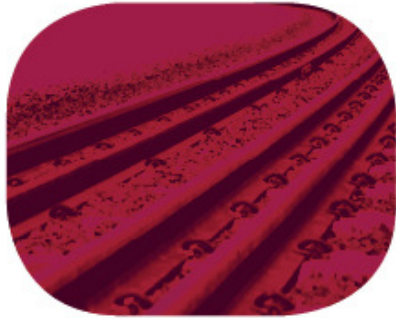





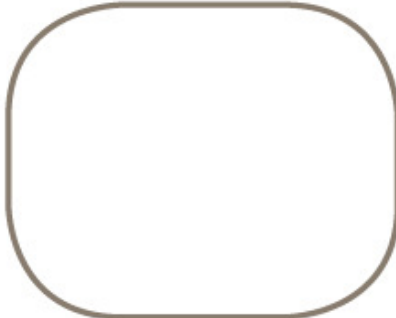
# QR Network's 2010 Access Undertaking



Consolidated Version  
prepared as at March  
2015



This consolidated version of the 2010 Access Undertaking incorporates the following amendments:

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1. the May 2013 Extension Draft Amending Access Undertaking as approved by the QCA on 31 May 2013;
  2. the QCA's consequential amendments relating to the Alternate Standard Access Agreement as approved by the QCA on 1 August 2013;
  3. the June 2013 GAPE Draft Amending Access Undertaking as approved by the QCA on 26 September 2013;
  4. the May 2014 Extension Draft Amending Access Undertaking as approved by the QCA on 12 June 2014; and
  5. the March 2015 Extension Draft Amending Access Undertaking as approved by the QCA on XX 2015.

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## VOLUME 2 – STANDARD ACCESS AGREEMENTS

## PART 1: PREAMBLE

QR Network is a wholly owned subsidiary of QR, a leading integrated national transport provider.

QR Network is responsible for providing, maintaining and managing access to, and operations on, its rail network and associated rail infrastructure. QR Network's rail network totals almost 10,000 kilometres and includes its metropolitan Citytrain network, regional freight and tourist lines, heavy haul tracks in central Queensland, and the interstate track between the New South Wales border and Brisbane.

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

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

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

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

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

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

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

QR Network Pty Ltd  
GPO Box 456, Brisbane Qld 4001  
Floor 21, 127 Creek Street, Brisbane Qld 4000

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

## **PART 2. INTENT AND SCOPE**

### **2.1 DURATION OF UNDERTAKING**

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

### **2.2 NON-DISCRIMINATORY TREATMENT**

- (a) This Undertaking will be consistently applied to all Access Seekers, Access Applications and negotiations for Access. QR Network will not unfairly differentiate between Access Seekers in negotiating with Access Seekers for the provision of Access or between Access Holders in providing Access, including in relation to:
  - (i) any decision relating to whether QR Network will undertake an Expansion;
  - (ii) assessing, allocating and managing Capacity; and
  - (iii) providing scheduling and Train Control Services in accordance with the Network Management Principles,except where there is an express provision to the contrary in:
  - (iv) the Undertaking or the Act; or
  - (v) an Access Agreement and the relevant conduct would not contravene Clause 3.2(a).
- (b) If an Access Seeker or Access Holder considers that QR Network has failed to comply with Clause 2.2(a) they may lodge a written complaint with QR Network.
- (c) QR Network will:
  - (i) advise the QCA, as soon as practicable, of any complaints it receives pursuant to Clause 2.2(b);
  - (ii) investigate complaints received pursuant to Clause 2.2(b); and
  - (iii) advise the complainant and the QCA in writing of the outcome of that investigation and QR Network's proposed response, if any, and use reasonable endeavours to do so within twenty-eight (28) days after receiving such a complaint.
- (d) If the complainant is not satisfied with the outcome of QR Network's investigation, the complainant can apply to the QCA seeking an audit of the conduct that is the subject of the complaint in relation to QR Network's compliance with Clause 2.2(a).
- (e) If a complainant applies to the QCA in accordance with Clause 2.2(d):
  - (i) the QCA may request QR Network to have an audit conducted in accordance with Clause 10.3 in respect of QR Network's compliance with Clause 2.2(a) as it relates to the relevant complaint, if the QCA reasonably believes that such an audit is necessary; and
  - (ii) if the QCA makes such a request, the audit will be conducted in accordance with Clause 10.3.

### **2.3 INTENT**

The intent of this Undertaking is to:

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

### **2.4 SCOPE**

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

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

- (c) Access Holders are responsible for the provision of any services other than Access, including Above Rail Services, required for the operation of Train Services. For the avoidance of doubt, where Access Rights are held via an EU Access Agreement, the relevant TOA Access Holder(s), not the relevant EU Access Holder, is responsible for the provision of Above Rail Services.



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

## **2.5 ULTIMATE HOLDING COMPANY SUPPORT DEED**

### **2.5.1 QR Network to Procure Deed**

QR Network will procure that its Ultimate Holding Company provides a deed in favour of the QCA which obliges the Ultimate Holding Company to ensure that all QR Parties will take such actions as are necessary to enable QR Network to comply with its obligations under this Undertaking where it is reliant on any QR Party in order to do so. In particular, that deed shall expressly require:

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

Party has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to;

- (b) QR Parties to take the steps required to allow QR Network to obtain ownership of rail transport infrastructure (as defined under the TIA) in accordance with Clause 3.8.2;
- (c) QR Parties to take the steps required to allow QR Network to procure a sale or supply of electric energy in accordance with Clause 2.4(e); and
- (d) QR Parties to comply with the arrangements prescribed in Part 3 (Ringfencing Arrangements) of this Undertaking; and
- (e) the Ultimate Holding Company to provide statements to the QCA as required by Clause 7.5.4(c)(ii).

### **2.5.2 Failure to Procure or Comply with Deed**

- (a) If QR Network's Ultimate Holding Company has not provided a deed in favour of the QCA of the type required by Clause 2.5.1 that remains current, or QR Network's Ultimate Holding Company fails to comply with the requirements of such a deed, then Clause 3.4.2 of the Undertaking will cease to permit disclosure of Confidential Information of Third Party Access Seekers and Third Party Access Holders other than to individuals within QR Network, until:
  - (i) QR Network's Ultimate Holding Company does provide a current deed of the type required by Clause 2.5.1; or
  - (ii) QR Network's Ultimate Holding Company rectifies its failure to comply with the deed to the satisfaction of the QCA,as applicable.

### **2.6 DRAFT INCENTIVE MECHANISM**

- (a) Following the Approval Date, QR Network will consult with Access Holders, Access Seekers, their Customers, and any affected Infrastructure Service Providers, in relation to how the revenue cap adjustment provisions in this Undertaking for the Central Queensland Coal Region might be amended to provide an incentive framework that provides QR Network with an incentive to operate, and invest in, the Rail Infrastructure efficiently and to do so in a way that promotes efficiency of a coal supply chain.
- (b) Within one (1) year after the Approval Date, QR Network will submit to the QCA draft amendments to the revenue cap adjustment provisions in this Undertaking to provide QR Network with an incentive to operate, and invest in, the Rail Infrastructure efficiently and to do so in a way that promotes efficiency of a coal supply chain ("Draft Incentive Mechanism Amendments").
- (c) The QCA may develop its own Draft Incentive Mechanism Amendments if:
  - (i) QR Network does not comply with Clause 2.6(b);
  - (ii) QR Network does not comply with a notice given by the QCA under Clause 2.6(h)(ii) for it to resubmit, the Draft Incentive Mechanism Amendments; or
  - (iii) the QCA refuses to approve the Draft Incentive Mechanism Amendments resubmitted by QR Network in accordance with Clause 2.6(h)(ii).
- (d) Where QR Network submits or resubmits, or the QCA develops, Draft Incentive Mechanism Amendments, the QCA will:
  - (i) publish the Draft Incentive Mechanism Amendments;

- (ii) invite Access Holders, Access Seekers, their Customers, and any affected Infrastructure Service Providers (and, if the QCA develops Draft Incentive Mechanism Amendments, QR Network) to make submissions on the Draft Incentive Mechanism Amendments to the QCA within a reasonable period of time specified by the QCA; and
  - (iii) consider any submission it receives within that time.
- (e) The QCA will consider the Draft Incentive Mechanism Amendments submitted or resubmitted by QR Network under this Clause 2.6 and either approve or refuse to approve those Draft Incentive Mechanism Amendments within sixty (60) days after their receipt by the QCA or such further period as either the QCA and QR Network may agree or the QCA may reasonably determine and notify to QR Network.
- (f) The QCA may approve Draft Incentive Mechanism Amendments (including Draft Incentive Mechanism Amendments developed by the QCA) only if
  - (i) the QCA considers it appropriate to do so having regard to the matters listed in s.138(2) of the Act;
  - (ii) the incentive mechanism the subject of the Draft Incentive Mechanism Amendments:
    - (A) operates in manner such that the objective is reasonably related to contracted entitlements, and the positive incentive QR Network can obtain for outperformance is proportionate to the negative incentive for under performance (that is, in a symmetrical manner); and
    - (B) would not potentially have the effect of reducing or increasing any System Allowable Revenue by more than 5%; and
  - (iii) the QCA has complied with Clause 2.6(d).
- (g) If the QCA approves Draft Incentive Mechanism Amendments under Clause 2.6(f):
  - (i) subject to Clause 2.6(g)(ii), the Draft Incentive Mechanism Amendments will:
    - (A) apply to the revenue cap adjustment for the relevant Year in which the QCA's approval is given – which is to be calculated by QR Network and submitted to the QCA in the next Year; and
    - (B) will not apply to the revenue cap adjustment for the Year prior to the Year in which the QCA's approval is given;
  - (ii) if the QCA's approval is given in the last quarter of a Year, then the Draft Incentive Mechanism Amendments will not apply to the revenue cap adjustment for that Year;
  - (iii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
  - (iv) QR Network must publish a new version of this Undertaking incorporating the Draft Incentive Mechanism Amendments as approved.
- (h) If the QCA refuses to approve Draft Incentive Mechanism Amendments, the QCA will give QR Network a notice in writing:
  - (i) stating the reasons for its refusal and the way in which the QCA considers that the Draft Incentive Mechanism Amendments should be amended; and

- (ii) where the Draft Incentive Mechanism Amendments have been submitted under Clause 2.6(b), requiring QR Network to amend the Draft Incentive Mechanism Amendments in a way the QCA considers appropriate and resubmit the Draft Incentive Mechanism Amendments to the QCA within thirty (30) days of that notice.
- (i) If QR Network complies with the notice given under Clause 2.6(h)(ii), the QCA may approve the resubmitted Draft Incentive Mechanism Amendments in accordance with Clause 2.6(f)
- (j) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, the Draft Incentive Mechanism Amendments, if:
  - (i) QR Network provides a written request to the QCA for an extension of time which outlines the reason why QR Network requires the extension of time; and
  - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (k) Nothing in this Clause 2.6 affects:
  - (i) the rights of QR Network under the Act; or
  - (ii) the operation of revenue cap adjustment provisions in Part B, Schedule F of this Undertaking – except to the extent that Draft Incentive Mechanism Amendments are approved by the QCA.

## **PART 3: RINGFENCING ARRANGEMENTS**

### **3.1 ORGANISATIONAL STRUCTURE**

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

and QR Network seeks to terminate those arrangements and execute an agreement with a Related Operator for the provision of such services,

then QR Network will submit a Draft Amending Undertaking to the QCA and the Related Operator(s) may only take over responsibilities for such matters upon approval by the QCA of the Drafting Amending Undertaking.

- (e) During the Term, QR Network and the QCA may agree to jointly review the appropriateness of Yard Control services at yards other than Major Yards continuing to be performed by a Related Operator. QR Network will, after first obtaining the approval of the QCA, take whatever reasonable steps are required to implement the findings of any such review.

### **3.1.1 QR Corporate Structure**

- (a) QR Network has a number of Related Parties, including:
  - (i) Railway Operators (“Related Operators”) which are competitors to other Third Party Railway Operators which may be Access Seekers and/or Access Holders; and
  - (ii) providers of support services and/or corporate functions to both QR Network and Related Operators.

This Part 3 is intended, amongst other matters, to ensure that the provision of Below Rail Services by QR Network is managed independently of the provision of Above Rail Services by Related Operators.

### **3.1.2 Independence of Senior Management**

- (a) QR Network must:
  - (i) ensure that QR Network is managed independently from Related Operators; and
  - (ii) procure that Related Operators do not participate in the appointment or supervision of the executive management of QR Network.

## **3.2 GENERAL PRINCIPLES OF NON-DISCRIMINATION AND INDEPENDENCE**

- (a) QR Network will not, and will procure that its Related Parties do not:
  - (i) engage in conduct for the purposes of preventing or hindering an Access Seeker’s or Access Holder’s Access; or
  - (ii) provide Access to Related Operators on more favourable terms than the terms on which QR Network provides Access to competitors of Related Operators (having regards to all of the terms on, and circumstances in which, Access is provided including the Access Charges and differences in the Access Rights provided or utilised).
- (b) QR Network will ensure that:
  - (i) all transactions between QR Network and Related Operators in relation to Access are conducted on an arms-length basis;
  - (ii) all Access Seekers, irrespective of whether they are a QR Party or Third Party:
    - (A) are provided with a consistent level of service; and

- (B) given an equal opportunity to obtain Access Rights, subject to the express provisions of the Act and this Undertaking; and
- (iii) all decisions made under this Undertaking are made in a manner that is consistent between all Access Seekers and/or Access Holders in the same circumstances.
- (c) QR Network must not engage in any activity or conduct (or agree to engage in such activity or conduct), either independently or with Related Operators, which has the purpose of, or results in or creates, or is likely to result in or create:
  - (i) anti-competitive cost shifting;
  - (ii) anti-competitive cross-subsidies;
  - (iii) anti-competitive price or margin squeezing.

