratings, the credit rating which most closely corresponds to that credit rating by another agency or person which is recognised in global financial markets as a major ratings agency;

~~(C)~~ requires the issuing bank to pay on demand by Queensland Rail:

~~(1)~~ without recourse to the Operator or any other person;

~~(2)~~ irrespective of the performance or non-performance of the Operator or Queensland Rail under this agreement; and

~~(3)~~ despite any notice or other communication from the Operator or any other person;

an amount or amounts up to the amount specified in the bank guarantee;

~~(D)~~ has no expiry date; and

~~(E)~~ is otherwise in a form acceptable to Queensland Rail; or

~~(ii)~~ any other form acceptable to Queensland Rail (in its absolute discretion).

~~15.2 Recourse to Security~~

- ~~(a) A Security may be called upon by Queensland Rail in any circumstance where:
 - ~~(i) the Operator fails to pay, on or before the due date, any amount that is payable by the Operator to Queensland Rail under this agreement; or~~
 - ~~(ii) Queensland Rail otherwise suffers or incurs a Loss in respect of which the Operator is required to indemnify Queensland Rail in accordance with this agreement.~~~~
- ~~(b) If an Insolvency Event occurs, or Queensland Rail (acting reasonably) suspects that an Insolvency Event has occurred, in relation to the Operator, Queensland Rail may:
 - ~~(i) in respect of any amounts due but unpaid by the Operator under this agreement:
 - ~~(A) decline payment from the Operator of all or part of those amounts; and~~
 - ~~(B) immediately call upon the Security for those amounts for which payment was so declined; or~~~~
 - ~~(ii) in respect of any amounts paid by the Operator under this agreement after the time when the Insolvency Event occurred or Queensland Rail (acting reasonably) suspects that an Insolvency Event occurred:
 - ~~(A) refund all or part of those amounts to the Operator; and~~
 - ~~(B) immediately call upon the Security for the amounts so refunded.~~~~~~
- ~~(c) If Queensland Rail calls on a Security, the Operator must deliver to Queensland Rail a further Security for the amount called upon, or a replacement Security for the remaining amount of the existing Security plus the amount called upon in exchange for the existing Security, within five Business Days after Queensland Rail calls on the Security so that the Security held by Queensland Rail is equal to the Security Amount.~~

~~15.3 Review of Security~~

- ~~(a) Queensland Rail may:
 - ~~(i) at any time, from time to time, review the amount of the Security Amount, taking into consideration all of the matters that Queensland Rail considers relevant including:
 - ~~(A) the financial performance of the Operator;~~
 - ~~(B) the Operator's past performance under this agreement (whether in relation to payments or otherwise); and~~~~~~

- ~~(c) — expected future payment obligations under this agreement;
and~~
- ~~(ii) — acting reasonably, determine that the amount of the Security Amount should be increased or decreased.~~
- ~~(b) — If Queensland Rail determines under **clause 15.3(a)** that the amount of the Security Amount should be:
 - ~~(i) — increased, the Operator must deliver to Queensland Rail further Security for the amount of the increase, or a replacement Security for the revised amount in exchange for the existing Security; or~~
 - ~~(ii) — decreased, the Operator must deliver to Queensland Rail a replacement Security for the revised amount in exchange for the existing Security,~~within ten Business Days after Queensland Rail gives notice of its determination so that the Security held by Queensland Rail is equal to the Security Amount as determined by Queensland Rail.~~

15.4 — Return of Security

~~Queensland Rail must, subject to the rights of recourse to the Security under this **clause 15**, return the Security to the Operator as soon as practicable after both of the following occur:~~

- ~~(a) — this agreement has expired or terminated; and~~
- ~~(b) — in Queensland Rail's opinion (acting reasonably) there is no prospect that:
 - ~~(i) — money or damages will become owing (whether actually or contingently) by the Operator to Queensland Rail in connection with this agreement; and~~
 - ~~(ii) — any payment towards the satisfaction of the Operator's obligation to pay any amount to Queensland Rail under this agreement will be void, voidable or refundable under any Law (including any Law relating to insolvency);~~~~

~~provided that, in any event, Queensland Rail has no obligation to return the Security to the Operator earlier than three months after the expiry or termination of this agreement.~~

16 — Adjustment for changes

16.1 — Review of schedule

- ~~(a) — This **clause 16.1**:
 - ~~(i) — applies to the extent that a Reference Tariff applies to the Train Services (including where a relevant Reference Tariff is approved by the QCA after the Commencement Date); and~~~~

- ~~(ii) — does not apply where there is no Reference Tariff that is applicable to the relevant Train Services.~~
- ~~(b) — **Schedule 3** must be reviewed by Queensland Rail as soon as practicable after a Reference Tariff Provision, or any change in a Reference Tariff Provision, is approved by the QCA from time to time. For clarity, Queensland Rail is not obliged to conduct such a review where there ceases to be a Reference Tariff that is relevant to the Train Services.~~
- ~~(c) — The purpose of the review under this **clause 16.1** is to determine the amendments to **schedule 3** that are necessary to ensure **schedule 3** remains consistent with the Reference Tariff Provisions — to the extent that **schedule 3** was consistent with those Reference Tariff Provisions at the Commencement Date (and always subject to any differences referred to in **clause 16.1(d)(ii)**).~~
- ~~(d) — Without limiting the matters that Queensland Rail must consider in a review under **clause 16.1(b)**, any review of **schedule 3** must have regard to the following:
 - ~~(i) — any relevant new or varied Reference Tariff;~~
 - ~~(ii) — the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Provision; and~~
 - ~~(iii) — any other relevant provisions of the Access Undertaking.~~~~
- ~~(e) — After Queensland Rail's review of **schedule 3**, Queensland Rail must notify the Operator of the amendments to **schedule 3** that will apply and the date from which those amendments take effect (**Amendment Notice**). For clarity, the amendments may take effect retrospectively, but must not take effect prior to the time when the relevant Reference Tariff Provision, or amendments to the relevant Reference Tariff Provision, take effect as approved by the QCA.~~
- ~~(f) — If the Operator does not accept some or all of the amendments in the Amendment Notice, then:
 - ~~(i) — the Operator may only give Queensland Rail a Dispute Notice within ten Business Days after being given that Amendment Notice; and~~
 - ~~(ii) — if the Operator gives such a Dispute Notice and the Parties do not resolve the Dispute in accordance with **clause 17.2**, the Dispute must be referred for determination by an Expert under **clause 17.3**.~~~~
- ~~(g) — For clarity, in this **clause 16.1** a reference to **schedule 3** includes each other provisions (including defined terms) of this agreement relevant to **schedule 3** but only to the extent that they are directly necessary for the application, or interpretation, of **schedule 3**.~~

~~16.2 Relationship to clause 2.1 of schedule 3~~

~~For clarity, clause 2.1 of schedule 3 and clause 16.1 must not be applied in a manner that will result in any part of an Access Charge Input being escalated twice for the same period based on the change in CPI over that period.~~

~~16.3 Adjustment for a Material Change~~

- ~~(a) This clause 16.3 does not apply in relation to a Material Change to the extent that the Net Financial Effect of that Material Change has been, or will be, removed as a result of:
 - ~~(i) amendments to schedule 3 in accordance with clause 16.1; or~~
 - ~~(ii) the escalation or variation of Access Charge Inputs in accordance with this agreement.~~~~
- ~~(b) If a Material Change occurs, then Queensland Rail may notify the Operator giving details of the Net Financial Effect of that Material Change.~~
- ~~(c) Within five Business Days after Queensland Rail gives a notice under clause 16.3(b), the Parties must meet and negotiate, in good faith, adjustments to this agreement, including adjustments to the Access Charges, in order to remove as far as practicable the relevant Net Financial Effect and to put Queensland Rail in the position it would have been in had there been no Material Change.~~
- ~~(d) If the Parties do not reach agreement within 15 Business Days after Queensland Rail's notice under clause 16.3(b) or otherwise resolve the matter in accordance with clause 17.2, then the matter must be referred to an Expert for determination in accordance with clause 17.3.~~
- ~~(b) Each Party's obligations under this agreement will continue despite the existence of a Material Change.~~

~~17 Disputes~~

~~17.1 Application of dispute resolution process~~

~~If any dispute, complaint or question arises between the Parties in relation to this agreement (Dispute), then:~~

- ~~(a) that Dispute must be resolved in accordance with this clause 17; and~~
- ~~(b) either Party may give the other Party a notice in writing (Dispute Notice) setting out details of the Dispute and requiring that it be dealt with in the manner set out in this clause 17.~~

~~17.2 Resolution by escalation~~

- ~~(a) Within five Business Days 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 17.2(a)**, senior management representatives of the Parties (who, for a Party, are senior to that Party's representative(s) referred to in **clause 17.2(a)**) must, within ten Business Days after the Dispute Notice Date, meet and use reasonable endeavours to resolve the Dispute.~~
- ~~(c) If the Dispute is not resolved under **clause 17.2(b)**, the Dispute must be referred to each Party's chief executive officer (or his or her nominee — who, for a Party, must be more senior than that Party's representative(s) referred to in **clauses 17.2(a)** and **(b)**) for resolution.~~
- ~~(d) Subject to **clauses 17.4** and **17.5**, if the Dispute is not resolved under **clause 17.2(c)** within 20 Business Days after the Dispute Notice Date (or such other time as agreed between the Parties), the relevant Dispute:
 - ~~(i) must, where this agreement requires referral to an Expert; and~~
 - ~~(ii) may, by agreement of the Parties (in each Party's absolute discretion) in any other case,~~be referred for resolution by an Expert in accordance with **clause 17.3**.~~
- ~~(e) If a Party's representative under **clause 17.2(a)** or **17.2(b)** is not authorised:
 - ~~(i) to act on behalf of that Party in relation to the Dispute; or~~
 - ~~(ii) to resolve the Dispute with immediate binding effect on that Party,~~the Dispute is deemed to have not been resolved under **clause 17.2(a)** or **17.2(b)** (as applicable).~~

17.3 Resolution by Expert

- ~~(a) This **clause 17.3** is subject to **clauses 17.4** and **17.5**.~~
- ~~(b) If a Dispute, or any other matter, is required to be referred to, or determined by, an Expert in accordance with this agreement (including under **clause 17.2(d)**):
 - ~~(i) the Expert must be appointed by agreement between the Parties or, in default of such appointment within ten Business Days after the need to refer the Dispute to an Expert, will be that person nominated, at either Party's request, by:
 - ~~(A) where the Parties agree the Dispute is primarily of a technical nature, the President (for the time being) of Engineers Australia — Queensland Division;~~
 - ~~(B) where the Parties agree the Dispute is primarily of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia — Queensland Branch; or~~
 - ~~(C) in any other case, the President (for the time being) of the Queensland Law Society Inc;~~~~~~

- ~~(ii) — the Expert must:
 - ~~(A) — have appropriate qualifications and practical experience having regard to the nature of the Dispute;~~
 - ~~(B) — have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by written notice to the Parties before his or her appointment;~~
 - ~~(C) — not be an employee of a Party or of a Related Party of a Party;~~
 - ~~(D) — not be permitted to act until he or she has given written notice to each Party that he or she is willing and able to accept the appointment;~~
 - ~~(E) — have regard to the provisions of this agreement and consider all submissions (including oral submissions by each Party provided that such oral submissions are made in the presence of the Parties), supporting documentation, information and data with respect to the matter submitted by the Parties;~~
 - ~~(F) — for clarity, only make a determination in a way that is consistent with this agreement;~~
 - ~~(G) — provide the Parties with a copy of his or her determination in the form of a report within a reasonable time after his or her appointment;~~
 - ~~(H) — be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties; and~~
 - ~~(I) — be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration including the *Commercial Arbitration Act 1990 (Qld)*, will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and~~~~
- ~~(iii) — if the Expert is to be nominated by a person referred to in **clause 17.3(b)(i)**, the Parties must comply with and do all things necessary to satisfy and to give effect to the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert; and~~
- ~~(iv) — the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant~~

~~indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting to be appointed as Expert.~~

- ~~(c) The Parties must do everything reasonably requested by the Expert to assist the Expert including producing information and materials as requested by the Expert and attending any hearing convened by the Expert.~~
- ~~(d) In the absence of manifest error, a decision of the Expert is final and binding upon the Parties.~~
- ~~(e) The costs of the Expert (and any advisers engaged by the Expert) will be borne in equal shares by the Parties. Each Party must bear its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).~~

17.4 Resolution of Disputes by Rail Safety Regulator

- ~~(a) Nothing in this clause 17 prevents a Party from, at any time, referring any relevant Dispute to the Rail Safety Regulator for resolution in accordance with the TRSA.~~
- ~~(b) To the extent that any Dispute is referred to the Rail Safety Regulator for resolution in accordance with the TRSA, the process under the TRSA prevails to the extent of any inconsistency with this clause 17.~~

17.5 Resolution of Disputes by Queensland Rail

~~If:~~

- ~~(a) any Dispute is in relation to:
 - ~~(i) proposed amendments to the IRMP; or~~
 - ~~(ii) the safety of any persons or property, or the environment, on or in relation to the Network or the land on which the Network is located or in relation to the use of the Network;~~~~
- ~~(b) that Dispute is not otherwise resolved by the Parties in accordance with clause 17.2 or 17.3 or by the Rail Safety Regulator; and~~
- ~~(c) Queensland Rail considers that the failure to resolve that Dispute may have a material adverse affect on Queensland Rail's ability to comply with (or its cost or risk of, or liability for, complying with):
 - ~~(i) this agreement (including any obligation to provide the Operator's Train Services with access to the Network);~~
 - ~~(ii) any Laws, Authorisations (including its Accreditation) or Land Tenure; or~~
 - ~~(iii) any obligations in relation to other Rail Transport Operators;~~~~

~~then that Dispute may be determined by Queensland Rail, at its election (acting reasonably), after considering any relevant matters raised by the Operator.~~

~~17.6 — Determination by court~~

~~If any Dispute is not resolved in accordance with this **clause 17**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.~~

~~17.7 — Injunctive Relief~~

~~Nothing in this agreement prevents a Party from seeking urgent injunctive relief from a court.~~

~~17.8 — Dispute not to affect performance of obligations~~

~~The Parties are not relieved from performing their obligations under this agreement because of the existence of a Dispute.~~

~~18 — Force majeure~~

~~18.1 — Force Majeure Event occurrence~~

- ~~(a) — If a Party (**Affected Party**) is prevented or hindered by a Force Majeure Event from fully or partly complying with any obligation (except for any obligation to pay money) under this agreement, that obligation is suspended during the time and to the extent that the performance of that obligation is prevented or hindered by the Force Majeure Event.~~
- ~~(b) — If the Affected Party wishes to claim the benefit of this clause, it must, as soon as practicable, give notice of the Force Majeure Event to the other Party including reasonable details of:
 - ~~(i) — the Force Majeure Event;~~
 - ~~(ii) — the effect of the Force Majeure Event on the performance of the Affected Party's obligations; and~~
 - ~~(iii) — the likely duration of the delay in performance of those obligations.~~~~
- ~~(c) — Subject to **clause 18.1(d)**, the Affected Party must use reasonable endeavours to remove the effect of the Force Majeure Event as soon as practicable and to identify alternative means to viably perform the relevant obligations or mitigate the effect of the Force Majeure Event, but is not obliged to settle any strike or other labour dispute contrary to its best judgment.~~
- ~~(d) — For the purposes of **clause 18.1(c)**:
 - ~~(i) — Queensland Rail is not obliged to fund the repair or replacement of any part of the Network that:
 - ~~(A) — is necessary for the Operator's Train Services; and~~
 - ~~(B) — is damaged or destroyed by a Force Majeure Event;~~~~
 - ~~(ii) — if Queensland Rail is not prepared to fund any such repair or replacement, Queensland Rail will notify the Operator of:~~~~

- ~~(A) — the repairs or replacement that Queensland Rail is not prepared to undertake unless a Rail Transport Operator agrees to pay to Queensland Rail (in advance) the cost of those repairs or that replacement (as applicable); and~~
- ~~(B) — the estimated cost of those repairs or that replacement (as applicable);~~
- ~~(iii) — if a Rail Transport Operator agrees (on terms satisfactory to Queensland Rail (in its absolute discretion)) to pay to Queensland Rail the cost of those repairs or that replacement (as applicable) in advance of Queensland Rail incurring those costs, or liability for those costs, then Queensland Rail will undertake those repairs or that replacement (as applicable) to a standard consistent with Prudent Practices, but only to the extent that the Rail Transport Operator has paid those costs to Queensland Rail; and~~
- ~~(iv) — if the total cost of the repairs or replacement (as applicable) undertaken by Queensland Rail is less than the amount that the Rail Transport Operator paid to Queensland Rail under **clause 18.1(d)(iii)**, Queensland Rail will refund the difference to the Rail Transport Operator as soon as reasonably practicable after the total costs of the repairs or replacement (as applicable) have been finally determined by Queensland Rail.~~
- ~~(e) — The Affected Party must keep the other Party informed in relation to the Force Majeure Event, any material change in the Affected Party's ability to perform its obligations and any matters relating to **clause 18.1(c)**.~~

~~18.2 — Termination~~

~~If a delay caused by a Force Majeure Event continues for more than three consecutive months, then either Party may terminate this agreement by giving 20 Business Days notice to the other Party.~~

~~19 — Reduction and relinquishment of Access Rights~~

~~19.1 — Reduction of Access Rights~~

- ~~(a) — If the Operator fails to operate all Train Services on Scheduled Train Paths for seven or more (not necessarily consecutive) weeks out of any 12 consecutive weeks when such Train Services are scheduled, Queensland Rail may, within ten Business Days after the last of those seven occasions, give a notice to the Operator deleting the relevant Train Path from the Operator's Train Service Description.~~
- ~~(b) — A Train Service has not been operated on a Scheduled Train Path if the Operator has failed:
 - ~~(i) — to present the relevant Train at the scheduled entry point onto the Network; or~~
 - ~~(ii) — to operate the relevant Train so that it completes its full journey,~~~~

~~in conformance with the locations and days set out in the Scheduled Train Paths applicable to such Train Service except:~~

- ~~(iii) where the prior agreement of Queensland Rail and the Operator has resulted in the Operator using an alternative Train Path for that Train service; and~~
- ~~(iv) where the reason for that failure is:
 - ~~(A) a Force Majeure Event; or~~
 - ~~(B) the failure of Queensland Rail to make the Network available.~~~~