### **3.3 ACCOUNTING SEPARATION**

#### **3.3.1 Preparation of Financial Statements**

- (a) Unless otherwise approved by the QCA, QR Network will develop, on an annual basis:
  - (i) General purpose financial statements for QR Network in accordance with relevant legislation and applicable Australian accounting standards;
  - (ii) “Financial Statements” which include a supplementary set of financial statements separately identifying QR Network’s business in respect of the Rail Infrastructure regulated by this undertaking from any other business conducted by QR Network (if any) and are otherwise developed in accordance with the methodology and format set out in the Costing manual.
- (b) The Financial Statements will be certified by the QR Network Executive General Manager as being in accordance with the Costing Manual and, for Financial Statements prepared under Clause 3.3.1(a)(i), will be audited in accordance with Clause 3.3.2.

#### **3.3.2 Audit of Financial Statements**

- (a) An audit of the Financial Statements will be conducted:
  - (i) within six (6) months of the end of the Year to which the Financial Statements relate, or such longer time as agreed by the QCA;
  - (ii) subject to this Clause 3.3.2, in accordance with Clause 10.3; and
  - (iii) by an Auditor who should be, or have the assistance of, a person with expertise and experience in the area of costing of railway activities.
- (b) QR Network acknowledges that, in order to facilitate finalisation of the audit within the required timeframe, certain aspects of the audit may be undertaken by the Auditor at different times throughout the relevant Year.
- (c) The Auditor will:
  - (i) examine whether the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual; and
  - (ii) prepare an audit report that specifies:

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

### **3.4 MANAGEMENT OF CONFIDENTIAL INFORMATION**

- (a) For the purpose of this Clause 3.4:
  - (i) "Confidential Information", in addition to the meaning as defined in Clause 12.1, includes information or data collected by QR Network or an Access Holder in the performance of an Access Agreement where the disclosure of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement; and
  - (ii) that other party shall be deemed to be the owner of such Confidential Information.
- (b) The provisions in this Clause 3.4 apply in relation to the handling of Confidential Information:
  - (i) disclosed by Third Party Access Seekers or Third Party Access Holders to QR Network, or disclosed by QR Network to Third Party Access Seekers or Third Party Access Holders, as part of an Access Application or Indicative Access Proposal (including any related discussions or disclosures of information), negotiations for Access and, unless otherwise agreed, as provided under, in accordance with or for the purpose of, an Access Agreement; or
  - (ii) collected by a Third Party Access Holder or QR Network in the performance of an Access Agreement with a Third Party,

except that they do not apply to the handling of Confidential Information which relates solely in all material respects to services other than the provision of Access to Rail Infrastructure for the purpose of one or more Train Services. Where a document or discussion is comprised of information only some of which would be information to which this Clause 3.4 applies, this Clause 3.4 will not apply to the remainder of the information in the document or discussion to the extent that QR Network can clearly separate this information from the information to which this Clause 3.4 applies.
- (c) At any time during the negotiation process, including prior to the submission of an Access Application by a Third Party Access Seeker in accordance with Clause 4.1, a Third Party Access Seeker may require QR Network to enter into a confidentiality deed with the Third Party Access Seeker. Similarly, at any time during the negotiation process, QR Network may require a Third Party Access Seeker to enter into a confidentiality deed with QR Network. The confidentiality deed entered into in accordance with this Clause 3.4(c) will be in



the form specified in Schedule B1, unless otherwise agreed between QR Network and the Third Party Access Seeker.

- (d) QR Network, Third Party Access Seekers, and Third Party Access Holders undertake at all times to keep confidential and not disclose any Confidential Information of the other party or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed by or engaged by a party) except in accordance with this Undertaking or a confidentiality deed entered into between the parties, and to use Confidential Information of the other party only for the purpose for which it is disclosed or collected, unless:
- (i) the owner of the Confidential Information provides its prior written approval, with such approval not to be unreasonably withheld; or
  - (ii) the disclosure and/or use is:
    - (A) required or compelled by any law;
    - (B) required or compelled by any order of a court;
    - (C) required or compelled by notice validly issued by any Authority;
    - (D) necessary for the conduct of any legal proceedings, including any dispute resolution process under this Undertaking or the Act;
    - (E) required under any stock exchange listing requirement or rule;
    - (F) to the Safety Regulator;
    - (G) to the recipient's solicitors, barristers, or accountants under a duty of confidentiality;
    - (H) to the recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the owner of the Confidential Information;
    - (I) requested by the shareholding ministers in QR Network's Ultimate Holding Company;
    - (J) for the purpose of facilitating Train Control directions where the disclosure of information is by QR Network in the usual course of undertaking Train Control Services;
    - (K) by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure;
    - (L) if the party disclosing the Confidential Information is QR Network, to another Railway Manager of rail transport infrastructure as defined in the TIA but only to the extent required for the purpose of QR Network negotiating or providing access or that other Railway Manager negotiating or providing access to that Railway Manager's rail transport infrastructure (as defined in the TIA), as applicable, in relation to the Access Seeker or Access Holder provided that the other Railway Manager has undertaken to keep the Confidential Information disclosed to it by QR Network confidential pursuant to a confidentiality deed in the form set out in B2;
    - (M) to an infrastructure provider for infrastructure forming part of the supply chain in respect of which Access forms a part for the

purpose of facilitating the coordination of the capacity allocation process of that infrastructure provider and of QR Network, provided that the infrastructure provider has undertaken, in an agreement to which both QR Network and the Access Seeker are a party, to keep the information disclosed to it by QR Network confidential and only use that information for the purpose for which it was disclosed;

- (N) to a QR Party provided that the disclosure is in accordance with Clause 3.4.2; or
- (iii) the disclosure is in accordance with Clause 3.4(e).
- (e) Notwithstanding any other provision of this Clause 3.4:
  - (i) QR Network and a relevant TOA Access Holder may disclose to an EU Access Holder information and notices arising from or in connection with a relevant TOA Access Agreement or the Access Rights under such a TOA Access Agreement, except to the extent such information or notices only relate to and affect the Access Rights in respect of a different EU Access Holder;
  - (ii) QR Network and a relevant TOA Access Seeker may disclose to an EU Access Seeker or EU Access Holder, information and notices arising from or in connection with the negotiation of a relevant TOA Access Agreement, except to the extent such information or notices only relate to and affect the Access Rights sought in respect of a different EU Access Seeker or EU Access Holder;
  - (iii) QR Network and a relevant EU Access Holder may disclose to a TOA Access Seeker or TOA Access Holder, information and notices arising from or in connection with the relevant EU Access Agreement or the Access Rights under that EU Access Agreement; and
  - (iv) QR Network and a relevant EU Access Seeker may disclose to a TOA Access Seeker information and notices arising from or in connection with the negotiation of the relevant EU Access Agreement,to the extent that such disclosure is reasonably necessary for:
  - (v) in respect of disclosures pursuant to Clauses 3.4(e)(i) and (iii), the performance of obligations or the exercise of rights under the EU Access Agreement or TOA Access Agreement (to which the relevant EU Access Agreement relates);
  - (vi) in respect of disclosures pursuant to Clauses 3.4(e)(ii) and (iv), the negotiation of the relevant TOA Access Agreement (to which the relevant existing or proposed EU Access Agreement relates) or EU Access Agreement; or
  - (vii) in respect of disclosures pursuant to Clauses 3.4(e)(i), (ii), (iii) or (iv), the safe operation of the Rail Infrastructure,

provided that, where (v) or (vi) apply and the information is Confidential Information that is not expressly required to be disclosed pursuant to the terms of a relevant EU Access Agreement or TOA Access Agreement, the owner of the Confidential Information must first provide its written approval, with such approval not to be unreasonably withheld. In all cases, where the disclosure is between QR Network and a QR Party, the receiving party may only use the information for the purpose for which it is disclosed.

### 3.4.1 External Flows of Confidential Information

- (a) QR Network may, if not reasonably avoidable, appoint an external consultant or independent advisor to provide advice in relation to a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, where that same external consultant or independent advisor is also advising a Related Operator in relation to the same or a related matter.
- (b) For the purposes of Clause 3.4(d)(i), it would be unreasonable for QR Network to refuse to approve the disclosure of its Confidential Information by a Third Party Access Seeker or Third Party Access Holder to that Third Party Access Seeker's or Third Party Access Holder's external consultant/s, independent adviser/s or Customer/s where the Third Party Access Seeker or Third Party Access Holder enters into a contract with the recipient of the Confidential Information on the following terms:
  - (i) specifying the persons employed by the recipient who may have access to any QR Network Confidential Information provided under the contract;
  - (ii) specifying that those persons must not disclose any QR Network Confidential Information provided under the contract to any other person unless otherwise agreed by QR Network; and
  - (iii) if required by QR Network, requiring the recipient to execute a confidentiality deed in favour of QR Network on terms and conditions reasonably satisfactory to QR Network.
- (c) For the purposes of Clause 3.4(d)(i), it would be unreasonable for a Third Party Access Seeker or Third Party Access Holder to refuse to approve the disclosure of its Confidential Information by QR Network to QR Network's external consultant/s or independent adviser/s where QR Network enters into a contract with the recipient of the Confidential Information on the following terms:
  - (i) advising the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a Related Operator;
  - (ii) specifying:
    - (A) the persons employed by the recipient who may have access to any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract; and
    - (B) that those persons must not disclose any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract to any person outside of QR Network unless otherwise agreed by the Third Party Access Seeker or Third Party Access Holder;
  - (iii) if:
    - (A) the external consultant or independent advisor is also advising a Related Operator in relation to the same or a related matter in accordance with Clause 3.4.1(a); and
    - (B) QR Network has not been able to reasonably avoid appointing that external consultant or independent advisor to provide advice in relation to that Confidential Information,  
requiring the recipient to ensure that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a Related Operator on the same or a related matter; and

- (iv) if required by the Third Party Access Seeker or Third Party Access Holder in question, requiring the recipient to execute a confidentiality deed in favour of the Third Party Access Seeker or Third Party Access Holder on terms and conditions reasonably satisfactory to that Third Party Access Seeker or Third Party Access Holder.
- (d) For the purposes of this Undertaking, a person who has been a consultant or contractor to either QR Network or a Third Party Access Seeker or Third Party Access Holder for a continuous period of at least three (3) months, who works at least an average of thirty (30) hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.
- (e) This Clause 3.4.1 does not apply to the disclosure or use of Confidential Information in accordance with Clause 3.4.2.

### **3.4.2 Flows of Confidential Information within the QR corporate group**

- (a) Notwithstanding any other provision in this Clause 3.4.2, QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to:
  - (i) individuals within QR Network; and
  - (ii) the Chief Executive Officer, the Chief Financial Officer and the board of directors of QR and QR Network's Ultimate Holding Company, and persons providing clerical or administrative assistance to any of them including any Company Secretary and Assistant Company Secretary.
- (b) Subject to Clause 3.4.2(c), QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to persons:
  - (i) in the Rollingstock Engineering Division within QR Services in relation to Rollingstock or Rollingstock interface issues;
  - (ii) in the Property Division within QR in relation to property issues; and
  - (iii) in QR Services in management level 2, 3 or 4 positions in relation to Rail Infrastructure issues,

provided that disclosure to each recipient is limited to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.
- (c) A Third Party Access Seeker may, in an Access Application, give notice to QR Network that it does not wish QR Network to disclose its Confidential Information to any one or more of the groups listed in Clause 3.4.2(b). If a Third Party Access Seeker gives such a notice to QR Network, then:
  - (i) upon receipt of such notice QR Network may not disclose Confidential Information to the groups so noted;
  - (ii) QR Network will make reasonable efforts to suggest a reasonable alternate mechanism whereby QR Network can obtain the information it requires to respond to the Access Application and the Third Party Access Seeker will not unreasonably withhold its agreement to this alternate mechanism;
  - (iii) all:
    - (A) reasonable costs incurred by QR Network in obtaining information by means of an alternate mechanism agreed in accordance with

Clause 3.4.2(c)(ii) may be recovered by QR Network from the Third Party Access Seeker as a debt due and owing; and

- (B) relevant timeframes applicable to QR Network under this Undertaking will be extended by the same number of days as equals the number of days from QR Network's receipt of the Access Application to QR Network's receipt of the information it requires to respond to the Access Application; and

(iv) if:

- (A) the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR Network can obtain the information it requires to respond to the Access Application; or
- (B) the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process,

QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Clause 4.6(a).

- (d) QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a Related Operator where:
  - (i) the Third Party Access Seeker or Third Party Access Holder approves such disclosure; or
  - (ii) such disclosure is required for the purpose of facilitating the performance of a service referred to in Clause 3.1(c), provided that any disclosure is limited to the extent required for that purpose.
- (e) Subject to Clause 3.4.2(h), if, for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement, QR Network wishes to disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to an employee or group of a QR Party not specified in Clauses 3.4.2(a), (b) or (d), or to a group specified in Clause 3.4.2(b) on an issue not specified in that clause, QR Network must:
  - (i) obtain the consent of the owner of the Confidential Information prior to making the disclosure; and
  - (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.
- (f) QR Network may, if not reasonably avoidable, disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to an employee of a QR Party where that person is advising a Related Operator in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Clause 3.4.2(b), QR Network must obtain the consent of the owner of the Confidential Information prior to making the disclosure.
- (g) If QR Network seeks the consent of an Access Seeker or Access Holder for the disclosure of Confidential Information pursuant to Clause 3.4.2(e) or (f):
  - (i) during the process of responding to an Access Application or negotiating an Access Agreement:
    - (A) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to

the disclosure of that Confidential Information, or fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Clause 4.6(a); or

(B) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR Network's request for consent within five (5) days of its receipt of QR Network's written request (referred to as the "Consent Response Date"), then all relevant timeframes applicable to QR Network will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date; or

(ii) during the process of administering an Access Agreement:

(A) such consent shall not be unreasonably withheld; and

(B) if the owner of the Confidential Information fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then consent shall be deemed to have been given.