19.2 Relinquishment of Access Rights

- ~~(a) If the Operator intends to relinquish all or part of the Access Rights, the Operator must give Queensland Rail reasonable notice of its intention to do so specifying:
 - ~~(i) the Access Rights that the Operator intends to relinquish **(Nominated Access Rights)**;~~
 - ~~(ii) if the Operator intends that all or part of the Relinquished Access Rights be used so Queensland Rail can grant specific access rights to a specified Access Seeker (as defined in the Access Undertaking) **(Transfer)**, the identity of that Access Seeker **(Transferee)**; and~~
 - ~~(iii) subject to **clause 19.2(b)**, the date **(Relinquishment Date)** on which and the period for which the Nominated Access Rights are to be relinquished.~~~~
- ~~(b) The period from the giving of the notice under **clause 19.2(a)** until the Relinquishment Date must not exceed six months.~~
- ~~(c) The relinquishment of any Nominated Access Rights in accordance with this **clause 19.2** is subject to and conditional on the Operator paying to Queensland Rail the Relinquishment Fee on or before the Relinquishment Date.~~
- ~~(d) If the Operator pays the Relinquishment Fee to Queensland Rail on or before the Relinquishment Date, then the terms of this agreement will cease to apply in respect of the Nominated Access Rights on the Relinquishment Date.~~
- ~~(e) Queensland Rail must facilitate a Transfer in respect of a Transferee if:
 - ~~(i) the relevant access rights to be granted to the Transferee:
 - ~~(A) are included in a new or varied access agreement with the Transferee on terms satisfactory to Queensland Rail; and~~
 - ~~(B) only commence on the Relinquishment Date if the Operator has paid the Relinquishment Fee to Queensland Rail on or before the Relinquishment Date;~~~~~~

- ~~(ii) — Queensland Rail is satisfied that the new or varied access agreement with the Transferee has been developed in accordance with the requirements of the Access Undertaking;~~
- ~~(iii) — the Operator has complied with **clauses 19.2(a)** and paid the Relinquishment Fee to Queensland Rail; and~~
- ~~(iv) — Queensland Rail has sufficient Available Capacity (as defined in the Access Undertaking) so that it can grant all of the relevant access rights to the Transferee without adversely affecting any other third party.~~
- ~~(f) — If the Relinquishment Fee is not paid on or prior to the Relinquishment Date, then the Operator is taken to have withdrawn the notice given under **clause 19.2(a)** and Queensland Rail has no further obligations under this **clause 19.2** in relation to the relevant relinquishment.~~

~~20 — Assignment~~

~~20.1 — Assignment by Queensland Rail~~

- ~~(a) — Queensland Rail may Assign all or part of its rights or obligations under this agreement without the prior consent of the Operator but Queensland Rail must give notice to the Operator advising the effective date of the Assignment.~~
- ~~(b) — On the Assignee executing and delivering to the Operator a deed covenanting to be bound by and to perform the obligations of Queensland Rail under this agreement to the extent of the rights and obligations Assigned to the Assignee, Queensland Rail is released and discharged from further liability under this agreement in respect of the obligations which the Assignee has undertaken to be bound by and to perform.~~

~~20.2 — Assignment by the Operator~~

- ~~(a) — The Operator must not Assign all or part of its rights or obligations under this agreement without the prior written consent of Queensland Rail provided that consent must not be unreasonably withheld if Queensland Rail is satisfied that the Assignee:
 - ~~(i) — has the financial resources and capability to perform the obligations of the Operator under this agreement; and~~
 - ~~(ii) — has Accreditation to operate the Train Services.~~~~
- ~~(b) — Any Assignment by the Operator of its rights or obligations under this agreement is conditional on and does not take effect until the Assignee covenants with Queensland Rail by deed, on terms satisfactory to Queensland Rail, to be bound by and to perform the obligations of the Operator under this agreement.~~

~~20.3 Charging~~

~~The Operator may only mortgage, charge, encumber or otherwise grant any security over (**Charge**) all or any of its rights and obligations under this agreement in whole or in part, in favour of any person (**Chargee**), if the Operator, the Chargee and Queensland Rail execute a covenant by deed on terms satisfactory to Queensland Rail, including terms to the effect that Queensland Rail acknowledges the existence of the Charge, and that the Chargee must comply with the provisions of this agreement including this **clause 20** in the exercise of its rights under the Charge as if it were originally a Party to this agreement in the position of the Operator.~~

~~20.4 Effect of Assignment or Charge~~

~~Any purported Assignment or Charge in breach of this **clause 20** is of no effect.~~

~~21 Representations and warranties~~

- ~~(a) In addition to any other express or implied representations and warranties in this agreement, the Operator represents and warrants to Queensland Rail that:~~
- ~~(i) it is a corporation validly existing under the laws applicable to it;~~
 - ~~(ii) it has the power to enter into and perform all of its obligations under this agreement and has obtained all necessary consents and approvals to enable it to do so;~~
 - ~~(iii) it has the resources and capability to perform all of its obligations under this agreement and is able to pay its debts as and when they fall due;~~
 - ~~(iv) its obligations under this agreement are enforceable in accordance with their terms and are fully binding on it;~~
 - ~~(v) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this agreement;~~
 - ~~(vi) there is:
 - ~~(A) no litigation, arbitration or administrative proceeding taking place, pending, commenced or, to its knowledge, threatened against it; and~~
 - ~~(B) no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it, which would or could have a material adverse effect on its ability to perform its obligations under this agreement;~~~~
 - ~~(vii) it will as soon as practicable notify Queensland Rail of the occurrence of, or pending or threatened occurrence of, any event~~

- ~~that may cause or constitute a material breach of any of the acknowledgments, representations, warranties or covenants of the Operator under this agreement and any event that could have a material adverse effect on its ability to perform its obligations under this agreement;~~
- ~~(viii) it has assessed the quality and standard of the Network and has satisfied itself as to:~~
- ~~(A) the standard and suitability of the Network for the purposes of operating the Train Services; and~~
- ~~(B) the ability of the Operator's Rolling Stock to safely interface with, and to operate on, the Network (including the cost, expense and risk of doing so); and~~
- ~~(ix) all information provided by the Operator to Queensland Rail, whether pursuant to this agreement or otherwise, in relation to or in connection with the Train Services, the Operator's rights or obligations under this agreement or the negotiation of this agreement, is correct and complete in all material respects and is not, whether by omission or otherwise, misleading or deceptive in any material way.~~
- ~~(b) The representations and warranties set out in **clause 21(a)** are taken to be given and made on the Commencement Date and on each day during the Term.~~
- ~~(c) Subject to **clause 21(d)**, the Operator may, at its cost and risk, inspect the Network (including circumstances of the Network such as fencing and level crossing protection) to satisfy itself as to:~~
- ~~(i) the standard and suitability of the Network for the purposes of operating the Train Services;~~
- ~~(ii) the ability of the Operator's Rolling Stock to safely interface with, and to operate on, the Network (including the cost, expense and risk of doing so); and~~
- ~~(iii) the operational, environmental and safety risks associated with operation of Train Services on the Network.~~
- ~~(d) Any inspection by the Operator under **clause 21(c)** is subject to:~~
- ~~(i) the Operator giving written notice to Queensland Rail of its request to inspect the Network a reasonable time prior to the date of the intended inspection;~~
- ~~(ii) the Operator receiving from Queensland Rail a notice (not to be unreasonably withheld) confirming that the inspection may occur and setting out the requirements for that inspection including in relation to any of the matters referred to in **clauses 21(d)(iii) to (v)**;~~

- ~~(iii) — that inspection being conducted:
 - ~~(A) — in the presence of a nominated representative of Queensland Rail;~~
 - ~~(B) — at a time satisfactory to Queensland Rail; and~~
 - ~~(C) — in a manner that does not cause or contribute to any disruption of, or other adverse affect to, any Train Movements or Rail Infrastructure Operations;~~~~
- ~~(iv) — the Operator paying, or if paid by Queensland Rail reimbursing, to Queensland Rail the costs and expenses incurred by Queensland Rail in relation to the Operator's inspection (including the costs and expenses of a representative of Queensland Rail attending the inspection and, if relevant, for any track protection officers) and those costs and expenses will be a debt due and owing by the Operator to Queensland Rail; and~~
- ~~(v) — such other conditions as may be required by Queensland Rail in relation to the inspection including compliance with Queensland Rail's safeworking procedures and safety standards.~~

~~22 — Confidentiality~~

~~22.1 — Confidentiality obligation~~

~~Subject to **clause 22.2**, a Party (**Recipient**), in respect of the Confidential Information of the other Party (**Disclosing Party**), must:~~

- ~~(a) — treat that Confidential Information as (and keep it) confidential;~~
- ~~(b) — only use that Confidential Information for the purposes of this agreement or for which it was disclosed; and~~
- ~~(c) — treat that Confidential Information as the property of the Disclosing Party.~~

~~22.2 — Exceptions~~

~~A Recipient of Confidential Information is not required to comply with **clause 22.1** to the extent that:~~

- ~~(a) — the Disclosing Party has given its written consent (which must not be unreasonably withheld) to the relevant disclosure or use; or~~
- ~~(b) — another Confidentiality Exception applies to the relevant disclosure or use.~~

~~22.3 — Responsibility~~

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

- ~~(a) — the directors, officers or employees of the Recipient or a Related Party of the Recipient; or~~

- ~~(b) — the Recipient’s solicitors, barristers, accountants, engineering or other technical consultants and 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.~~

~~23 — Notices~~

~~23.1 — Form of Notice~~

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

~~23.2 — Method of giving a Notice~~

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

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

~~23.3 — Particulars for the giving of Notices~~

- ~~(a) — The particulars for the giving of Notices are initially:~~

~~Queensland Rail~~

~~Delivery address: Floor 15, 295 Ann Street, Brisbane Qld 4000~~

~~Postal address: GPO Box 1429, Brisbane Qld 4001~~

~~Facsimile: (07) 3046 7524~~

~~Attention: General Counsel/Company Secretary~~

~~Operator~~

~~As set out in **item 2** of **schedule 1**.~~

- ~~(b) — Each Party may change its particulars for delivery of Notices by notice to each other Party.~~

~~23.4 — Effect and receipt of Notices~~

- ~~(a) — Subject to **clause 23.4(b)**, a Notice is given:~~

- (i) ~~if personally delivered, at the time of delivery;~~
 - (ii) ~~if posted, on the third day after the date of posting; and~~
 - (iii) ~~if sent by facsimile, when the machine from which the facsimile was sent produces a report that the facsimile was sent in full to the facsimile number of the recipient (and that report is conclusive evidence that the addressee received the facsimile in full at the time indicated on that report).~~
- (b) ~~If a Notice is given:~~
- (i) ~~after 5:00pm in the place of receipt; or~~
 - (ii) ~~on a day which is a Saturday, Sunday or public holiday in the place of receipt;~~
- ~~it is taken to have been given on the next day which is not a Saturday, Sunday or public holiday in the place of receipt.~~

23.5 — Process service

~~Any process or other document relating to litigation, administrative or arbitral proceedings relating to this agreement may be served by any method contemplated by this **clause 23** or in accordance with any applicable Law.~~

23.6 — Representatives of the Operator

- (a) ~~The persons referred to in **item 7** of **schedule 1** are the Operator's representatives in relation to the relevant matters for which they have been nominated in respect of this agreement or the Train Services.~~
- (b) ~~The initial contact details for those persons are as set out in **item 7** of **schedule 1**.~~
- (c) ~~The Operator:~~
 - (i) ~~must notify Queensland Rail of any changes to those representatives or their contact details on or prior to that change occurring (subject to **clause 23.6(c)(ii)**); and~~
 - (ii) ~~must ensure that any person ceasing to be such a representative is replaced on or prior to (or, if this is not possible, as soon as practicable after) the time when that person ceases to be a representative.~~
- (d) ~~Nothing in this **clause 23.6** limits the requirements that may be set out in the Operating Requirements Manual in relation to the nomination of representatives or the provision of contact details for nominated representatives (including, for example, the nomination of persons as incident response coordinators or for the recovery of Rolling Stock).~~

~~24 — GST~~

~~24.1 — Definitions~~

~~In this agreement the expressions **adjustment note**, **consideration**, **GST**, **input tax credit**, **supply**, **tax invoice**, **recipient** and **taxable supply** have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).~~

~~24.2 — Sums exclude GST~~

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

~~24.3 — Responsibility for GST~~

- ~~(a) — Despite any other provisions in this agreement, if GST is imposed on any supply made by a Party (or any entity through which that Party acts) (**Supplier**) under or in connection with this agreement, the recipient must pay to the Supplier an amount equal to the GST payable on the supply.~~
- ~~(b) — Subject to **clause 24.5**, the recipient must pay the amount referred to in **clause 24.3(a)** in addition to and at the same time as payment for the supply is required to be made under this agreement.~~

~~24.4 — Reimbursement of expenses~~

~~If this agreement requires a Party to reimburse or indemnify any other Party for any expense, loss or outgoing (**reimbursable expense**) incurred by another Party, the amount required to be reimbursed or indemnified by the first Party will be the sum of:~~

- ~~(a) — the amount of the reimbursable expense net of input tax credits (if any) to which the other Party (or the representative member of the GST group of which the other Party is a member) is entitled in respect of the reimbursable expense; and~~
- ~~(b) — if the other Party's recovery from the first Party is a taxable supply, any GST payable in respect of that supply.~~

~~24.5 — Tax invoice~~

~~If an amount on account of GST or a GST inclusive price is charged or varied under this agreement, the Supplier must provide the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.~~

~~24.6 — Adjustment~~

~~If the amount of GST paid or payable by the Supplier (or the representative member of the GST group of which the Supplier is a member) on any supply made under this agreement differs from the amount on account of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by~~

~~the recipient to the Supplier or the Supplier to the recipient, as the case requires.~~

~~25 — General~~

~~25.1 — Duty~~

- ~~(a) — The Operator as between the Parties is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by Queensland Rail) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it.~~
- ~~(b) — If Queensland Rail pays any duty (including any fine, interest or penalty) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it, the Operator must pay that amount to Queensland Rail on demand.~~

~~25.2 — Legal costs~~

~~Except as expressly stated otherwise in this agreement, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this agreement.~~

~~25.3 — Waiver and exercise of rights~~

- ~~(a) — Waiver of any right arising in relation to a failure to comply with this agreement must be in writing and signed by the Party granting the waiver.~~
- ~~(b) — A single or partial exercise or waiver by a Party of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.~~
- ~~(c) — A Party is not liable for any Loss of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.~~
- ~~(d) — A failure or delay in the exercise, or partial exercise, of a right arising from a breach of this agreement does not result in a waiver of that right.~~

~~25.4 — Amendments~~

~~Except as otherwise provided in this agreement, an amendment of this agreement will only be effective if it is in writing and executed by all Parties.~~

~~25.5 — Rights cumulative~~

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

~~25.6 — Consents~~

~~Except as expressly stated otherwise in this agreement, a Party may conditionally or unconditionally give or withhold any consent, approval, acceptance or notice of no objection to be given under this agreement and is not obliged to give its reasons for doing so.~~

~~25.7 Further steps~~

~~Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this agreement and to perform its obligations under it.~~

~~25.8 Governing law and jurisdiction~~

~~(a) This agreement is governed by and is to be construed in accordance with the laws applicable in the State of Queensland.~~

~~(b) Each Party irrevocably and unconditionally:~~

~~(i) agrees that the courts of the State of Queensland and any courts which have jurisdiction to hear appeals from any of those courts are to have exclusive jurisdiction to settle disputes which may arise out of or in connection with this agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this agreement may be brought in, and only in, such courts;~~

~~(ii) waives any objection which it may have now or in the future to the laying of the venue of any Proceedings in such courts and any claim that any such Proceedings have been brought in an inconvenient forum; and~~

~~(iii) agrees that a final judgment in any Proceedings brought in such courts are conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.~~

~~25.9 Liability~~

~~An obligation of two or more persons binds them separately and together.~~

~~25.10 Counterparts~~

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

~~25.11 Entire understanding~~

~~(a) This agreement contains the entire understanding between the Parties as to the subject matter of this agreement.~~

~~(b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this agreement are merged in and superseded by this agreement and are of no effect.~~

~~(c) No oral explanation or information provided by any Party to another:~~

~~(i) affects the meaning or interpretation of this agreement; or~~

~~(ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.~~

~~25.12 Relationship of Parties~~

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

~~25.13 Severability~~

- ~~(a) Subject to **clause 25.13(b)**, if a provision of this agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this agreement.~~
- ~~(b) **Clause 25.13(a)** does not apply if severing the provision:
 - ~~(i) materially alters:
 - ~~(A) the scope and nature of this agreement; or~~
 - ~~(B) the relative commercial or financial positions of the Parties;~~~~
 - ~~or~~
 - ~~(ii) would be contrary to public policy.~~~~

~~25.14 Survival~~

- ~~(a) **Clauses 4, 5.1(c), 6.6(c) to (e), 10, 11, 13.5, 13.6, 14.8, 15.2, 15.4, 16, 17 and 22 to 26** remain in full force and effect and survive the expiry or termination of this agreement.~~
- ~~(b) **Clause 13.6** remains in full force and effect and survives the expiry or termination of this agreement until it is fully complied with by the Operator.~~
- ~~(c) All indemnities contained in this agreement survive the expiration or termination of this agreement.~~
- ~~(d) All representations and warranties in this agreement survive the execution and delivery of this agreement and the completion of the transactions contemplated by it.~~

~~25.15 Benefit~~

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

~~25.16 No merger~~

~~The rights and obligations of the Parties:~~

- ~~(a) continue until satisfied in full;~~
- ~~(b) do not merge on the completion of any transaction contemplated by this agreement; and~~
- ~~(c) survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.~~

~~25.17 Enforcement of indemnities~~

~~It is not necessary for a Party to incur expense or make a payment before enforcing an indemnity contained in this agreement.~~

~~25.18 Sublease~~

- ~~(a) The Operator acknowledges that:
 - ~~(i) Queensland Rail's interest in all or part of the land on which the Network is located and over which the Train Services will operate is or will be held under:
 - ~~(A) the Sublease; or~~
 - ~~(B) a lease, easement, licence, statutory right or other arrangement or right other than the Sublease, **(Land Tenure)**; and~~~~
 - ~~(ii) this agreement is subject to the terms and conditions (including all reservations), whether express or implied, of the Sublease (or the Head Lease) and any other Land Tenure.~~~~
- ~~(b) Queensland Rail may, from time to time, do either or both of the following:
 - ~~(i) give the Operator a copy of any Land Tenure (together with any relevant amendments from time to time); or~~
 - ~~(ii) notify the Operator of any requirements that the Operator must comply with in relation to that Land Tenure (together with any amendments from time to time) **(Tenure Requirements)**.~~~~
- ~~(c) Despite any other clause in this agreement and to the extent that the Operator operates Train Services on any part of the Network on land, or otherwise accesses land, that is the subject of any Land Tenure, the Operator must:
 - ~~(i) observe and comply with all relevant obligations of Queensland Rail under that Land Tenure and the Tenure Requirements; and~~
 - ~~(ii) not act, omit to act or permit, cause or contribute to any act or omission that may result in Queensland Rail:
 - ~~(A) breaching a term of any Land Tenure; or~~
 - ~~(B) incurring (directly or indirectly) any costs or expenses in complying with a Land Tenure that Queensland Rail would not otherwise have incurred.~~~~~~
- ~~(d) Without limitation to the circumstances where the Operator may fail to comply with **clause 25.18(c)**, the Operator must be taken to fail to comply with **clause 25.18(c)** if the Operator, by act or omission, fails to comply (or permits any non-compliance) with any Tenure Requirements.~~
- ~~(e) If there is an inconsistency between the terms of this agreement and the terms of any Land Tenure or Tenure Requirements which means that Queensland Rail or the Operator cannot comply with both this agreement and that Land Tenure or those Tenure Requirements, then the terms of that Land Tenure or those Tenure Requirements (as applicable) prevail~~

~~to the extent of the inconsistency and the provisions of this agreement will be construed accordingly.~~