This Clause 3.4.2(g) does not apply where QR Network has requested consent to disclose the Confidential Information to a Related Operator.

- (h) QR Network is permitted to disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to QR employees in Internal Audit, the Information Services Division and Insurance Management, to the extent necessary for those employees to perform their duties, without obtaining the consent of the Third Party Access Seeker or Third Party Access Holder.
- (i) Except where Clause 3.4.2(a) applies, QR Network may only disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR Party:
- (i) if QR Network and the QR Party have entered into a legally enforceable agreement with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that QR Party to disclose) Confidential Information disclosed to the QR Party by QR Network; and
- (ii) provided QR Network notifies the QCA of:
- (A) any breach of such provisions of which QR Network becomes aware; and
- (B) where there is a breach, the actions QR Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure.
- (j) QR Network will establish and maintain a ring fencing register for the purpose of recording the names of those persons within a QR Party (excluding those persons gaining access to Confidential Information in accordance with Clause 3.4.2(a) or (h)) to whom QR Network discloses Confidential Information of a Third Party Access Seeker or Third Party Access Holder. This register will record the acknowledgement of receipt of the Confidential Information by the recipient. Such acknowledgement will be by way of facsimile, hard copy of an electronic message, or the original signature of the recipient. A Third Party

Access Seeker or Third Party Access Holder may, upon request, view the register relating to its Confidential Information.

### **3.4.3 Transfer of QR Network employees within the QR corporate group**

- (a) QR Network will ensure that all QR Network employees receiving, or having access to in the course of performing their duties, a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, are aware of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.4, and have undergone a ring fencing training and awareness session.
- (b) Where QR Network employees leave QR Network to work for a QR Party, they will undergo, as part of any exit process, a debriefing to remind them of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.4 and will be asked to sign an exit certificate (that includes an acknowledgement of having undergone such a debriefing process).
- (c) If the activities of:
  - (i) a project working group (whose members include staff from a Related Operator); or
  - (ii) a Related Operator,affect or could affect the Access of Third Party Access Holders or Third Party Access Seekers, then QR Network must ensure no QR Network employee:
  - (iii) works in such a working group; or
  - (iv) is temporarily transferred to such a Related Operator,unless QR Network is satisfied the employee has not had access, as an employee of QR Network, to any Confidential Information regarding the operations of a Third Party Access Holder or Third Party Access Seeker (whose Access will or could be affected by the activities of the working group or Related Operator) which, if disclosed to the relevant Related Operator, could provide that Related Operator with an advantage over the Third Party Access Holder or Third Party Access Seeker.
- (d) In making all decisions in relation to the temporary transfer of QR Network employees to roles in a QR Party, QR Network must have regard to the potential implications of any such transfer on QR Network's obligations under this Undertaking to manage Confidential Information.

### **3.5 DECISION MAKING**

- (a) Subject to Clause 3.5(b), QR Network will comply with the following decision making principles when making a decision under this Undertaking that will, or has the potential to, materially and adversely affect an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access:
  - (i) the decision is made by an identified decision maker responsible for the relevant type of decision;
  - (ii) the decision is made in a manner that is consistent between Access Seekers and/or Access Holders in the same circumstances; and
  - (iii) either:
    - (A) the decision is required in order to comply with:
      - a law;
      - a lawful direction of an Authority;

- this Undertaking;
  - the Access Agreements of adversely affected Access Holders; or
  - an access code made under the Act; or
- (B) the decision is made in accordance with QR Network's documented policies and procedures; or
- (C) the reasons for the decision are documented by QR Network.
- (b) Decisions made in relation to or to prevent an emergency are exempt from the decision making process prescribed by Clause 3.5(a).

### **3.6 COMPLAINT HANDLING**

- (a) If a Third Party Access Seeker or Third Party Access Holder considers that QR Network has breached one or more of its obligations under Clause 3.4 or Clause 3.5, or that a QR Party has breached a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it, they may lodge a written complaint with QR Network.
- (b) QR Network will advise the QCA, as soon as practicable, of any complaints it receives pursuant to Clause 3.6(a).
- (c) QR Network will:
- (i) investigate complaints received pursuant to Clause 3.6(a); and
  - (ii) advise the complainant and the QCA in writing of the outcome of that investigation and QR Network's proposed response, if any, and use reasonable endeavours to do so within twenty-eight (28) days after receiving such a complaint.
- (d) Where a complaint relates to an alleged breach by QR Network of its obligations under Clause 3.5 and the complainant is not satisfied with the outcome of QR Network's investigation, the complainant can apply to the QCA seeking an audit of the relevant QR Network decision(s) the subject of the complaint and that audit must be conducted in accordance with Clause 10.3.

### **3.7 AUDITS**

- (a) An audit of:
- (i) QR Network's compliance with its obligations under Clauses 3.4, 3.5 and 3.6; and
  - (ii) one or more of the following (to the extent that the Authority specifically requests that the auditor consider such matters);
    - (A) QR Network engaging in cost shifting between regulated and non-regulated activities;
    - (B) QR Network engaging in margin squeezing (with special reference to non-reference train services);
    - (C) QR Network refusing to provide access to associated facilities or discrimination between Related Operators and Third Party Railway Operators in respect of such access;
    - (D) discrimination between Related Operators and Third Party Railway Operators in decision regarding live run variations from train plans;



- (E) QR Network's compliance with the Capacity allocation in this Undertaking;
- (F) QR Network's compliance with the negotiation framework in this Undertaking;
- (G) QR Network's compliance with investment obligations in this Undertaking;
- (H) Conduct of QR Network in respect of which the QCA has received a complaint from an Access Seeker, Access Holder or Customer, or a breach report in relation to this Undertaking; or
- (I) other issues for which the QCA reasonably believes that an audit is necessary;

will be conducted annually and, subject to Clause 3.6 in accordance with Clause 10.3.

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

### **3.8 RESPONSIBILITY FOR RAIL INFRASTRUCTURE**

#### **3.8.1 Line Diagrams**

- (a) The Line Diagrams indicate those parts of the Queensland rail network that are Rail Infrastructure.
- (b) During the Term, QR Network will review and amend the Line Diagrams as necessary, at intervals of no greater than six (6) months, to reflect changes that have been made to the configuration or ownership of the Queensland rail network and will publish on QR Network's website:
  - (i) the current version of the Line Diagrams; and
  - (ii) a description of the changes made since the immediately preceding version of the Line Diagrams.
- (c) Unless approved by the QCA, QR Network will not:
  - (i) assign or transfer ownership of existing or new Rail Infrastructure from QR Network to a QR Party; or
  - (ii) remove existing Rail Infrastructure (except where such Rail Infrastructure is already identified in the Line Diagrams for future removal) or amend the Line Diagrams to identify any existing Rail Infrastructure for future removal, except where the change:
    - (A) is minor or administrative in nature;
    - (B) reflects an agreement between Queensland Transport and QR Network to cease Queensland Transport funding for the provision of the relevant Rail Infrastructure through Transport Service Payments and to remove the relevant Rail Infrastructure; or

- (C) does not reflect a permanent reduction in Existing Capacity that would affect an Access Holder's Access other than in accordance with an Access Agreement or this Undertaking (for example, where level crossings are removed or reconfigurations of track are undertaken).
- (d) Where the QCA or an Access Seeker or Access Holder is reasonably of the opinion that Line Diagrams prepared and published in accordance with Clause 3.8.1(b):
  - (i) do not indicate those parts of the Queensland rail network that are Rail Infrastructure; or
  - (ii) reflect a change to Rail Infrastructure that contravenes Clause 3.8.1(c), the QCA or that Access Seeker or Access Holder may request in writing that QR Network review and, if necessary, amend the Line Diagrams in accordance with Clause 3.8.1(b).
- (e) Where QR Network receives a request under Clause 3.8.1(d), QR Network must:
  - (i) if the QCA made the request, review the Line Diagrams and make any necessary amendments to the Line Diagrams within thirty (30) days after receiving that request; and
  - (ii) if an Access Seeker or Access Holder made the request:
    - (A) notify the QCA in writing of that request;
    - (B) review the Line Diagrams; and
    - (C) within thirty (30) days after receiving the request, give the QCA and the Access Seeker or Access Holder written notice of whether QR Network accepts the matters set out in the request and, if so, the action that QR Network proposes to take; and
    - (D) undertake any required amendments to the Line Diagrams within fourteen (14) days after:
      - (1) where the matter has not been referred to Dispute resolution under Clause 10.1 and QR Network has accepted the matters set out in the request, the giving of the notice under Clause 3.8.1(e)(ii)(C); or
      - (2) if the matter is referred to Dispute resolution under Clause 10.1, the resolution of the Dispute in favour of the Access Seeker or Access Holder.
- (f) An Access Seeker or Access Holder may only refer a Dispute in relation to the Line Diagrams to the Dispute resolution process under Clause 10.1, if:
  - (i) such a Dispute exists after QR Network has notified that party in accordance with Clause 3.8.1(e)(ii)(C); or
  - (ii) QR Network has failed to comply with Clause 3.8.1(e)(ii).

### **3.8.2 Transfer of rail transport infrastructure from QR Party**

- (a) If an Access Seeker is reasonably of the opinion that rail transport infrastructure (as defined under the TIA) that is owned by a QR Party forms part of the Declared Service, then the Access Seeker may make a request in writing that QR Network obtain ownership of the relevant rail transport infrastructure and amend the Line Diagrams accordingly.

- (b) In considering a request made in accordance with Clause 3.8.2(a), QR Network will obtain ownership of the relevant rail transport infrastructure and amend the Line Diagrams accordingly if, in QR Network's reasonable opinion, this is appropriate having regard to the following principles:
- (i) subject to Clauses 3.8.2(b)(iv) and 3.8.2(b)(v), the ownership of rail transport infrastructure (as defined under the TIA), as between QR Network and other QR Parties, should be allocated in a way that enables QR Network to operate as a stand alone provider of the Declared Service, except in relation to stations and platforms;
  - (ii) the existing market shares of Related Operators should not be a factor in the allocation of ownership of rail transport infrastructure (as defined under the TIA) between QR Network and other QR Parties;
  - (iii) subject to Clauses 3.8.2(b)(iv) and 3.8.2(b)(v), ownership of rail transport infrastructure (as defined under the TIA), as between QR Network and other QR Parties, should be allocated in a way that reasonably allows for Access Seekers to undertake activities associated with Access Rights;
  - (iv) any Private Infrastructure should connect directly to Rail Infrastructure, except where the agreement between a QR Party and the Private Infrastructure manager explicitly accepts that the Private Infrastructure connects to track managed by the QR Party; and
  - (v) any facility that is owned or leased by a Third Party and is accessible from track managed by a QR Party (referred to as a "Private Facility") should be accessible from Rail Infrastructure, except where the agreement between the QR Party and the Private Facility manager explicitly accepts that the Private Facility is accessible from track managed by the QR Party.

But QR Network is not obliged to do so unless:

- (vi) if ownership of the rail transport infrastructure was with QR Network, the use of the rail transport infrastructure would form part of the Declared Service;
  - (vii) if the rail transport infrastructure is not required to operate a Train Service directly between an origin and a destination, access to the rail transport infrastructure satisfies the criteria in s.76(2) of the Act; and
  - (viii) if the rail transport infrastructure relates to the Central Queensland Coal Region, the value of the rail transport infrastructure is included in the Regulatory Asset Base at the DORC value;
  - (ix) if the rail transport infrastructure relates to the Central Queensland Coal Region, it is included in an Individual Coal System and the System Forecasts, System Allowable Revenue, Reference Tariffs and any other relevant matters for the Individual Coal System are reviewed and amended to take account of the rail transport infrastructure (including taking into account any Incremental Costs associated with the rail transport infrastructure);
- (c) If an Access Seeker disagrees with the results of QR Network's consideration of its request under Clause 3.8.2(a), it may refer the issue to the Dispute resolution process set out in Clause 10.1.

## **PART 4: NEGOTIATION FRAMEWORK**

### **4.1 ACCESS APPLICATION**

- (a) Requests for Access must be submitted to QR Network in the form of an Access Application. For an Access Application given by a TOA Access Seeker to be valid the TOA Access Seeker must also certify to QR Network that they:
  - (i) are currently engaged in negotiations with each relevant EU Access Seeker or EU Access Holder in respect of a potential haulage agreement reflecting the Access being sought; or
  - (ii) are a party to an existing haulage agreement with each relevant EU Access Seeker or EU Access Holder which includes haulage reflecting the Access being sought.
- (b) Prior to submitting an Access Application, the Access Seeker may seek initial meetings with QR Network to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and, in particular, the Application Requirements.
- (c) QR Network will make publicly available on QR Network's website:
  - (i) the form(s) of application for Access Applications (which may identify different information requirements for different types of Train Services); and
  - (ii) to the extent reasonably practicable, the Preliminary Information (except for the QR Network Rollingstock Interface Standards).
- (d) An Access Seeker may request a copy of any Preliminary Information that is not provided on QR Network's website (including the QR Network Rollingstock Interface Standards for the rail corridor for which it is interested in seeking Access Rights). QR Network will use reasonable endeavours to make that requested information available to the Access Seeker within fourteen (14) days after QR Network receives the Access Seeker's request and is entitled to levy the charge specified in Schedule D for that information.
- (e) QR Network will use reasonable endeavours to keep the Preliminary Information current.
- (f) If a request for Access by an Access Seeker specifies:
  - (i) the Customer(s), EU Access Holder(s) or EU Access Seeker(s) (as applicable) that the request relates to; and
  - (ii) the contact details for such Customer(s), EU Access Holder(s) or EU Access Seeker(s) (as applicable),then QR Network will provide to each such Customer, EU Access Holder or EU Access Seeker (as applicable) copies of all notices that are required to be given to the Access Seeker in accordance with this Undertaking and relating to the progress of that request for Access, provided that QR Network will not provide each such Customer, EU Access Holder or EU Access Seeker (as applicable) with a copy of the Indicative Access Proposal (or any revision of that document).
- (g) If QR Network has established a queue in accordance with Clause 7.3.4, QR Network must notify each Access Seeker in the queue of:
  - (i) the positions in the queue;
  - (ii) the date of Access Applications,

- (iii) the status of the Access Applications under Part 4,
- (iv) to the extent known, required Infrastructure Enhancements to accommodate the Access Rights sought in the Access Applications;
- (v) an indicative and non-binding estimate of the timeframe in which QR Network would be able to provide the Access Rights being sought to the Access seeker; and
- (vi) any change in the order of the queue.

#### **4.2 ACKNOWLEDGMENT OF ACCESS APPLICATION**

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

and including, in either case, the extent to which that additional information or clarification is required in order for QR Network to be reasonably satisfied that the request for Access provides a reasonable description of the proposed Train Service for the purpose of preparing an Indicative Access Proposal.

- (b) If QR Network gives an Access Seeker a notice under Clause 4.2(a):
  - (i) the Access Seeker must provide the required additional information and clarification of information within:
    - (A) thirty (30) days after the date on which that notice was given to the Access Seeker; or
    - (B) such longer period as QR Network and the Access Seeker agree is reasonably necessary,

to the extent that the additional information or clarification is required for QR Network to be satisfied that the request for Access provides a reasonable description of the proposed Train Service for the purpose of preparing an Indicative Access Proposal; and

- (ii) the additional information or clarification when provided by the Access Seeker to QR Network forms part of the request for Access.
- (c) If QR Network is reasonably satisfied that the request for Access:
  - (i) satisfies all of the Application Requirements; or
  - (ii) does not satisfy all of the Application Requirements but that the Access Seeker's request for Access provides a reasonable description of the proposed Train Service (having regard to the Train Service Description requirements set out in the Application Requirements),

then, within ten (10) Business Days after QR Network received the request for Access or the additional information or clarification in response to the notice given by QR Network under Clause 4.2(a) (even if the Access Seeker was not

able to provide all of the additional information or clarification), QR Network will give the relevant Access Seeker a written notice:

- (iii) acknowledging receipt of the Access Application; and
  - (iv) where Clause 4.2(c)(ii) applies, stating that QR Network will prepare an Indicative Access Proposal conditional upon assumptions made by QR Network relating to the information not provided by the Access Seeker.
- (d) If, after the period within which the Access Seeker is required to provide additional information or clarification under Clause 4.2(b)(i), QR Network is not reasonably satisfied of the matters under either Clause 4.2(c)(i) or (ii), QR Network may reject the request for Access by giving a notice in writing to the Access Seeker stating the reasons for that rejection.
- (e) If a request for Access is received by QR Network which is, in whole or part, for Access Rights which cannot be provided in the absence of an Extension (or a request for Access by a TOA Access Seeker, where the Access Rights of a relevant EU Access Seeker cannot be provided in whole or part in the absence of an Extension):
- (i) to the extent QR Network is required to undertake and fund the required Extension in accordance with Clause 7.5.4, it must continue to apply the negotiation framework in this Part 4 of the Undertaking;
  - (ii) to the extent the only Extension required is a Customer Specific Branch Line and:
    - (A) QR Network is willing to fund the Customer Specific Branch Line in accordance with Clause 7.5.3, QR Network must continue to apply the negotiation framework in this Part 4 of the Undertaking unless and until the Access Seeker (or their Customer(s), or relevant EU Access Holder(s) or EU Access Seeker(s)) indicates it will wholly fund the development of the Customer Specific Branch Line; or
    - (B) QR Network is not willing to fund the Customer Specific Branch Line, it must inform the Access Seeker and may cease negotiations with that Access Seeker until they (or their Customer(s), or relevant EU Access Holder(s) or EU Access Seeker(s)) indicate they are willing to fund the development of the Customer Specific Branch Line;
  - (iii) to the extent the Access Rights could be accommodated in an Extension for which a Request for Proposal has been made in accordance with Clause 7.5.2(b) and for which the period for expressions of interest has not yet expired, provide the Access Seeker (or for a TOA Access Seeker, each relevant EU Access Seeker) with a copy of the Request for Proposal and the opportunity to lodge an expression of interest; and
  - (iv) to the extent the required Extension does not fall within the categories in (i) to (iii) above:
    - (A) if QR Network reasonably believes (having regard to the Access Application, any existing queue, and any Access Seekers on the Committed Capacity Register) that there is demand for access rights which would utilise in excess of 70% of the Capacity to be created by the smallest efficient Expansion, it will make a Request for Proposals in accordance with Clause 7.5.2(b); or
    - (B) in circumstances where paragraph 4.2(e)(iv)(A) does not apply, QR Network must inform the Access Seeker (or for a TOA Access

Seeker, each relevant EU Access Seeker) and indicate the estimated scale of the smallest efficient Expansion, and may cease negotiations with that Access Seeker unless they (or their Customer(s) or relevant EU Access Holder(s) or EU Access Seeker(s)) indicate they are willing to fund at least 70% of the projected costs of that Extension, provided that where a TOA Access Seeker is seeking Access Rights corresponding to multiple EU Access Holders or EU Access Seekers, QR Network may only cease negotiations on this ground in respect of that part of the Access Rights sought which relates to EU Access Holders or EU Access Seekers to which Clause 4.2(e)(iv) applies. If the Access Seeker or Customer or a relevant EU Access Holder or EU Access Seeker (as applicable) indicates such a willingness to provide User Funding, QR Network will make a Request for Proposals in accordance with Clause 7.5.2(b).

If QR Network ceases negotiation with an Access Seeker (other than a TOA Access Seeker) pursuant to this Clause it must offer to include the Access Seeker or their Customer on the Capacity Notification Register if they meet the requirements of Clause 4.7(a).

- (f) If QR Network is required to give an Acknowledgement Notice in accordance with Clause 4.2(c), the date when the relevant Access Application was received by QR Network is, for the purposes of this Undertaking, deemed to be the date when the relevant Access Seeker's request for Access was received by QR Network (subject to Clause 4.4(c)).
- (g) If QR Network has given an Acknowledgement Notice in accordance with Clause 4.2(c) but is yet to provide an Indicative Access Proposal to the Access Seeker, the Access Seeker may review and revise the information in its request for Access, provided that such revision does not substantially alter the nature of the Access Rights sought by the Access Seeker. If QR Network is reasonably of the view that such revision does substantially alter the nature of the Access Rights sought by the Access Seeker, QR Network will notify the Access Seeker in writing of QR Network's view and may suspend preparing an Indicative Access Proposal for the Access Seeker. If, within five (5) Business Days after QR Network gives that notice:
  - (i) the Access Seeker gives QR Network a notice in writing that it wishes to continue with the original request for Access without the proposed revisions, the process under this Undertaking in respect of that request for Access will, subject to Clause 4.2(h), continue; or
  - (ii) the notice in Clause 4.2(g)(i) is not given:
    - (A) the provision of the revised information will be deemed to be a written notice that the Access Seeker no longer wishes to proceed with the original request for Access; and
    - (B) the original request for Access and revised information will together comprise a new request for Access deemed to have been received by QR Network on the date five (5) Business Days after QR Network gave the notice under this Clause 4.2(g).
- (h) If a notice is given by the Access Seeker under Clause 4.2(g)(i), the time within which QR Network is required to provide an Indicative Access Proposal to the Access Seeker is extended by the period from (and including) the date on which QR Network notified the Access Seeker in accordance with

Clause 4.2(g) to (and including) the date on which the Access Seeker gives QR Network a notice in accordance with Clause 4.2(g)(i).

#### **4.3 INDICATIVE ACCESS PROPOSAL**

- (a) Subject to Clauses 4.2(h) and 4.3(b), QR Network will provide an Indicative Access Proposal to an Access Seeker within thirty (30) days after the date on which QR Network gives an Acknowledgement Notice to the Access Seeker provided that such a notice must include the reasons for the extension.
- (b) QR Network:
  - (i) if it considers that, due to the complexity of the Access Application or other extenuating circumstances, it is not reasonable to provide an Indicative Access Proposal within the period under Clause 4.3(a), may by written notice to the Access Seeker, within twenty (20) days after the date on which QR Network gives an Acknowledgement Notice to the Access Seeker, extend the period under Clause 4.3(a) by not more than a further thirty (30) days; and
  - (ii) may, in addition to Clause 4.3(b)(i), further extend that period but only with the written agreement of the Access Seeker.
- (c) The Indicative Access Proposal will set out:
  - (i) the Rollingstock and Rollingstock Configurations to which the Indicative Access Proposal applies;
  - (ii) a summary of the applicable operating characteristics (for example, frequency, transit time, commodity carried);
  - (iii) an Initial Capacity Assessment (which is subject to confirmation by a Capacity Analysis prepared in accordance with Clause 4.5.2(a)(vi)) together with, for coal carrying Train Services, QR Network's assumptions regarding Rollingstock, section run times and loading and unloading times used in preparing that assessment, except to the extent that either the System Rules indicate or QR Network considers that such an assessment is not required;
  - (iv) except where the Access Seeker is a TOA Access Seeker, advice in respect of the existence of other Access Seekers who have submitted an Access Application in respect of Access which, if it were to be provided, would limit the ability of QR Network to provide Access in accordance with the Indicative Access Proposal and whether a queue has been formed;
  - (v) an initial estimate of the Access Charge for the requested Access Rights, based on the pricing principles set out in Part 6, including advice as to whether QR Network has applied Clause 6.1.2(b)(i) or 6.1.2(c) in determining the estimate of the Access Charge and, if so:
    - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
    - (B) the impact that the factor has on the Access Charge; and
    - (C) how that impact on the Access Charge was determined;
  - (vi) details of the additional information required for QR Network to progress the proposal and develop the Access Charge and terms and conditions for acceptance; and



- (vii) the expiry date of the Indicative Access Proposal, which will be ninety (90) days following the date that QR Network dispatches the Indicative Access Proposal to the Access Seeker, or such later date as QR Network specifies.
- (d) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige QR Network to provide Access in accordance with the specific terms and conditions, including any Access Charge, contained within it.
- (e) If, after the period within which QR Network is required to give an Indicative Access Proposal to an Access Seeker under Clauses 4.3(a) and (b), the Access Seeker believes that QR Network is not making reasonable progress in the preparation of the Indicative Access Proposal, then the Access Seeker may refer the matter to dispute resolution in accordance with Clause 10.1.
- (f) If the Access Seeker believes that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, the Access Seeker will notify QR Network of its concerns in writing within thirty (30) days after being given the Indicative Access Proposal, or such other timeframe as QR Network and the Access Seeker may agree.
- (g) QR Network will use reasonable efforts to respond to the concerns of an Access Seeker notified under Clause 4.3(f), including, where appropriate, by making revisions to the Indicative Access Proposal, within:
  - (i) fourteen (14) days after being notified under Clause 4.3(f); or
  - (ii) if QR Network considers that due to the complexity of the concerns or other extenuating circumstances, it is not reasonable to provide a response within that fourteen (14) day period, such reasonable period as QR Network notifies to the Access Seeker in writing within five (5) Business Days after the Access Seeker's notice to QR Network under Clause 4.3(f).
- (h) If, after being given a response from QR Network under Clause 4.3(g) (including any revision to the Indicative Access Proposal), the Access Seeker:
  - (i) is satisfied with that response, it must notify QR Network of its intention to proceed with negotiations before the expiry of the Indicative Access Proposal or such other timeframe as QR Network and the Access Seeker may agree; or
  - (ii) is not satisfied with that response and seeks to resolve the Dispute in accordance with Clause 10.1, it must:
    - (A) commence that Dispute resolution process within thirty (30) days after being given QR Network's response or such other timeframe as QR Network and the Access Seeker may agree; and
    - (B) within fourteen (14) days of resolution of the Dispute, or such other timeframe that QR Network and the Access Seeker may agree, notify QR Network in writing whether the Access Seeker wishes to proceed further with its Access Application, on the basis of the arrangements outlined in the Indicative Access Proposal including any amendments made as a result of the resolution of the Dispute.
- (i) If QR Network gives a Third Party Access Seeker a notice under Clause 4.2(a), but has not given a notice for the same extension period to a QR Party Access

Seeker which is seeking substantially similar Access Rights, QR Network must notify the QCA of the reasons for the difference in treatment.