~~(f) Queensland Rail does not warrant or represent:~~

~~(i) that it will not surrender all or part of any Land Tenure; or~~

~~(ii) that any Land Tenure will not be terminated or determined for any reason.~~

~~Queensland Rail will not be liable to the Operator for any Claims which may be brought against or made upon the Operator, or any Losses which the Operator suffers or incurs, in connection with any amendment, replacement, surrender, termination, expiry or determination of any Land Tenure.~~

~~26 Interpretation~~

~~26.1 Definitions~~

~~In this agreement:~~

~~**Access Charge Input** means a rate or other input, used for the purpose of calculating Access Charges, as specified in **clause 1** of **schedule 3** (including as varied, escalated or replaced from time to time in accordance with this agreement).~~

~~**Access Charges** means the charges determined in accordance with **schedule 3**.~~

~~**Access Rights** has the meaning given in **clause 2**.~~

~~**Access Undertaking** means Queensland Rail's access undertaking as approved by the QCA under the QCA Act, from time to time.~~

~~**Accreditation** means accreditation (including any exemption from the requirement for such accreditation) in accordance with Part 5 of the TRSA and **Accredited** means to have Accreditation.~~

~~**Affected Party** has the meaning given in **clause 18.1(a)**.~~

~~**Assign** means assign, novate, transfer or otherwise deal with, and **Assignment** and **Assignee** have a corresponding meaning.~~

~~**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.~~

~~**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;~~

~~**Business Day** means a day which is not a Saturday, Sunday or public holiday in Brisbane.~~

~~**Certification** has the meaning given in **clause 6.7(a)(i)**.~~

~~**Change in Law** means:~~

~~1. any amendment, repeal, modification or enactment of any Law;~~

- ~~(g) — 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;~~
- ~~(h) — the making of any new directive, or any change in an existing directive, of any Authority;~~
- ~~(i) — the imposition of a requirement for Authorisations not required as at the Commencement Date;~~
- ~~(j) — after the date of grant of any Authorisation, a change in the terms, conditions or requirements relating to that Authorisation including any new terms, conditions or requirements;~~
- ~~(k) — 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;~~
- ~~(l) — an amendment to or replacement of the Access Undertaking; or~~
- ~~(m) — a change in the application or interpretation of the Access Undertaking resulting from a decision of a court or other Authority.~~

~~**Change in Control** means:~~

~~1. a change in the entity that controls the Operator;~~

- ~~(n) — an entity that controls the Operator ceases to control the Operator; or~~
 - ~~(o) — if the Operator is not controlled, another entity acquires control of the Operator,~~
- ~~except where:~~

- ~~(p) — the Operator is listed on the Australian Securities Exchange before, and remains listed after, the relevant change;~~
- ~~(q) — the relevant change relates directly to the initial listing of the Operator on the Australian Securities Exchange; or~~
- ~~(r) — for paragraphs (a) and (b), the ultimate holding company of the Operator remains the same following the relevant change.~~

~~For the purposes of this definition “control”, “controls”, “controlled” and “ultimate holding company” have the meaning given to those terms in the Corporations Act.~~

~~**Change to Credit** means:~~

- ~~1. *a change in the rate, or basis of calculation, of; or~~
 - ~~(i) — 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~~
 - ~~(s) — any change in the funding or other support received by Queensland Rail from any Authority in relation to the Network.~~

~~**Charge** has the meaning given in **clause 20.3**.~~

~~**Chargee** has the meaning given in **clause 20.3**.~~

~~**Claim** means any claim, cause of action, proceeding, liability, suit or demand (including by way of contribution or indemnity) whether:~~

- ~~1. arising in contract, in tort (including negligence), under any Law or otherwise; or~~
 - ~~(t) — present or future, fixed or unascertained, actual or contingent.~~

~~**Claim Event** has the meaning given in **clause 11.6**.~~

~~**Commitment Date** has the meaning given in **item 5 of schedule 1**.~~

~~**Commencement Date** has the meaning given in **item 3 of schedule 1**.~~

~~**Confidential Information** means:~~

- ~~1. the terms of this agreement; and~~
 - ~~(u) — 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 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, excluding information that:~~
 - ~~(d) — was in the Recipient’s lawful possession prior to the disclosure; or~~

~~(e) — whether before or after the disclosure:~~

~~(A) — is in the public domain through means other than a breach of confidentiality by the Recipient (or anyone to whom the Recipient has disclosed it); or~~

~~(B) — is received by the Recipient independently from a third party who is free to disclose such information;~~

Confidentiality Exception means:

~~1. any disclosure or use of Confidential Information consented to by the Disclosing Party under **clause 22.2(a)**; or~~

~~(v) — any disclosure or use of Confidential Information:~~

~~(c) — 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 (other than section 275(1) of the *Personal Property Securities Act 2009* (Cth));~~

~~(iii) — to the extent necessary for the conduct of any legal proceedings (including any dispute resolution process under the Access 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 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 in accordance with the Access Undertaking.~~

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

1. any special, indirect or consequential loss;

- ~~(w) — any economic loss in respect of any claim in tort;~~
- ~~(x) — 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~~
- ~~(y) — 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:~~
 - ~~(z) — a loss (including a loss arising out of a Claim by a third party) in respect of:~~
 - ~~(c) — 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~~
 - ~~(i) — personal injury to or death of any person; or~~
 - ~~(aa) — in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims.~~

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

CPI means the Consumer Price Index: All Groups — Brisbane (Australian Bureau of Statistics Publication No.6401.0) as published by the Australian Bureau of Statistics (or other successor, authority or instrumentality having jurisdiction in the matter) as varied from time to time in accordance with this agreement.

Damage has the meaning given in **clause 8.2(a)**.

~~**Dangerous Goods** means any substance or thing defined as dangerous goods, explosives or radioactive material under a Dangerous Goods Code and includes any substance or thing specifically identified as such in **schedule 2**.~~

~~**Dangerous Goods Code** means:~~

- ~~1. the Australian Code for the Transport of Dangerous Goods by Road and Rail;~~
- ~~(bb) the Australian Code for the Transport of Explosives by Road and Rail; or~~
- ~~(cc) the Code of Practice for the Safe Transport of Radioactive Material, as published and in force from time to time and as amended or replaced.~~

~~**Data** has the meaning given in **clause 6.6(a)**.~~

~~**Disclosing Party** has the meaning given in **clause 22.1**.~~

~~**Dispute** has the meaning given in **clause 17.1**.~~

~~**Dispute Notice** has the meaning given in **clause 17.1(b)**.~~

~~**Dispute Notice Date** has the meaning given in **clause 17.2(a)**.~~

~~**Emergency Possession** means a Possession:~~

- ~~1. that is required to rectify a fault with the Network:
 - ~~i. that is considered by Queensland Rail to be dangerous or potentially dangerous to any person; or~~
 - ~~ii. where severe speed restrictions have been imposed that affect the scheduled Train services of Rail Transport Operators; and~~~~
- ~~(dd) that Queensland Rail intends to carry out within five Business Days after the detection of the fault.~~

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

~~**Expert** means an expert appointed in accordance with **clause 17.3**.~~

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

- ~~1. is beyond the reasonable control of the Affected Party; and~~
 - ~~(ee) by the exercise of due diligence the Affected Party was not reasonably able to prevent or is not reasonably able to overcome,~~
- ~~and includes:~~
- ~~(ff) 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;~~

- ~~(gg) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the Affected Party is a party to such industrial action or would be able to influence or procure the settlement of such industrial action;~~
- ~~(hh) act of God;~~
- ~~(ii) 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;~~
- ~~(jj) 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;~~
- ~~(kk) malicious damage or sabotage;~~
- ~~(ll) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste;~~
- ~~(mm) failure of electricity supply from the electricity grid;~~
- ~~(nn) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;~~
- ~~(oo) fire, flood, storm surge, cyclone, tornado, tsunami, earthquake, washaway, landslide, explosion, hail, lightning, severe weather conditions or other catastrophe or natural calamity;~~
- ~~(pp) any act or omission of any third party (including any third party's presence on or near the Network), without the express authorisation of Queensland Rail, that results in damage to the Network or the use or operation of the Network being prevented or impeded;~~
- ~~(qq) epidemic or quarantine restriction; and~~
- ~~(rr) delay of a supplier due to any of the foregoing whenever arising,~~
- ~~and, where the Operator is the Affected Party, excludes any cause, event or circumstance in connection with any right referred to in **clause 6.9** (including any failure by the Operator to obtain and maintain such rights, any exercise or performance of such rights and any inconsistency between such rights and this agreement).~~

~~**GST** has the meaning given in **clause 24.1**.~~

~~**Head Lease** means the lease from the Governor in Council to the State of Queensland (represented by the Department of Transport and Main Roads) of land on which all or part of the Network is located, granted in accordance with section 240(2) of the TIA.~~

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

Impost Change means:

~~1. the introduction or imposition of a new Impost;~~

~~(ss) a change in the rate, amount or application of an Impost; or~~

~~(tt) a change in the basis of calculation of an Impost.~~

~~**Incident** means any Network Incident involving the activities of the Operator.~~

~~**Insolvency Event** means, in relation to a Party, any one or more of the following events:~~

~~1. the Party is not able to pay all its debts from the Party's own money as and when they become due or has stated that it is unable to do so;~~

~~(uu) the Party has been presumed to be insolvent or unable to pay its debts under any applicable legislation;~~

~~(vv) a resolution is passed that the Party be wound up or placed in liquidation voluntarily or that an administrator be appointed;~~

~~(ww) an application or order has been made for the winding up or dissolution of the Party (other than an application which is dismissed or withdrawn within ten Business Days after such proceedings were commenced);~~

~~(xx) a controller, administrator, receiver, liquidator or provisional liquidator has been appointed to the Party or in respect of any of its property;~~