#### **4.4 NOTIFICATION OF INTENT**

- (a) Subject to Clause 4.3(h), if the Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the Indicative Access Proposal. For a notification of intent given by a TOA Access Seeker to be valid the TOA Access Seeker must also certify to QR Network that they:
  - (i) are currently engaged in negotiations with each relevant EU Access Seeker or EU Access Holder in respect of a potential haulage agreement reflecting the Access being sought; or
  - (ii) are a party to an existing haulage agreement with each relevant EU Access Seeker or EU Access Holder which includes haulage reflecting the Access being sought.
- (b) Subject to Clause 4.3(h), if the Access Seeker gives a notification of its intention to progress its Access Application after the expiry date of the Indicative Access Proposal but not later than six (6) months after that date, QR Network will review the Indicative Access Proposal and, if considered necessary by QR Network, prepare a revised Indicative Access Proposal in accordance with Clause 4.3.
- (c) Where:
  - (i) a revised Indicative Access Proposal is prepared and the Access Seeker intends to progress its Access Application on the basis of the arrangements outlined in the revised Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the revised Indicative Access Proposal; or
  - (ii) a revised Indicative Access Proposal is not considered necessary by QR Network, the Access Seeker's notification of its intention under Clause 4.4(b) is taken to be validly given even though it is given after the expiry date of the Indicative Access Proposal,

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

#### **4.5 NEGOTIATION PROCESS**

##### **4.5.1 Negotiation Period**

- (a) Once the Negotiation Period has commenced both parties shall commence negotiations as soon as reasonably possible to progress towards an Access Agreement. Subject to Clause 4.5.1(b), the Negotiation Period shall commence upon the Access Seeker providing a notification of intent in accordance with Clause 4.4.
- (b) If QR Network has established a queue in accordance with Clause 7.3.4, QR Network may negotiate with any Access Seeker in that queue (and any TOA

Access Seeker to the extent the Access Rights sought corresponds to Access Rights being sought by an EU Access Seeker that is in the queue or Access Rights already contracted by an EU Access Holder), but QR Network is only obliged to do so to the extent that:

- (i) at that time, QR Network can provide the requested Access Rights to the Access Seeker within three (3) years (or for TOA Access Seekers, can provide the requested Access Rights to each relevant EU Access Seeker within three (3) years or has already agreed to provide the relevant Access Rights to each EU Access Holder within that period); and
  - (ii) were QR Network to execute an Access Agreement with that Access Seeker (or for TOA Access Seekers seeking Access unrelated to an existing EU Access Agreement, each relevant EU Access Seeker), QR Network's ability to provide Access Rights to any Access Seeker earlier in the queue would not be adversely affected.
- (c) If QR Network decides not to commence negotiations with an Access Seeker in accordance with Clause 4.5.1(b), then that Access Seeker's Negotiation Period is put on hold until such time as either QR Network commences negotiations with that Access Seeker or QR Network is obliged to negotiate with that Access Seeker in accordance with Clause 4.5.1(b).
- (d) If, after commencing negotiations with an Access Seeker, QR Network notifies that Access Seeker that it is suspending negotiations on the basis that it is not obliged to negotiate with that Access Seeker in accordance with Clause 4.5.1(b), then:
- (i) where QR Network has, until that time, been obliged to negotiate with that Access Seeker, QR Network will provide that Access Seeker with the reasons why it is no longer obliged to negotiate in accordance with Clause 4.5.1(b) and give that Access Seeker thirty (30) days within which to demonstrate to QR Network's satisfaction that QR Network continues to be obliged to negotiate with the Access Seeker; and
  - (ii) that Access Seeker's Negotiation Period is put on hold until such time as:
    - (A) QR Network recommences negotiations; or
    - (B) either:
      - (1) the Access Seeker demonstrates to QR Network's satisfaction that QR Network continues to be obliged to negotiate with that Access Seeker; or
      - (2) QR Network becomes obliged to negotiate with that Access Seeker in accordance with Clause 4.5.1(b).
- (e) An Access Seeker's Negotiation Period ceases on:
- (i) the execution of an Access Agreement in respect of the Access sought by the Access Seeker;
  - (ii) QR Network receiving written notification by the Access Seeker that it no longer wishes to proceed with its Access Application (or in addition, for a TOA Access Seeker, a relevant EU Access Seeker gives such a notification to QR Network in respect of the relevant Access Rights);
  - (iii) QR Network issuing a Negotiation Cessation Notice to the Access Seeker (or in addition, for a TOA Access Seeker, a relevant EU Access Seeker) pursuant to Clause 4.6(a);

- (iv) the expiration of nine (9) months from the commencement of the Negotiation Period unless:
  - (A) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiration of the agreed extended period, provided that agreement to extend the Negotiation Period is not unreasonably withheld by either party; or
  - (B) a Dispute arises between the parties that either party has sought to resolve in accordance with Clause 10.1, in which case the Negotiation Period will continue until the resolution of the Dispute and for any further time agreed by the parties or determined during the Dispute resolution process; or
- (v) QR Network no longer being able to offer Access to the Access Seeker (or for a TOA Access Seeker, a relevant EU Access Seeker) under the terms of the Indicative Access Proposal, either because of:
  - (A) Available Capacity being reduced; or
  - (B) Infrastructure Enhancements subsequently committed to by QR Network adversely impacting QR Network's ability to develop Infrastructure Enhancements contemplated in the Indicative Access Proposal, except to the extent that:
    - (1) Clause 4.5.1(f) applies; and
    - (2) the Access Seeker has indicated that it is willing to continue negotiations on the basis of the revised Indicative Access Proposal prepared in accordance with Clause 4.5.1(f),

provided that where a TOA Access Seeker is seeking Access Rights which correspond to Access Rights sought by multiple EU Access Seekers, and Clauses 4.5.1(e)(ii), (iii) or (v) would have the effect of ceasing the Negotiation Period for that TOA Access Seeker, the Negotiation Period shall only so cease in relation to the Access Rights sought which correspond to the affected EU Access Seeker(s).

- (f) If:
  - (i) QR Network can no longer offer Access to an Access Seeker (or for a TOA Access Seeker, each relevant EU Access Seeker) under the terms of the relevant Indicative Access Proposal because of either a reduction in Available Capacity or Infrastructure Enhancements subsequently committed to by QR Network adversely impacting QR Network's ability to develop Infrastructure Enhancements contemplated in the Indicative Access Proposal; and
  - (ii) either the remaining Available Capacity can satisfy part of the Access Rights sought by the Access Seeker (or for a TOA Access Seeker, the relevant EU Access Seeker(s)) or the contemplated Infrastructure Enhancements can be altered to provide all or part of the Access Rights sought,

QR Network will notify the Access Seeker (and for a TOA Access Seeker, each relevant EU Access Seeker) of that event and the portion of the Access Rights being sought which can be provided and:

- (iii) if requested by the Access Seeker (or for a TOA Access Seeker, each relevant EU Access Seeker) within 2 weeks after the Access Seeker is given such a notice, prepare and issue to the Access Seeker a revised

Indicative Access Proposal in accordance with Clause 4.3 in relation to that portion of the Access Rights that can be provided; and

- (iv) if, within 2 weeks after being given the revised Indicative Access Proposal, the Access Seeker (or for a TOA Access Seeker, each relevant EU Access Seeker) notifies QR Network that it intends to continue to negotiate for Access Rights in accordance with this Undertaking on the basis of the revised Indicative Access Proposal, the negotiation process outlined in this Part 4 will recommence from that point (but without affecting the Access Seeker's position in any queue established by QR Network in accordance with Clause 7.3.4).
- (g) Subject to Clause 4.5.1(f)(iv), if a Negotiation Period ceases and the Access Seeker was in a queue established by QR Network in accordance with Clause 7.3.4, the Access Seeker will be removed from the queue.

#### **4.5.2 Issues to be addressed during Negotiation**

- (a) During the Negotiation Period, QR Network and the Access Seeker will negotiate and endeavour to agree on the elements comprising the Access Agreement. In order to facilitate this process:
  - (i) QR Network will provide to the Access Seeker Additional Information relevant to the rail corridor applicable to the Access Seeker's Access Application and will use reasonable endeavours to ensure such information is the most current available to QR Network and is provided within a reasonable timeframe;
  - (ii) an Operating Plan is to be prepared by the Access Seeker (unless the Access Seeker is an EU Access Seeker and the information has or will be provided by the TOA Access Seeker) in accordance with Clause 8.1.4;
  - (iii) an Interface Risk Assessment is to be undertaken by the Access Seeker (unless the Access Seeker is an EU Access Seeker and the information has or will be provided by the TOA Access Seeker), jointly with QR Network, in accordance with Clause 8.1.2 and an IRMP is to be developed and agreed in accordance with Clause 8.1.3;
  - (iv) an EIRMR must be undertaken and prepared by the Access Seeker (unless the Access Seeker is an EU Access Seeker and the information has or will be provided by the TOA Access Seeker) in accordance with Clause 8.2.1;
  - (v) an Access Charge, determined in accordance with the pricing principles set out in Part 6, is to be provided by QR Network including advice as to whether QR Network has applied Clause 6.1.2(b)(i) or 6.1.2(c) in determining the Access Charge and if so:
    - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
    - (B) the impact that the factor has on the Access Charge; and
    - (C) how that impact on the Access Charge was determined;
  - (vi) a Capacity Analysis and an investigation of operational impacts are to be undertaken by QR Network and any necessary Infrastructure Enhancements to accommodate Access by the Access Seeker are to be advised by QR Network except to the extent that either the System Rules indicate or QR Network considers that such matters are not required;

- (vii) the definition of the relevant Train Service Entitlement and, where applicable, advice of the initial timetable is to be provided by QR Network, consistent with Clause 7.2;
  - (viii) except for an EU Access Seeker, the Access Seeker is to demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are consistent with the Rollingstock Interface Standards incorporated in the IRMP in accordance with Clause 8.1.6; and
  - (ix) other terms and conditions comprising the Access Agreement are to be provided by QR Network consistent with Clause 5.1.
- (b) During the Negotiation Period, the Access Seeker may review and revise the information in its Access Application, provided that such revision does not substantially alter the nature of the Access Rights sought by the Access Seeker. If QR Network is reasonably of the view that such revision does substantially alter the nature of the Access Rights sought by the Access Seeker, QR Network will notify the Access Seeker in writing of QR Network's view. If, within five (5) Business Days of QR Network giving that notice:
- (i) the Access Seeker gives QR Network a notice in writing that it wishes to continue negotiating on the original Access Application without the proposed revisions, the negotiation process under this Undertaking will continue; or
  - (ii) if the notice in Clause 4.5.2(b)(i) is not given:
    - (A) the provision of the revised information will be deemed to be a written notice referred to and given under Clause 4.5.1(e)(ii) in respect of the original Access Application; and
    - (B) the original Access Application and revised information will together comprise a new request for Access deemed to have been submitted to QR Network on the date five (5) Business Days after QR Network gave the notice under this Clause 4.5.2(b).
- (c) QR Network will be entitled to levy an appropriate charge for the provision of Additional Information commensurate with the cost of preparation and supply of the information.
- (d) In respect of the details required to be developed by the parties in accordance with Clause 4.5.2(a), the parties may agree:
- (i) to finalise certain aspects after the execution of the Access Agreement;
  - (ii) to make the Access Agreement subject to the satisfaction of conditions (including, for example, the completion of schedules to the Access Agreement or the securing of port capacity); or
  - (iii) to include mechanisms in the Access Agreement to address any subsequent cost or operating impacts arising in connection with the matters referred to in Clauses 4.5.2(d)(i) and (ii).
- (e) QR Network will be responsible for the investigation and design of any necessary Infrastructure Enhancements to accommodate Access by an Access Seeker to Rail Infrastructure. However, if prior to entering into an Access Agreement, the Access Seeker requires detailed scoping of the enhancements that are required directly to facilitate the Access Rights under negotiation, QR Network will be entitled to require that the Access Seeker pay QR Network's reasonable costs for such investigation and design.

### **4.5.3 Negotiation of EU Access Agreements and TOA Access Agreements**

- (a) Each:
  - (i) EU Access Seeker or EU Access Holder shall have the right to be present and participate in any negotiation between QR Network and a relevant TOA Access Seeker for Access Rights relating to that EU Access Seeker's or EU Access Holder's proposed or existing (as applicable) EU Access Agreement (except, for the avoidance of doubt, to the extent the negotiations between QR Network and the TOA Access Seeker solely relate to Access Rights sought in respect of a different EU Access Seeker or EU Access Holder); and
  - (ii) EU Access Seeker shall have the right to require QR Network to permit any relevant TOA Access Seeker to be present at all negotiations between QR Network and the EU Access Seeker for Access Rights proposed to be wholly or partially utilised by that TOA Access Seeker.
- (b) In negotiating an EU Access Agreement for the purposes of this Part 4 (including for the purposes of determining a Train Service Entitlement during those negotiations):
  - (i) QR Network and an EU Access Seeker will seek to agree an assumed Operating Plan (which the EU Access Seeker may involve any relevant TOA Access Seeker in the preparation of); and
  - (ii) if the EU Access Seeker does not provide required information regarding Rollingstock and Rollingstock Configuration for the EU Access Seeker's Train Services, QR Network will assume a Reference Train Service in respect of the Rollingstock and Rollingstock Configurations for the EU Access Seeker's Train Services and such other above rail operational matters as are reasonably necessary (having regard to any existing standard manner of conducting Above Rail Services on the relevant parts of the Rail Infrastructure).
- (c) For the avoidance of doubt, the Access Rights negotiated between QR Network and a TOA Access Seeker cannot be inconsistent with the corresponding Access Rights granted to the relevant EU Access Holder(s) (or to be granted to the relevant EU Access Seeker(s)).
- (d) QR Network must not enter a TOA Access Agreement that relates to utilising Access Rights contracted under more than one EU Access Agreement, except with the prior written agreement of all relevant EU Access Holders or EU Access Seekers.