~~(yy) the Party has entered into or taken any action to enter into (whether formally or informally) an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;~~

~~(zz) a mortgagee has entered into possession of any of the Party's assets or undertakings; or~~

~~(aaa) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction has occurred in respect of the Party,~~

~~provided that, for the purposes of this definition, a reference to the Party includes any Related Party of the Party.~~

~~**Insurance** means those insurances to be effected and maintained in accordance with **clause 14**.~~

~~**Interest Rate** means the rate which is the aggregate of:~~

~~1.2% per annum; and~~

~~(bbb) the Commonwealth Bank of Australia's reference rate being the "Reference Rate" quoted by the Commonwealth Bank of Australia (or any successor bank) for borrowers with overdrafts of \$100,000 or more on any relevant date as published in the Australian Financial Review (or in the event that such a rate is not so quoted or published at or in respect~~

~~of any relevant date, such other similar rate to the “Reference Rate” specified by a major commercial bank agreed between the Parties or, if not agreed, a rate determined by an Expert in accordance with **clause 17.3**).~~

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

~~1. identify, to the extent reasonably practicable, all Interface Risks;~~

~~(ccc) assess the likelihood and consequences of those Interface Risks occurring and any factors relevant to the management of those Interface Risks; and~~

~~(ddd) 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 environment²⁶ arising from the interaction between the Operator’s proposed operations and any one or more of:~~

~~1. the Network;~~

~~(eee) operations on the Network (including those of other Rail Transport Operators and Queensland Rail); and~~

~~(fff) 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 Risk Management Plan** and **IRMP** mean the interface risk management plan set out in **schedule 4** as amended from time to time in accordance with **clause 7**.~~

~~**Land Tenure** has the meaning given in **clause 25.18(a)(i)**.~~

~~**Law** includes:~~

~~1. any statute, ordinance, code, law, by-law, proclamation, rule or regulation or any other subordinate legislation, whether State, Commonwealth or otherwise;~~

~~(ggg) the terms of any Authorisation;~~

~~(hhh) common law and equity; and~~

~~(iii) any order, circular, requirement, condition, notice, decree, decision, direction or guidelines of any Authority with which the Operator or Queensland Rail (as the case may be) is legally required to comply including any requirement to pay fees and charges;~~

²⁶ Environmental risks include:

(A) risks in relation to water quality, pollution, contaminated land, nature conservation, hazardous substances and dangerous goods, waste and noise; and

(B) risks of serious environmental harm, material environmental harm and environmental nuisance as defined in the *Environmental Protection Act 1994* (Qld).

~~whether now, or at any time in the future, in effect.~~

~~**Loss** means loss, damage, cost or expense including the costs and expenses of defending or settling any Claim (including legal costs and expenses on a full indemnity basis) whether:~~

- ~~1. arising in contract, in tort (including negligence), under any Law or otherwise; or~~
- ~~(jjj) — present or future, fixed or unascertained, actual or contingent.~~

~~**Material Change** means:~~

- ~~1. an Impost Change;~~

~~(kkk) a Change in Law; or~~

~~(lll) — a Change to Credit.~~

~~**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.~~

~~**Net Financial Effect** means the net adverse effect in financial terms of a Material Change on Queensland Rail in relation to performing its obligations or exercising its rights under this agreement including any offsetting benefits or adverse effects directly or indirectly connected to the Material Change.~~

~~**Network** means the rail transport infrastructure (as defined in the TIA):~~

- ~~1. for which Queensland Rail is the Railway Manager; and~~

~~(mmm) 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).²⁷~~

~~**Network Incident** means any Rolling Stock derailment, Rolling Stock disablement or breakdown, accident, collision or any other unplanned occurrence on the Network which causes or could cause death or injury to any person, damage to property or Environmental Harm or a disruption to or cancellation by Queensland Rail of any Train Movement.~~

~~**Network Management Principles** has the meaning given to that term in the Access Undertaking (from time to time) or, if the Access Undertaking ceases to define that term, the network management principles included in the Operating Requirements Manual from time to time.~~

~~**Nominated Access Rights** has the meaning given in **clause 19.2(a)(i)**.~~

~~**Notice** has the meaning given in **clause 23.1**.~~

~~**Notifiable Events** has the meaning given in **clause 8.5(b)**.~~

~~**Obstruction** means any thing or circumstance (including debris or other things on the Network), which has the potential to cause a disruption to or cancellation by Queensland Rail of Train Services or Train Movements and~~

²⁷ — In this definition, a term defined in the QCA Act has the meaning given to that term in the QCA Act.

includes any Network Incident but does not include an Operational Constraint imposed by Queensland Rail.

Operating Requirements Manual has the meaning given in the Access Undertaking, provided that on and from the date that **clauses 6.8(b) to (e)** commence in accordance with **clause 6.8(a)** the term means the 'Operating Requirements Manual' as defined under the Access Undertaking as at that date as amended from time to time by Queensland Rail under **clause 6.8**.

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's Associates means any director, officer, employee, contractor, agent or consultant of the Operator and any other person under the control or supervision of, or acting for or on behalf of, the Operator.

Operator's Customer means:

1. any person that has a rail haulage agreement or arrangement with the Operator in relation to the Access Rights;

(nnn) any consignor of goods to be transported by the Operator;

(ooo) any person with title to, or an interest in, any thing to be transported by the Operator; and

(ppp) any other person directly or indirectly benefitting from, or for whom the Operator operates, the Train Services.

Operator's Emergency Management Plan means a plan (including any amendments from time to time) developed and maintained by the Operator in accordance with **clause 8.3** and for which the Operator has obtained a notice from Queensland Rail, in accordance with **clause 8.3(a)** (and, if applicable, **clause 8.3(d)(iii)**), that Queensland Rail has no objection to that plan (including any amendments).

Parties means collectively Queensland Rail and the Operator, and **Party** means one of them.

Peak Periods means the time periods:

1. from 6:00am to 9:00am; and

(qqq) from 3:30pm to 6:30pm;

on Business Days or as otherwise notified by Queensland Rail (acting reasonably) from time to time.

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

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

Present Value means the present value calculated at a discount rate equal to the Weighted Average Cost of Capital (WACC) (as defined in the Access Undertaking from time to time).

Private Infrastructure means rail transport infrastructure (as defined in the TIA), including but not limited to the track, signalling and electrical overhead traction system (if applicable) for which Queensland Rail is not the Railway Manager.

Proceedings has the meaning given in **clause 25.8(b)(i)**.

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

QCA means the Queensland Competition Authority established under the QCA Act.

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

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

Queensland Rail Cause means Queensland Rail's inability to make the Network available for the operation of Train Services in accordance with this agreement as a result of:

1.a Planned Possession, Urgent Possession or Emergency Possession;

(rrr) a Force Majeure Event affecting Queensland Rail;

(sss) the derailment of any Train caused solely by an act or omission of Queensland Rail; or

(ttt) any other action by Queensland Rail other than Queensland Rail complying with an obligation in accordance with this agreement, the Access Undertaking or any applicable Law,

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

Queensland Rail Emergency Procedures means Queensland Rail's emergency procedures as set out in the Operating Requirements Manual.

Rail Infrastructure Operations means:

1.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;

~~(uuu) 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~~

~~(vvv) any inspections or investigations of the Network.~~

~~**Railway Manager** has means an Accredited rail infrastructure manager (as defined in the TRSA).~~

~~**Rail Safety Regulator** means the chief executive under the TRSA.~~

~~**Rail Transport Operator** means:~~

~~1. 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~~

~~(www) any Accredited rail transport operator (as defined in the TRSA), including:~~

~~(xxx) the Operator; and~~

~~(yyy) any person in control of, or operating, any Private Infrastructure.~~

~~**Recipient** has the meaning given in **clause 22.1**.~~

~~**Reference Tariff** means a prescribed access charge applicable for a specified Reference Train Service as set out in the Access Undertaking.~~

~~**Reference Tariff Provisions** means, to the extent that a Reference Tariff applies to the Train Services, the provisions in the Access Undertaking that either set out that Reference Tariff or are directly or indirectly related to the application or interpretation of that Reference Tariff.~~

~~**Reference Train Service** means a notional Train service described in the Access Undertaking in respect of a Reference Tariff and conforming to certain criteria, including carrying a specified commodity type, operating between specified geographical areas and conforming to specified technical characteristics, operational characteristics and contract terms and conditions.~~

~~**Related Party** means a related body corporate as defined in the Corporations Act.~~

~~**Relinquished Access Rights** means the Available Capacity (as defined in the Access Undertaking) that is created as a result of a relinquishment by the Operator of Nominated Access Rights in accordance with **clause 19.2**.~~

~~**Relinquishment Date** has the meaning given in **clause 19.2(a)(iii)**.~~

~~**Relinquishment Fee** means a fee:~~

~~1. equivalent to the Present Value of the aggregate of the Take or Pay Charges that would have been payable on and from the Relinquishment Date until the end of the Term if the relevant Access Rights were not relinquished and the Operator did not use those Access Rights; and~~

~~(zzz) if, prior to the Relinquishment Date, Queensland Rail has granted access rights (with effect on or after the Relinquishment Date) to a third party (including a Transferee) (**New Access Holder**) under an access agreement using the Relinquished Access Rights, adjusted to offset an amount equivalent to the Present Value of the aggregate of the take or pay charges, under that access agreement, payable by the New Access Holder:~~

- ~~(i) — that are directly attributable to that part of the access rights granted to the New Access Holder derived solely from the Relinquished Access Rights;~~
- ~~(ii) — for all or part of the same period as that used to calculate the amount under **paragraph (a)**; and~~
- ~~(iii) — calculated assuming the New Access Holder does not use the relevant access rights;~~

~~provided that if this calculation would result in an amount less than zero, then the fee equals zero.~~

~~**Repeated Breach** means an event or circumstance where:~~

~~1. Queensland Rail has given to the Operator at least two notices to remedy a breach of a particular provision of this agreement;~~

~~(aaaa) each notice referred to in **paragraph (a)** relates to a separate breach of the particular provision;~~

~~(bbbb) the Operator commits a further breach of the particular provision; and~~

~~(cccc) all of the breaches happened within a period of 12 months.~~

~~**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.~~

~~**Scheduled Time** means the time at which a Train Service has been scheduled by Queensland Rail to operate on the Network as detailed in the Train Schedule or as modified or varied by Queensland Rail from time to time on the day of operation in accordance with the Network Management Principles.~~

~~**Scheduled Train Path** means a Train Path that has been scheduled by Queensland Rail in a Train Schedule.~~

~~**Security** has the meaning given in **clause 15.1(a)**.~~

~~**Security Amount** has, subject to **clause 15.3**, the meaning given in **item 6 of schedule 1**.~~

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

Sublease means:

1. the sublease of the Head Lease between the State of Queensland (represented by the Department of Transport and Main Roads) (as sublessor) and Queensland Rail (as sublessee) for all or part of the land on which the Network is located; and

(dddd) any tenure or other right to that land which replaces all or part of that sublease from time to time and entitles Queensland Rail to operate, and provide access to, the Network.