### **4.6 NEGOTIATION CONDITIONS**

- (a) At any time during a Negotiation Period, QR Network may, within fourteen (14) days of deciding that it will not enter into an Access Agreement with the relevant Access Seeker, give a Negotiation Cessation Notice to that Access Seeker if:
  - (i) the Access Seeker does not comply with the relevant obligations and processes contained in this Undertaking, and QR Network considers on reasonable grounds that such non-compliance is material;
  - (ii) QR Network is of the reasonable opinion that there is no reasonable likelihood that the Access Seeker will comply with the terms and conditions of an Access Agreement in a material way;

- (iii) QR Network is of the reasonable opinion that the Access Seeker has no genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;
  - (iv) QR Network gives a Negotiation Cessation Notice under Clause 3.4.2(c)(iv) or 3.4.2(g)(i)(A);
  - (v) subject to Clause 10.1.3(c), the Access Seeker does not comply with a determination of an expert pursuant to Clause 10.1.3 in relation to the Access Seeker's Access Application; or
  - (vi) the Access Seeker does not comply with a determination of the QCA pursuant to Clause 10.1.4 in relation to a Dispute about the Access Seeker's Access Application.
- (b) Without limitation, it will be reasonable for QR Network to form the opinion that the circumstances in Clause 4.6(a)(ii) apply, if:
- (i) the Access Seeker is Insolvent; or
  - (ii) the Access Seeker, or a Related Party of the Access Seeker, is currently, or has in the previous two (2) years been, in Material Default of any Access Agreement or any other agreement and where its performance under that agreement is relevant to its likely performance under an Access Agreement.
- (c) Without limitation, when QR Network is forming an opinion as to whether the circumstances in Clause 4.6(a)(iii) apply, QR Network may consider any one or more of the following factors:
- (i) whether the Access Seeker (or for a TOA Access Seeker, each relevant EU Access Holder or EU Access Seeker) has secured or is reasonably likely to secure the rights required to leave the QR Network rail network in order to unload at its destination, for instance, port capacity or capacity to unload at a power station;
  - (ii) whether the Access Seeker (if they are seeking to be an Access Holder and not an operator or are a TOA Access Seeker) has secured or is reasonably likely to secure a rail haulage agreement required to operate the Train Services the subject of the Access Application;
  - (iii) the speed and timeliness of the Access Seeker in conducting its negotiations, including whether QR Network has determined under Clause 4.6(d) that the Access Seeker has taken an unreasonable or excessive amount of time negotiating an Access Agreement; and
  - (iv) for a TOA Access Seeker, whether each relevant EU Access Holder or EU Access Seeker has nominated or is reasonably likely to nominate the TOA Access Seeker as the operator for some or all of the Train Services the subject of the Access Application.
- (d) An Access Seeker who is in a queue but is not an Access Seeker with whom QR Network is obliged to negotiate in accordance with Clause 4.5.1(b) may notify QR Network that it considers the time taken by such an Access Seeker to negotiate an Access Agreement with QR Network is unreasonable or excessive. If QR Network receives such a notice, QR Network will determine whether the time taken by the applicable Access Seeker is unreasonable or excessive having regard to the complexity of the Access Application and Indicative Access Proposal or the existence of other extenuating circumstances. QR Network will make its determination and advise both



Access Seekers of its decision within seven (7) Business Days of receiving the notification.

- (e) If an Access Seeker disputes that QR Network was entitled to give it a Negotiation Cessation Notice and seeks to resolve the Dispute in accordance with Clause 10.1, for the purposes of Clause 4.6(a), the Negotiation Cessation Notice will be deemed to have been issued only if and when the Dispute is resolved in QR Network's favour. If the resolution of the Dispute identifies that QR Network was not entitled to give the Access Seeker a Negotiation Cessation Notice, QR Network will recommence negotiations with that Access Seeker immediately.
- (f) QR Network shall have the right at its option to recover its costs incurred in negotiations with the Access Seeker where it ceases negotiations in accordance with Clause 4.6(a)(iii). QR Network may seek acknowledgement of the Access Seeker's liability for costs as part of the negotiation for Access.

#### **4.7 CAPACITY NOTIFICATION REGISTER**

- (a) If QR Network ceases negotiations with an Access Seeker (other than a TOA Access Seeker) in accordance with Clause 4.5.1(e)(v) (in respect of all or part of the Access Rights sought by the Access Seeker), then QR Network will include:
  - (i) if requested by the Access Seeker, that Access Seeker's details; and
  - (ii) if specified by the applicable request for Access in accordance with Clause 4.1(f) and requested by the Customer, that Customer's details, in the Capacity Notification Register. But QR Network is not obliged to do so unless that person provides evidence satisfactory to QR Network, that
    - (iii) it either:
      - (A) has been allocated or is in a queue for the rights required to unload at its destination (for instance, port capacity or capacity to unload at a power station, or Access Rights sought involving a right to unload on the Rail Infrastructure or other QR Network owned infrastructure) that are necessary to use the Access Rights that they are interested in seeking and are to be included in the Capacity Notification Register ("Exit Rights");
      - (B) owns the facility in respect of which Exit Rights must be obtained;
      - (C) the capacity of the facility is being expanded to create those Exit Rights; or
      - (D) that the required Exit Rights will become available; and
    - (iv) either has, or is in the process of negotiating:
      - (A) the contractual rights required to provide the Train Services for the relevant Customer; or
      - (B) title to the goods, products or other matter to be transported by rail, as contemplated by the Access Rights that they are interested in seeking and are to be included in the Capacity Notification register ("Entry Rights"),
- (b) QR Network will maintain a Capacity Notification Register that identifies:
  - (i) each person referred to in Clause 4.7(a) who requests inclusion in the register;

- (ii) the nature of each person's interest in seeking Access Rights (in respect of which negotiations ceased in accordance with Clause 4.5.1(e)(v)); and
  - (iii) the date on which the applicable Access Application (in respect of which negotiations ceased in accordance with Clause 4.5.1(e)(v)) was or was deemed to have been received by QR Network for queuing purposes.
- (c) Every six (6) months after the date on which QR Network received a person's request in accordance with Clause 4.7(a), that person must:
- (i) notify QR Network that they wish to continue to remain in the Capacity Notification Register;
  - (ii) in relation to Exit Rights, provide evidence satisfactory to QR Network:
    - (A) that they have been allocated or are in a queue for Exit Rights; or
    - (B) if that person owns the facility in respect of which Exit Rights must be obtained, that the capacity of the facility is being expanded to create those Exit Rights or that there are Exit Rights that will become available; and
  - (iii) in relation to Entry Rights, provide evidence satisfactory to QR Network that it either: has, or is in the process of negotiating:
    - (A) the contractual rights required to provide the Train Services for the relevant Customer; or
    - (B) title to the goods, products or other matter to be transported by rail, as contemplated by the Access Rights that they are interested in seeking and are to be included in the Capacity Notification register ("Entry Rights"), provided that such a notice can be given no more than one (1) month prior to the due date for that notice;
- (d) If there is Available Capacity or proposed Infrastructure Enhancements which, if committed to by QR Network, would create Available Capacity, then QR Network will notify each person indicated in the Capacity Notification Register as being interested in seeking Access Rights applicable to such existing or potential Available Capacity (as applicable), of the nature and extent of that existing or potential Available Capacity.
- (e) If a person notified under Clause 4.7(d) submits a request for Access within one (1) month of being given that notice, then that request for Access is deemed, for the purposes of a queue, to have been received by QR Network on the date recorded in the Capacity Notification Register, in accordance with Clause 4.7(b)(iii), in respect of that person provided that the request for Access is only for the relevant Access Rights, in accordance with Clause 4.7(b)(ii).
- (f) A person will remain on the Capacity Notification Register until:
- (i) that person fails to comply with Clause 4.7(c); or
  - (ii) QR Network notifies that person in accordance with Clause 4.7(d).

## **PART 5: ACCESS AGREEMENTS**

### **5.1 DEVELOPMENT OF ACCESS AGREEMENTS**

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

### **5.2 DEVELOPMENT OF NEW OR AMENDED STANDARD ACCESS AGREEMENT**

- (a) QR Network will submit a Proposed Standard Access Agreement to the QCA:

- (i) within sixty (60) days after receiving a notice from the QCA in accordance with Clause 5.2(b);
  - (ii) as required in accordance with Clause 5.2(n); or
  - (iii) otherwise at QR Network's discretion.
- (b) The QCA may give QR Network a notice requiring it to submit a Proposed Standard Access Agreement if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a pro forma Access Agreement for a specified type of Train Service not covered by a Standard Access Agreement.
- (c) The QCA may develop a Proposed Standard Access Agreement that is consistent with the Undertaking including the principles contained in Schedule E and Clause 5.2(n), as applicable, if:
- (i) QR Network does not comply with a notice given by the QCA under Clause 5.2(b) or 5.2(h)(ii) for it to submit, or resubmit, a Proposed Standard Access Agreement (whichever is applicable);
  - (ii) QR Network does not submit the Proposed Standard Access Agreements (including consequential amendments to this Undertaking) in accordance with Clause 5.2(n); or
  - (iii) the QCA refuses to approve a Proposed Standard Access Agreement resubmitted by QR Network in accordance with a notice given by the QCA under Clause 5.2(h)(ii).

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

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

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

- (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
  - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (m) If the QCA grants QR Network an extension of time under Clause 5.2(l), QR Network must submit, or resubmit, a Proposed Standard Access Agreement, (whichever is applicable) within the time specified by the QCA.
- (n) Within six (6) months after the Approval Date, QR Network will submit to the QCA:
- (i) a Proposed Standard Access Agreement which can be entered by users of rail haulage services to contract directly with QR Network for Access Rights without bearing liability and obligations for above rail operational issues, subject to utilisation of those Access Rights being conditional on one or more Railway Operators nominated by the user entering an operator agreement with QR Network of the type described in Clause 5.2(n)(ii);
  - (ii) a Proposed Standard Access Agreement which can be entered into by one or more Railway Operators, nominated by such users who are Access Seekers or Access Holders pursuant to a user agreement with QR Network of the type described in Clause 5.2(n)(i), under which they can utilise some or all of the user's Access Rights, subject to assuming liability and obligations in relation to above rail operational issues; and
  - (iii) if necessary, any consequential amendments to this Undertaking to give effect to the Proposed Standard Access Agreements submitted in accordance with Clauses 5.2(n)(i) and (ii) (including, for example, to provide flexibility for short term scheduling of Train Services) provided that any such amendments do not alter the scope and nature of this Undertaking.

### **5.3 ACCESS AGREEMENTS FOR NEW OR RENEWED RELATED OPERATOR TRAIN SERVICES**

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

### **5.4 DISCLOSURE OF ACCESS AGREEMENTS**

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

the QCA for non-disclosure of those specified parts. The QCA must agree to the request where it is satisfied that disclosure of the information would be likely to damage that party's commercial activities and that disclosure would not be in the public interest.

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

## **PART 6: PRICING PRINCIPLES**

### **6.1 PRICE DIFFERENTIATION**

#### **6.1.1 Application of pricing principles**

In developing Access Charges and Reference Tariffs, QR Network:

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

#### **6.1.2 Limits on Price Differentiation**

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



- commercially provide Access to Train Services in that specified geographic area at the current Access Charges;
- (C) Changes in Market Circumstances; or
  - (D) limitations on Available Capacity in accordance with Clause 6.3.1(b).
- (d) QR Network will give Access Seekers the opportunity to incorporate rate review provisions in Access Agreements as follows:
- (i) where a Reference Tariff is applicable for the Train Service type, to enable the Access Charge to be reviewed (whether upwards or downwards) to be consistent with changes in the applicable Reference Tariff over time; or
  - (ii) where there is no Reference Tariff applicable for the Train Service type, to enable the Access Charge to be reviewed (whether upwards or downwards) to be consistent with changes in the Access Charges offered to other Access Seekers over time for that specified commodity in that specified geographic area,
- provided that QR Network will be entitled to incorporate such rate review provisions in any Access Agreement which has a term in excess of five (5) years.
- (e) In addition to any rate review provision that may be incorporated in its Access Agreement in accordance with Clause 6.1.2(d), if an Access Holder (“Aggrieved Access Holder”) can demonstrate to QR Network’s reasonable satisfaction that after entering into an Access Agreement with the Aggrieved Access Holder, QR Network has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this Clause 6.1.2, and if QR Network is not able to alter the Access Charge contained in the subsequent Access Agreement to ensure that it is in accordance with the limits on price differentiation set out in this Clause 6.1.2, then QR Network will alter the Access Charge for the Aggrieved Access Holder in accordance with the pricing principles set out in this Part 6.
- (f) For the avoidance of doubt, where Access Rights have been, or are proposed to be, contracted pursuant to an EU Access Agreement:
- (i) the relevant EU Access Holder or EU Access Seeker (as applicable) and any relevant TOA Access Holder or TOA Access Seeker will be treated as a single Access Seeker or Access Holder (as relevant) for the purposes of this clause 6 (other than clauses 6.5.2 to 6.5.4); and
  - (ii) QR Network will not be in breach of this clause 6.1.2 because of the division of the obligation to pay Access Charges between the relevant EU Access Holder or EU Access Seeker (as applicable) and any relevant TOA Access Holder or TOA Access Seeker in a manner consistent with the Standard Access Agreements in Volume 2 of this Undertaking referred to as the ‘End User Access Agreement (Coal)’ and ‘Train Operations Agreement (Coal)’.

### **6.1.3 Establishment of Access Charges for Related Operators**

In developing Access Agreements with Related Operators, QR Network will not establish Access Charges for Train Services for the purpose of preventing or

hindering Access by a Third Party Access Seeker into any market in competition with the Related Operator providing those Train Services.

## **6.2 PRICING LIMITS**

### **6.2.1 Application of Pricing Limits**

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

### **6.2.2 Price Limits for Individual Train Services**

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

### **6.2.3 Price Limits on Train Service Combinations**

- (a) In addition to Clause 6.2.2, price limits will apply in respect of Access Charges to be established for a Train Service such that, over the Evaluation Period, the expected Access revenue (determined in accordance with Clause 6.2.3(c)) for any combination of Train Services incorporating a Train Service:
  - (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for that combination of Train Services; and

- (ii) subject to Clause 6.2.1(b), will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that combination of Train Services,

provided that compliance with these price limits will be assessed after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure.

- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Clause 6.2.3(a)(ii), a Maximum Allowable Revenue will be established for identified combinations of Train Services. The Maximum Allowable Revenue for a combination of Train Services will reflect the Stand Alone Cost of providing Access for the combination of Train Services over the Evaluation Period. The Maximum Allowable Revenue for the combination of Train Services will be determined in accordance with Clause 6.2.4.
- (c) Expected Access revenue for a combination of Train Services will be determined as the aggregate of revenue reasonably expected from the application of Access Charges for all the Train Services comprising the combination of Train Services, where the Access Charges for different Train Service types will be identified as follows:
  - (i) where a Reference Tariff is to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with the Reference Tariff proposed; and
  - (ii) where a Reference Tariff is not intended to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with current applicable Access Charges, except as provided in Clause 6.3.1(b)(ii).
- (d) If QR Network incorporates an Access Charge in the Access Agreement for an Access Holder that, at the time of development, is in contravention of either Clause 6.2.2(a)(i) or 6.2.3(a)(i), then provided that QR Network observes the limits on price differentiation set out in Clause 6.1.2 in subsequently developing an Access Charge for an Access Seeker for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), QR Network shall be deemed not to be in breach of Clause 6.2.2 or 6.2.3.