Take or Pay Charges means that part of the Access Charges calculated as "TP" in accordance with **schedule 3**.

Tenure Requirements has the meaning given in **clause 25.18(b)(ii)**.

Term means the term of this agreement as determined in accordance with **clause 1**.

Termination Date has the meaning given in **item 4** of **schedule 1**.

Third Party Works means any works, maintenance of any thing or other activities (including design, construction, testing and commissioning activities) undertaken or required to be undertaken on, over or under the land on which the Network is located:

1. by or on behalf of an Authority;

(eeee) which Queensland Rail must permit in accordance with any Law or direction from an Authority;

(ffff) by or on behalf of a third party who wants and is entitled to install and operate services or other infrastructure on, over or under that land; or

(gggg) which Queensland Rail is required to permit either in accordance with the Sublease or because Queensland Rail's rights under the Sublease are subject to the rights of a third party to install and operate services or other infrastructure on, over or under that land.

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

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

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

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

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

1. all Train Movements;

2. all other operations of Rolling Stock on the Network; and

~~3.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 preventing or minimising the effect of a material breach of this 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 Control System** means the software, databases and systems used from time to time by Queensland Rail in connection with Train Control.~~

~~**Train Movement** means the operation of a Train on the Network by the Operator or any other 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 Schedule** means the train diagrams, yard schedules, terminal schedules and any other form of train timetable, plan or schedule prepared by Queensland Rail in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Network.~~

~~**Train Service** means the operation of a Train in accordance with this Agreement and, in **schedule 3**, a Train Service is a one way Train Service—that is, the journey from the origin to the destination is one Train Service, and the return journey from the destination to the origin is a second Train Service.~~

~~**Train Service Description** means the details set out in **schedule 2**.~~

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

~~**Transfer** has the meaning given in **clause 19.2(a)(ii)**.~~

~~**Transferee** has the meaning given in **clause 19.2(a)(ii)**.~~

~~**Urgent Possession** means a Possession:~~

~~1.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~~

~~2.that Queensland Rail intends to carry out within less than three months after the detection of the problem,~~

~~other than an Emergency Possession.~~

~~**Year** means, as applicable:~~

~~(c) —the period from the Commencement Date to the next 30 June;~~

~~(d) —a 12 month period during the Term subsequent to the period in **paragraph (a)** of this definition (subject to **paragraph (c)** of this definition); and~~

- ~~(e) — if the Termination Date is not 30 June, the period from (and including) 1 July immediately preceding the Termination Date and ending on the Termination Date.~~

26.2 — Construction

~~Unless expressed to the contrary, in this agreement:~~

- ~~(a) — words in the singular include the plural and vice versa;~~
- ~~(b) — any gender includes the other genders;~~
- ~~(c) — if a word or phrase is defined its other grammatical forms have corresponding meanings;~~
- ~~(d) — “include”, “includes” and “including” must be read as if followed by the words “without limitation”;~~
- ~~(e) — no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;~~
- ~~(f) — a reference to a term or expression:
 - ~~(i) — having the meaning given to it in the Access Undertaking; or~~
 - ~~(ii) — as defined in the Access Undertaking,~~is a reference to that term or expression as having the meaning given to it in the Access Undertaking, or as defined in the Access Undertaking, as at the Commencement Date;~~
- ~~(g) — a reference to:
 - ~~(i) — a person includes a partnership, joint venture, unincorporated association, corporation, a government or statutory body or authority and any other entity recognised by law;~~
 - ~~(ii) — a person includes the person’s legal personal representatives, successors, permitted assignees and persons substituted by novation;~~
 - ~~(iii) — any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;~~
 - ~~(iv) — an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;~~
 - ~~(v) — a right includes a benefit, remedy, discretion or power;~~
 - ~~(vi) — conduct includes:
 - ~~(A) — a benefit, remedy, discretion, authority or power; and~~
 - ~~(B) — any omission and any representation, statement or undertaking, whether or not in writing;~~~~~~

- ~~(vii) time is to local time in Brisbane;~~
- ~~(viii) a month is a reference to a calendar month;~~
- ~~(ix) "\$" or "dollars" is a reference to Australian currency;~~
- ~~(x) this or any other document includes this agreement or that other document, as applicable, as novated, varied or replaced and despite any change in the identity of the Parties or, for another document, the parties to that document;~~
- ~~(xi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;~~
- ~~(xii) this agreement includes all schedules and annexures to it;~~
- ~~(xiii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this agreement; and~~
- ~~(xiv) an Authority includes:
 - ~~(A) any successor to, or replacement of, that Authority;~~
 - ~~(B) any re-constitution or re-naming of that Authority; and~~
 - ~~(C) any other Authority who is transferred any of the powers or functions of that Authority;~~~~
- ~~(h) if the date on or by which any act must be done under this agreement is not a Business Day, the act must be done on or by the next Business Day;~~
- ~~(i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and~~
- ~~(j) if there is any inconsistency:
 - ~~(i) between matters contained in a schedule to this agreement and other provisions of this agreement that are not contained in a schedule, then those other provisions of this agreement prevail; or~~
 - ~~(ii) between matters contained in the Access Undertaking and this agreement, the provisions of this agreement prevail.~~~~

26.3 Headings

Headings do not affect the interpretation of this agreement.

Schedule 1

(iii) Reference schedule

2	Operator	[insert name] ABN [insert] of [insert]
3	Operator's particulars for Notices	Delivery address: [insert] Postal address: [insert] Facsimile: [insert] Attention: [insert]
4	Commencement Date	[insert date of execution by Parties]
5	Termination Date	The earlier of: 1. [insert]; and (f) the termination of this agreement in accordance with its provisions (including clauses 13 and 18.2 , as applicable) or any Law.
6	Commitment Date	[insert date when access is to be available]
7	Security Amount	[insert]
8	Initial details for the Operator's representatives	Representative for Obstructions Name: _____ Position: _____ Phone: _____ Mobile: _____ Facsimile: _____ Email: _____ Representative for loading of Train Services Name: _____ Position: _____ Phone: _____ Mobile: _____

		<p>Facsimile: Email:—</p> <p>Representative for Operational Meetings</p> <p>Name:— Position:— Phone:— Mobile:— Facsimile: Email:—</p> <p>Representative for Contractual Meetings</p> <p>Name:— Position:— Phone:— Mobile:— Facsimile: Email:—</p> <p>Representative for Document Control</p> <p>Name:— Position:— Phone:— Mobile:— Facsimile: Email:—</p>
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Schedule 2

(iv) Train Service Description

The details for the Train Service Description are as follows:

Origin	
Destination	
Average Haul Distance	
Commodity	
Dwell Times²⁸	
Applicable Network	The part of the Network to be used by the Train Services is described in the train route acceptance in Attachment 3 of this schedule 2 .
Rolling Stock and Train Configuration	The details for the Rolling Stock and Train Configuration to be used for the Train Services are set out in the train route acceptance in Attachment 3 of this schedule 2 .
Train Service Levels	The description of the Train Service levels is set out in Attachment 1 of this schedule 2 .
Special Operating Requirements	The special operating requirements of the Train Service are set out in Attachment 2 of this schedule 2 .
Storage	The Train Services do not include the storage of Trains (whether short or long term) on the Network except short term storage as agreed, from time to time, between the Parties (in each Party's absolute discretion).

²⁸ A dwell time is the time period from when the Train Service arrives at a specified point until it has completed all relevant activities, is ready to depart from that point and has advised the relevant Train-Controller accordingly.