#### **6.2.4 Definition of Maximum Allowable Revenue**

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

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

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

where:

- $AV_o$  is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with Clause 6.2.4(c), at the commencement of the Evaluation Period;
- $n$  is the number of years in the Evaluation Period;
- $t$  is each year within the Evaluation Period from 1 to  $n$ ;
- $MAR_t$  is the Maximum Allowable Revenue for the Train Service(s) expressed as revenue that may be earned in each year of the Evaluation Period;
- $C_t$  is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;
- $M_t$  is the Efficient Cost, including operating and maintenance costs, business and corporate overheads and QCA Levy, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;
- $ROA$  is the allowable rate of return expressed in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by QR Network and the QCA or, failing such agreement, as determined by the QCA;
- $T$  is the tax expense assessed through the application of the statutory tax rate for corporations to the taxable income reasonably expected to be earned through the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period, where such tax expense is reduced in each year by the application of the gamma factor, reflecting the market value of dividend imputation, as agreed by QR Network and the QCA or, failing such agreement, as determined by the QCA; and
- $AV_n$  is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with Clause 6.2.4(c), at the end of the Evaluation Period.
- (b) In order to determine the amount of each of the variables set out in Clause 6.2.4(a), it will be necessary to identify the assumed traffic task resulting from the Train Service(s) over the Evaluation Period. The assumed traffic task shall be the forecast reasonably determined for the traffic task resulting from the Train Service(s) over the Evaluation Period, except where changes in traffic task are the result of the commencement of projects that individually impact significantly on the traffic task. In such circumstances, expected increases in traffic task shall be incorporated into the forecast following service commitment.
- (c) The value of assets used in Clause 6.2.4(a) will be determined using:
- (i) where applicable, the value of the assets for the relevant area of the network contained in the Regulatory Asset Base, where the value of those assets is maintained in accordance with Schedule A; or

- (ii) where there is no value for the assets for the relevant area of the network contained in the Regulatory Asset Base, the Depreciated Optimised Replacement Cost methodology.

### **6.3 PRICING OBJECTIVES**

#### **6.3.1 Rail Infrastructure Utilisation**

- (a) Access Holders serve a number of different markets that have different abilities to support Access Charges that contribute in excess of the Incremental Cost and towards the Common Costs of providing the Rail Infrastructure. Accordingly, QR Network will be entitled to establish different Access Charges for Access Holders serving different markets in order to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs of providing the Rail Infrastructure.
- (b) Where Available Capacity is limited, and QR Network reasonably considers that expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not commercially justified:
  - (i) QR Network may establish an Access Charge based on the highest Access Charge QR Network is likely to achieve from the current or likely Access Seekers (provided that the highest Access Charge is developed in accordance with the pricing principles set out in this Part 6), i.e. the Access Charge which incorporates the highest contribution to the Common Costs of providing the Rail Infrastructure (referred to in this Clause 6.3.1(b) as the “Maximum Access Charge”). The Maximum Access Charge may then be quoted to all Access Seekers seeking Access in respect of the relevant Available Capacity, irrespective of a particular Access Seeker’s ability to contribute to the Common Costs of providing the Rail Infrastructure or the Access Charges payable in existing Access Agreements for similar Train Services; and
  - (ii) if QR Network:
    - (A) has received mutually exclusive Access Applications; and
    - (B) chooses to allocate Available Capacity to an Access Application where the Access Seeker will pay an Access Charge that is less than the Maximum Access Charge in preference to an Access Application where the Access Seeker would pay an Access Charge that is equal to the Maximum Access Charge and would otherwise be able to utilise that Available Capacity,

then for the purpose of assessing a Maximum Allowable Revenue in accordance with Clause 6.2.4 for all Train Services using that constrained section of Rail Infrastructure, the Access Charge for the Access Seeker will be assumed to be the Maximum Access Charge.

#### **6.3.2 Revenue Adequacy**

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

## **6.4 REFERENCE TARIFFS**

### **6.4.1 Application of Reference Tariffs**

- (a) It is recognised that there may be a large range between the price limits established in Clause 6.2 within which Access Charges for individual Train Services may be determined. Therefore, to assist in the facilitation of an efficient Access negotiation process, QR Network may develop Reference Tariffs for certain types of Train Services.
- (b) Each Reference Tariff will be developed as an Access Charge for a Reference Train Service.
- (c) Reference Tariffs will not be required to be consistent with the actual Access Charges for the relevant type of Train Services applicable under existing Access Agreements. However, QR Network will give Access Holders the opportunity to incorporate rate review provisions in Access Agreements in accordance with Clause 6.1.2(d).
- (d) Reference Tariffs for nominated Reference Train Services, including the conditions associated with the application of those Reference Tariffs, are set out in Schedule F.
- (e) Where the QCA has approved a Reference Tariff submitted to it by QR Network, that Reference Tariff will be an acceptable means by which QR Network provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the Act, as provided for in accordance with section 101(4) of the Act.

### **6.4.2 Establishment of Reference Tariffs for new Reference Train Services**

- (a) QR Network will submit a proposed Reference Tariff for a new Reference Train Service to the QCA:
  - (i) if required in accordance with Clause 6.4.2(b);
  - (ii) subject to Clause 6.4.2(d), within sixty (60) days after receiving a notice from the QCA in accordance with Clause 6.4.2(c); or
  - (iii) otherwise at QR Network's discretion.
- (b) Unless otherwise agreed with the QCA, where a new coal mine is developed and Train Services servicing that mine will utilise Rail Infrastructure in the Central Queensland Coal Region, the Train Services travelling between the mine (or, where the mine is or will be located on Private Infrastructure, the point where that Private Infrastructure connects to the Rail Infrastructure) and its most common destination will be incorporated in a new or existing Reference Train Service in a manner consistent with and subject to the requirements of Schedule F. (For the avoidance of doubt, where the mine is or will be located on Private Infrastructure, the loading point for the new Train Service will be used for the purpose of calculating the Private Incremental Costs for and describing that Train Service even though that loading point is located adjacent to Private Infrastructure).
- (c) The QCA may give QR Network a notice requiring it to submit a proposed Reference Tariff for a new Reference Train Service if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of such a Reference Tariff.
- (d) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a proposed Reference Tariff, if:

- (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
  - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (e) The QCA may develop a proposed Reference Tariff that is consistent with this Undertaking if:
- (i) QR Network does not comply with a notice given by the QCA under Clause 6.4.2(c) or 6.4.2(j)(ii) for it to submit, or resubmit, a proposed Reference Tariff (whichever is applicable); or
  - (ii) the QCA refuses to approve a proposed Reference Tariff resubmitted by QR Network in accordance with a notice given by the QCA under Clause 6.4.2(j)(ii).
- (f) Where QR Network submits, or the QCA develops, a proposed Reference Tariff for a new Reference Train Service, the QCA will:
- (i) publish the proposed Reference Tariff;
  - (ii) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
  - (iii) consider any submission it receives within the time.
- (g) The QCA may approve a proposed Reference Tariff for a new Reference Train Service (including a proposed Reference Tariff developed by the QCA) only if the QCA:
- (i) is satisfied that the proposed Reference Tariff is consistent with this Undertaking;
  - (ii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
  - (iii) has complied with Clause 6.4.2(f).
- (h) The QCA will consider a proposed Reference Tariff given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives that proposed Reference Tariff under this Clause 6.4.2 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.
- (i) If the QCA approves a proposed Reference Tariff submitted under Clause 6.4.2(a), or resubmitted under Clause 6.4.2(j)(ii):
- (i) the proposed Reference Tariff will apply from the earlier of:
    - (A) the date of the QCA decision;
    - (B) where Clause 6.4.2(b) applies, the date of the first Train Service servicing the new coal mine; and
    - (C) where Clause 6.4.2(c) applies, the date when the relevant notice is given by the QCA,
 except where the QCA specifies a later date in its decision, in which case the proposed Reference Tariff will apply from that date.
  - (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and

- (iii) QR Network must:
  - (A) publish a new version of Schedule F which includes the Reference Tariff; and
  - (B) advise Access Holders and Access Seekers, in respect of the Train Services to which the Reference Tariff applies, that the Reference Tariff has been approved.
- (j) If the QCA refuses to approve a proposed Reference Tariff the QCA will give QR Network a notice in writing:
  - (i) stating the reasons for its refusal and the way in which the QCA considers that the proposed Reference Tariff should be amended; and
  - (ii) where the proposed Reference Tariff has been submitted by QR Network in response to a notice given by the QCA under Clause 6.4.2(c), requiring QR Network to amend the proposed Reference Tariff in the way the QCA considers appropriate and resubmit the amended proposed Reference Tariff to the QCA within thirty (30) days after the giving of that notice.
- (k) If QR Network complies with the notice given under Clause 6.4.2(j)(ii), the QCA may approve the resubmitted proposed Reference Tariff in accordance with Clause 6.4.2(l).
- (l) The QCA may approve the resubmitted proposed Reference Tariff only if the QCA:
  - (i) is satisfied that the proposed Reference Tariff is in accordance with the QCA's decision;
  - (ii) is satisfied that the proposed Reference Tariff is consistent with this Undertaking; and
  - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act.
- (m) A proposed Reference Tariff may be withdrawn at any time by the party who developed the proposed Reference Tariff except that if the proposed Reference Tariff was required to be submitted in accordance with Clauses 6.4.2(a)(i) or (ii), then that withdrawal will only take effect if approved by the QCA.
- (n) If the QCA grants QR Network an extension of time under Clause 6.4.2(d), QR Network must submit, or resubmit, the proposed Reference Tariff, (whichever is applicable) within the time specified by the QCA.
- (o) For the purposes of this Clause 6.4.2:
  - (i) a new Reference Tariff submitted by QR Network or developed by the QCA in accordance with this Clause 6.4.2 must include a review of System Allowable Revenue and System Forecast to the extent applicable to that new Reference Tariff; and
  - (ii) the QCA in approving a new Reference Tariff must also approve the corresponding variation of the applicable System Allowable Revenue and System Forecast.

### **6.4.3 Review of Reference Tariffs**

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



#### **6.4.4 Review of MCI**

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

### **6.5 STRUCTURE OF ACCESS CHARGES AND ACCESS CONDITIONS**

#### **6.5.1 Structure of Access Charges**

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

#### **6.5.2 Access Conditions**

- (a) QR Network may require an Access Seeker to agree to Access Conditions before being granted Access Rights, to the extent that this is reasonably required in order to mitigate QR Network's exposure to the financial risks associated with providing Access for the Access Seeker's proposed Train Service.
- (b) For the purposes of Clause 6.5.2(a), Access Conditions are deemed to be reasonably required:
  - (i) where:
    - (A) QR Network is to develop Infrastructure Enhancements (for example, a new branch line or increasing the height of tunnels to accommodate taller than usual trains);
    - (B) either:
      - (1) there will be no more than one Customer using those Infrastructure Enhancements; or
      - (2) if the relevant Access Seeker is not reasonably expected to have any Customers, only Train Services operated for that Access Seeker (including, for an EU Access Seeker, Train

Services to be operated by any relevant TOA Access Holder) will use those Infrastructure Enhancements; and

- (C) those Infrastructure Enhancements would not be required had that Access Seeker not sought Access for its Train Services;
  - (ii) if QR Network requires those Access Conditions pursuant to Clause 6.5.2(e)(ii), provided that the sharing of responsibility between the First Party and the Subsequent Party in respect of the Access Conditions originally borne by the First Party is equitable; or
  - (iii) where QR Network demonstrates it cannot provide the Access sought unless it invests in a Significant Investment, and the QCA approves the Access Conditions through the process set out in Clause 6.5.4.
- (c) For the purposes of Clause 6.5.2(a) and subject to Clause 6.5.2(b), Access Conditions are deemed not to be reasonably required where QR Network is to construct Infrastructure Enhancements:
- (i) that are likely to be used by a number of Customers, Access Seekers or Access Holders (excluding TOA Access Holders and TOA Access Seekers, but including EU Access Holders and EU Access Seekers) such that QR Network's risk of being unable to recover the costs of the Infrastructure Enhancements if any one of those Customers, Access Seekers or Access Holders ceases to require all or part of the relevant Train Services is not material; or
  - (ii) that are for the purpose of increasing Capacity for the operation of Reference Train Services and that will form part of the Central Queensland Coal Region Mainline except where the Infrastructure Enhancement is part of a Significant Investment and the QCA approves the Access Conditions through the process set out in Clause 6.5.4.
- (d) If an Access Condition results in QR Network earning revenue from the Access Seeker's Access that is in addition to the ongoing Access Charge (for example, an upfront contribution or Access Facilitation Charge), QR Network will:
- (i) where the Access Condition relates to a Customer Specific Branch Line:
    - (A) negotiate an agreement separate from the Access Agreement with the party who agreed to pay such additional revenue (or their nominee Access Seeker) which will provide for payment of a rebate to that party or their nominee, where the rebate is equivalent to the amount provided in the Access Charge for a cost component to the extent that this component is separately funded through the additional revenue (for example, depreciation and the non-diversifiable component of the return on any relevant Infrastructure Enhancements), with the rebate being payable over no longer period of time than the asset lives of the relevant Infrastructure Enhancements (as endorsed by the QCA, from time to time, for the purpose of calculating the Regulatory Asset Base); or
    - (B) exclude the cost components separately funded through the additional revenue (for example, the value of any relevant Infrastructure Enhancements to the extent supported by the additional revenue) from the cost base (including the asset base) used to determine the ongoing Access Charge.
  - (ii) where the Access Condition relates to an Expansion, negotiate an agreement of the type described in paragraph (i)(A) above, or some

equivalent agreement, that has the effect of returning to the Access Seeker (or the nominee Access Seeker) their contribution to the Access Condition:

- (A) over no long period of time than QR Network can reasonably be expected to recover the value of the relevant Infrastructure Enhancement through the ongoing Access Charge; and
- (B) the balance of the contribution to the Access Condition, where that Access Seeker's Access Agreement expires before the full amount has been returned, and QR Network continues to earn Access Charges from other Access Holders for the use of the relevant Rail Infrastructure,

provided that, where the Access Charges from the relevant Rail Infrastructure are not sufficient to cover both the return to the Access Seeker, and the approved operating and maintenance costs, QR Network can only be obliged to return the amount it has received from Reference Tariffs net of the approved operating and maintenance costs (with Access Holders than continue to use the relevant Rail Infrastructure receiving priority over Access Holders that have ceased using it, where Access Charges are not sufficient to cover all returns of capital.