Differences from the relevant Reference Train Service	The Train Services must only differ from the Reference Train Service as follows: (A) [insert]; (B) [insert]; and (C) in accordance with any other differences as expressly set out in this agreement.
Dangerous Goods	Nil

~~Attachment 1 – Train Service levels~~

~~[insert relevant Train Services levels including daily, weekly, monthly and/or annual description of Train Services and other details relevant to the preparation of the Master Train Plan, including section run times.]~~

~~[Drafting Note: If a Train Service is only a one-way Train Service for the purposes of this description, then this should be specifically referred to in the description.]~~

~~Attachment 2 – Special operating requirements~~

~~1 Provisioning locations~~

~~The provisioning locations for Train Services are:~~

~~(g) — [insert]; and~~

~~(h) — any other locations as agreed with Queensland Rail (in its absolute discretion);~~

~~except that if a Network Incident or delay occurs that affects more than one Train Service, the provisioning locations will be as agreed between the Parties (acting reasonably) for agreed Train Services and an agreed time period.~~

~~2 [insert]~~

~~[insert other requirements — for example, exit and entry points, shunting areas]~~

~~Attachment 3 – Train route acceptance~~

~~4. Applicable Network~~

~~[insert]~~

~~6 – Rolling Stock and Train Configuration~~

~~[insert]~~

Schedule 3

(v) Calculation of Access Charges and other charges

7 Access Charge Inputs

(a) The Access Charge Inputs (as at the Commencement Date) to apply for specific Train Services are as set out below:

Origin	Destination	Access Charge Inputs		
		Variable rate AT ₁ (\$/1000gtk)	Fixed rate AT ₂ (\$/Train Path)	QCA Levy ²⁹ QL (\$/Net Tonne)

Miscellaneous train services ³⁰	Access Charge Input
Unscheduled repositioning of Rollingstock within the Applicable Network described in schedule 2.	
All other such relocations and movements	

²⁹ The QCA Levy is a fee imposed by the QCA on the beneficiaries of the QCA's regulatory services. This levy will be reviewed and endorsed by the QCA annually.

³⁰ For clarity, a miscellaneous train service to which the miscellaneous train service rates apply will be treated as a special type of ad hoc train service for the purposes of this agreement including the application of the Network Management Principles and are comprised in 'Ad Hoc Train Services' as referred to under the Network Management Principles.

³⁴ Where tkm is a reference to train kilometre—that is, each kilometre or part thereof travelled on the Network by the Train(s) or Rollingstock involved. For example, if the relevant miscellaneous train service rate is \$X/tkm and the total tkm for in respect of those miscellaneous train services is 1000, then the relevant charge will be X multiplied by 1000.

~~(b) The Access Charge Inputs will be varied or escalated in accordance with clauses 2 and 3 of this schedule 3 and clause 16, as applicable.~~

~~8 CPI escalation~~

~~8.1 Calculation of CPI escalation~~

~~Unless otherwise agreed between the Parties, the Access Charge Inputs (other than the QCA Levy), and any other charges or rates expressed in this agreement as being subject to escalation, will escalate on each 1 July during the Term (Escalation Date), in accordance with the following formula:~~

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

~~Where:~~

~~**ACI_n** means the amount of the relevant Access Charge Input (or other charge or rate) that commences to apply on the relevant Escalation Date;~~

~~**ACI_{n-1}** means the amount of the relevant Access Charge Input (or other charge or rate) applicable immediately prior to the relevant Escalation Date;~~

~~**CPI_n** means the CPI for the Quarter which commenced six months prior to the relevant Escalation Date;~~

~~**CPI_{n-1}** means the CPI for the Quarter which commenced 18 months prior to the relevant Escalation Date.~~

~~8.2 Review of CPI~~

~~(a) 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;~~

~~then either Party may notify the other Party that the CPI is required to be replaced.~~

~~(b) After a notice is given in accordance with clause 2.2(a) of this schedule 3:~~

~~(i) the Parties will negotiate in good faith for the purpose of agreeing to vary or replace the CPI; and~~

~~(ii) if the Parties fail to agree within 30 days after that notice is given, then the matter must be referred to an Expert for determination in accordance with clause 17.3.~~

- (c) ~~For clarity, if the Parties reach agreement, or the Dispute is resolved, after the relevant Escalation Date, the Parties agree to retrospectively adjust any Access Charges (or other relevant amounts) invoiced since that date to be consistent with that agreement, or the resolution of the Dispute, in accordance with **clause 4.6**.~~
- (d) ~~This **clause 2.2** is subject to **clause 16.1** and does not apply to the extent that the CPI is, or is proposed to be, varied in accordance with **clause 16.1**.~~

~~9 Variation of QCA Levy~~

~~Queensland Rail may, from time to time, vary the Access Charge Input for the QCA Levy by giving notice in writing to the Operator of that variation. However, that Access Charge Input must only be varied by Queensland Rail if the QCA:~~

- (a) ~~requires a change in the QCA Levy;~~
- (b) ~~has approved a different allocation of the QCA Levy amongst different types of train services; or~~
- (c) ~~otherwise approves that variation.~~

~~10 Calculation of invoice for access~~

~~10.1 Invoice calculations~~

~~The amount of the invoice for charges payable by the Operator to Queensland Rail under this agreement for a relevant month is calculated in accordance with the following formula:~~

$$~~TC = AC \times (1 + GST) + G~~$$

~~where:~~

~~**TC** is the total amount of charges payable by the Operator for the relevant month;~~

~~**AC** is the sum of VC, FC and QCAL for each Train Service for the relevant month and, if the relevant month is:~~

~~1. the last month of the Year; or~~

~~2. the month in which this agreement has expired or terminated,~~

~~TP;~~

~~**FC** is the fixed charge component for the relevant Train Service calculated by the formula:~~

$$~~AT_2 \times rtp~~$$

~~where:~~

~~rtp~~ has the meaning given to that term in the Access Undertaking in relation to the relevant Train Service; and

~~AT₂~~ is the amount specified as such in **clause 1** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

~~VC~~ is the variable charge component for the relevant Train Service calculated by the formula:

$$\frac{AT_1 \times gtk}{1000}$$

where:

~~gtk~~ is the gross tonne kilometres for the relevant Train Service calculated in accordance with **clause 5.2** of this **schedule 3**; and

~~AT₁~~ is the amount specified as such in **clause 1** of this **schedule 3** for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

~~QCAL~~ is the QCA Levy component for the relevant Train Service which is calculated by the formula:

$$QL \times nt$$

where:

~~QL~~ is the amount specified as such in **clause 1** of this **schedule 3** for the relevant Train Service applicable for the relevant month as varied from time to time in accordance with this agreement; and

~~nt~~ is the net tonnes for the relevant Train Service calculated in accordance with **clause 5.3** of this **schedule 3**;

~~TP~~ is the take or pay charge for the relevant Year which is the greater of zero and the amount calculated by the formula:

$$\left(\left(AT_1 \times \frac{gtk}{1000} \right) + AT_2 \right) \times NTNO \times 0.8$$

where:

~~AT₁~~ is the amount specified as such in **clause 1** of this **schedule 3**, as escalated, or varied, from time to time in accordance with this agreement, for the relevant Train Service as applicable on the last day of the relevant Year;

~~AT₂~~ is the amount specified as such in **clause 1** of this **schedule 3**, as escalated, or varied, from time to time in

accordance with this agreement, for the relevant Train Service as applicable on the last day of the relevant Year;

gtk is the average gross tonne kilometres for the relevant Train Services calculated in accordance with **clause 5.2** of this **schedule 3**; and

NTNO is the amount calculated by the formula:

$$\text{NTNO} = \text{TSEY} - \text{TSOY} - \text{TSQRCY}$$

where:

TSEY is the number of Train Services that the Operator was entitled to operate for the Year under this agreement;

TSOY is the number of Train Services that the Operator operated for the Year under this agreement; and

TSQRCY is the number of relevant Train Services which failed to operate for the Year under this agreement due to a Queensland Rail Cause;

GST is the rate of GST (expressed as a decimal) applicable at the time the supply is made; and

G is the sum of any other amount due and payable under this Agreement including charges for GST not already factored in by the formula for AC including, but not limited to, interest, payment for ad-hoc train services and miscellaneous train services not calculated in AC above, any Adjustment Charges (as defined in the Access Undertaking) and any other adjustments (positive or negative).

11 Interpretation

11.1 Train Services operate in the period in which they commence to operate

For the purposes of **clause 4.1** of this **schedule 3**, a Train Service is taken to have operated in the month or a Year in which it commenced operation from its origin even if that Train Service does not reach its destination until the next month or Year.

11.2 Gross tonne kilometres

(a) The gross tonnes (**gt**) for a Train Service is calculated as the sum of:

- (i) the maximum gross mass as specified in the Train Control System for each locomotive comprised in the Train Service;
- (ii) if the Train Service is operated loaded or partly loaded, the maximum gross mass as specified in the Train Control System for each wagon comprised in the Train Service (for clarity, an empty

wagon in a loaded Train Service will be treated as a loaded wagon);

- (iii) — if the Train Service is operated empty, the tare mass as specified in the Train Control System for each wagon comprised in the Train Service; and
- (iv) — for all other Rolling Stock, the maximum gross mass specified in the Train Control System for each item of such Rolling Stock comprised in the Train Service.

(b) — The gross tonne kilometres (**gtk**) for a Train Service is determined as:

- (i) — the multiple of the gt for the Train Service and the distance travelled in kilometres by the Train Service, provided that there has been no change in the gt of the Train Service over the relevant haulage distance being assessed; or
- (ii) — where there has been a change in gt for the Train Service over the relevant haulage distance (refer to average haul distance as listed in **schedule 2**) being assessed, the gtk must be determined separately for each part of the haulage distance for which there is a different gt and then each such gtk is aggregated to determine the total gtk for the Train Service over the relevant haulage distance.

11.3 Net tonnes

— The net tonnes (**nt**) for a Train Service is equal to the gt for the Train Service calculated in **clause 5.2(a)** of this **schedule 3** less the sum of:

- (a) — the maximum gross mass as specified in the Train Control System for each locomotive comprised in the Train Service;
- (b) — the tare mass as specified in the Train Control System for each wagon comprised in the Train Service; and
- (c) — for all other Rolling Stock, the tare mass specified in the Train Control System for each item of such Rolling Stock comprised in the Train Service.

~~Schedule 4~~

~~(vi) Interface Risk Management Plan~~

~~Executed as an agreement.~~

~~Executed by Queensland Rail)
Limited by its duly authorised officer in)
the presence of:)~~

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

~~Executed by [Insert name of)
Operator])~~

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)