- (iii) include in the agreements described in paragraph (i) or (ii) above (as applicable) an obligation on QR Network to transfer to an Access Seeker (or the nominee Access Seeker or Customer) any tax or other financial benefit accruing to QR Network as legal owner of the Rail Infrastructure covered by the Access Condition, where the risks have been transferred to the Access Seeker (or the nominee Access Seeker or Customer) as a result of the Access Condition.
- (e) Where the Access of an Access Holder ("First Party") is subject to an Access Condition in relation to the construction of Infrastructure Enhancements and Access is sought by an Access Seeker ("Subsequent Party") (other than a TOA Access Seeker) to operate Train Services using all or part of those Infrastructure Enhancements, QR Network will use reasonable endeavours to either:
- (i) negotiate an agreement with the First Party where a rebate paid in accordance with Clause 6.5.2(d)(i) includes the amount provided in the Access Charge paid by the Subsequent Party (including, where the Subsequent Party is an EU Access Seeker, Access Charges paid by relevant TOA Access Holders) for the cost component to the extent that the component is separately funded through the additional revenue (for example, depreciation and the non-diversifiable component of the return on the relevant Infrastructure Enhancements); or
  - (ii) renegotiate the terms of the First Party's Access Conditions and impose Access Conditions on the Subsequent Party, so that the First Party and the Subsequent Party share the responsibility that was originally borne by the First Party.
- (f) For the purposes of determining for this Clause 6.5.2 whether another Customer or a Subsequent Party uses (or will use) an Infrastructure Enhancement, the Customer or Subsequent Party is deemed not to do so unless the particular characteristics of the Train Service for the Customer or the Subsequent Party's Train Service would also have resulted in the Infrastructure Enhancement being required for Access to be provided in relation to the

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

### **6.5.3 Access Conditions Register**

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

### **6.5.4 Approval of Access Conditions**

- (a) If QR Network:
  - (i) intends to commence negotiating Access Conditions in respect of the provision of Access which requires a Significant Investment (or continue doing so where negotiations for the provision of Access were already underway at the Approval Date); or
  - (ii) intends to issue a Request for Proposal to potential Access Seekers (excluding any TOA Access Seekers) and Customers in respect of the provision of Access which requires a Significant Investment in accordance with Clause 7.5.2(b),it must issue to all relevant Access Seekers (excluding any TOA Access Seekers), Customers and the QCA a report which details:
  - (iii) the Access Conditions QR Network is seeking from any Access Seeker (excluding any TOA Access Seekers) or Customer which is not entering a User Funding Agreement;

- (iv) the additional risks QR Network is exposed to (the “Additional Risks”), which it is seeking to mitigate through the Access Conditions and how the Access Conditions mitigate those risks;
  - (v) why QR Network’s exposure to the Additional Risks would not be:
    - (A) reasonably mitigated by an Access Agreement which permits QR Network to charge Access Charge(s) calculated in accordance with a Reference Tariff based on the Approved WACC and 100% take or pay commitments; or
    - (B) more efficiently mitigated through insurance or other financial instruments;
  - (vi) QR Network’s assessment of the magnitude of the Additional Risks and the probabilities of the Additional Risks occurring; and
  - (vii) to the extent that the Access Conditions being sought indicate Access Charges being calculated based on:
    - (A) adjustments to cash flows, evidence that there are risks not mitigated by the other Access Conditions being sought, and the adjustments are reflective of the possible outcomes and probabilities of the outcomes as a consequence of such risks; and/or
    - (B) a Varied WACC, evidence that there is either a materially different risk-free rate or debt margin, or that, as a result of the QR Network funding this Significant Investment, QR Network would have a materially different gearing ratio or credit rating, from that which was assessed at the time the Approved WACC was determined by the QCA;
  - (viii) why QR Network considers that the proposed Access Conditions would not be contrary to the public interest, including the public interest in having competition in markets; and
  - (ix) confirmation that QR Network considers the proposed Access Conditions would not contravene a provision of the Undertaking or the Act.
- (b) If the Authority has reason to believe that QR Network has commenced negotiating Access Conditions in respect of the provision of Access which requires a Significant Investment prior to providing a report as required by Clause 6.5.4(a) or has provided a request in accordance with Clause 7.5.2(b), it may require QR Network to:
- (i) produce a report in accordance with Clause 6.5.4(a) within 10 Business Days; and
  - (ii) cease negotiating Access Conditions in respect of the Significant Investment until such a report has been provided.
- (c) QR Network and the Access Seekers (excluding any TOA Access Seekers) may, after QR Network has provided the report required by Clause 6.5.4(a), negotiate for 60 days on the terms of those Access Conditions, provided that:
- (i) either QR Network or any Access Seeker (excluding any TOA Access Seekers) or Customer may apply to the QCA for an extension to the negotiation period (subject to the period not being extended to more than 120 days unless a majority of Access Seekers (excluding any TOA Access Seekers) or their relevant Customers request such an extension); and

- (ii) Access Seekers (excluding any TOA Access Seekers) or their Customers may refer the proposed Access Conditions to the QCA for arbitration at any time during the negotiation period (although the QCA may decline to arbitrate until the negotiation period has expired where it considers a prior referral is vexatious or the referring party has not engaged in the negotiation of Access Conditions in good faith);
  - (iii) Access Seekers (excluding any TOA Access Seekers) or their Customers may choose to cease negotiating Access Conditions and enter a User Funding Agreement in respect of the proportion of the projected costs of the Significant Investment that the Access Rights they are seeking represent of the Planned Capacity to be created by the Significant Investment.
- (d) following receipt of the report required by Clause 6.5.4(a), the QCA will invite and consider comments from stakeholders regarding the proposed Access Conditions;
- (e) to the extent that all Access Seekers (excluding any TOA Access Seekers) agree to the Access Conditions sought by QR Network during the period in Clause 6.5.4(c), the QCA will approve the proposed Access Conditions unless the QCA is satisfied:
- (i) it would be contrary to the public interest, including the public interest in having competition in markets;
  - (ii) it is reasonably expected to disadvantage future Access Seekers, existing Access Holders, Customers or other stakeholders which will not be parties to the Access Agreements containing the Access Conditions;
  - (iii) QR Network has failed to provide Access Seekers with the report required by Clause 6.5.4(a); or
  - (iv) It would contravene a provision of the Undertaking or the Act.
- (f) to the extent that only some or none of the Access Seekers (excluding any TOA Access Seekers) agree to the Access Conditions sought by QR Network during the period in Clause 6.5.4(c), the QCA may approve the proposed Access Conditions if it is satisfied that:
- (i) the Access Conditions are reasonably required in order to mitigate QR Network's exposure to the financial risks associated with providing Access;
  - (ii) QR Network's exposure to the Additional Risks would not be:
    - (A) reasonably mitigated by an Access Agreement which permits QR Network to charge Access Charge calculated in accordance with a Reference Tariff based on the Approved WACC and 100% take or pay commitment; or
    - (B) more efficiently mitigated through insurance or other financial instruments;
  - (iii) to the extent a proposed Access Condition includes Access Charges being based on adjustments to cash flows, there are risks not mitigated by other Access Conditions being sought, and that the adjustments are reflective of the possible outcomes and probabilities of the outcomes as a consequence of such risks;

- (iv) to the extent a proposed Access Condition includes Access Charges being based on a Varied WACC, that the Varied WACC is justified by a material difference in:
  - (A) the risk-free rate;
  - (B) debt margin; and/or
  - (C) QR Network's gearing ratio or QR Network's credit rating which would occur as a result of QR Network funding the Significant Investment,
 from that assessed at the time the Approved WACC was determined by the QCA;
- (v) the proposed Access Conditions would not be contrary to the public interest, including the public interest in having competition in markets;
- (vi) the proposed Access Conditions would not be reasonably expected to disadvantage future Access Seekers, existing Access Holders, Customers or other stakeholders which will not be parties to the Access Agreements containing the Access Conditions;
- (vii) QR Network has provided Access Seekers with the report required by Clause 6.5.4(a); and
- (viii) the proposed Access Conditions would not contravene a provision of the Undertaking or the Act;
- (g) to the extent that the QCA refuses to approve some or all of the Access Conditions sought by QR Network:
  - (i) the QCA must publish its decision regarding the Access Conditions it approves (which may include Access Conditions not initially sought by QR Network); and
  - (ii) QR Network must, within 30 days of the QCA's decision, elect to either:
    - (A) proceed to negotiate Access with Access Seekers (excluding any TOA Access Seekers) for which the Access Seeker or their Customer are not Funding Users on the basis of those Access Conditions which have been approved by the QCA; or
    - (B) cease to negotiate Access and not undertake the Significant Investment unless all of the costs of the relevant Infrastructure Enhancements will be refunded by way of Access Seekers (excluding any TOA Access Seekers) entering User-Funding Agreements, except for funding QR Network is required to provide in accordance with Clause 7.5.5(f).

### **6.5.5 Prohibited Access Conditions**

QR Network may not seek to impose, and the QCA will not approve pursuant to Clause 6.5.4, any Access Condition that:

- (a) restricts Access Seekers or their Customers from raising disputes with the QCA or disclosing proposed Access Conditions or other contract terms to the QCA;
- (b) requires Access Seekers, Access Holders, or their Customers to disclose information that is confidential to one or more of them, to any other Access Holder, Access Seeker, or their Customer in circumstances other than those permitted by this Undertaking; or
- (c) results in QR Network earning an Access Charge based on a Varied WACC or otherwise earning above the return provided by Reference Tariffs based on the

Approved WACC, other than as approved by the QCA pursuant to Clause 6.5.4.



## **PART 7: CAPACITY MANAGEMENT**

### **7.1 NETWORK MANAGEMENT PRINCIPLES**

- (a) QR Network will:
  - (i) perform scheduling, Train Control and associated services; and
  - (ii) provide capacity related information to Access Holders,in accordance with the Network Management Principles.
- (b) When developing the initial System Rules for an Individual Coal System, QR Network will consult with Access Holders, Railway Operators and Access Seekers whose Train Services will be affected by the System Rules, and any affected Infrastructure Service Providers, in relation to the introduction of the System Rules.
- (c) If, after the consultation referred to in Clause 7.1(b), QR Network decides to make System Rules for an Individual Coal System that has none, QR Network must:
  - (i) prepare the proposed System Rules for that Individual Coal System (“Draft System Rules”) having regard to the equitable operation of the System Rules across Access Holders and Access Seekers (should they become Access Holders) and their Customers and the terms of Access Agreements; and
  - (ii) submit the Draft System Rules to the QCA.
- (d) Clauses 5.2(c) to 5.2(m) apply to Draft System Rules in the same way as if a reference to a Proposed Standard Access Agreement were a reference to the Draft System Rules (with all references to Clause 5.2(a) being deemed to be references to Clause 7.1(c)(ii)).
- (e) Without limitation to Clauses 7.1(b) to (d), within nine (9) months after the Approval Date, QR Network will submit to the QCA Draft System Rules for the Goonyella coal system.

### **7.2 SERVICE SPECIFICATION AND TRAIN SCHEDULING**

- (a) Each Train Service Entitlement will have specified scheduling constraints. Scheduling constraints are likely to vary significantly between different types of Train Services and may include, without limitation, the following:
  - (i) the specified days of operation and times at the origin and/or destination and where appropriate, specified arrival/departure times at intermediate locations, with an allowable variation around these specified time(s) for the scheduling of the Train Service;
  - (ii) the maximum time period between Train Services;
  - (iii) the minimum time period between Train Services;
  - (iv) the average Below Rail Transit Time;
  - (v) the agreed threshold for on-time running of the Train Services;
  - (vi) the regularity of timetable reviews and the applicable review process; and
  - (vii) the allowable modifications of timetable (for example, cancellation or deferral of services).
- (b) In respect of Timetabled Traffics, the Train Service Entitlement will be used to develop an initial timetable, which QR Network and the Access Holder (where

Access Rights are held via an EU Access Agreement, the TOA Access Holder(s) nominated as the operator for all or part of the Train Service Entitlement) will then be required to adhere to except to the extent that the timetable is varied in accordance with the Network Management Principles.

- (c) QR Network will, subject to the Network Management Principles, be able to manage the scheduling of train plans, including the MTP, ITP and DTP, to optimise the use of the Rail Infrastructure as circumstances change from time to time. QR Network will use reasonable endeavours to consult with other relevant infrastructure providers directly affected by the scheduling of particular train plans.

### **7.3 CAPACITY ALLOCATION**

#### **7.3.1 Allocation of Available Capacity**

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

TOA Access Seekers will not be treated as Access Seekers for the purposes of this Clause 7.3.1.

#### **7.3.2 Competing Applications**

In respect of Competing Applications, QR Network will:

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

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

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

### **7.3.3 Requests for mutually exclusive Access Rights**

- (a) If, at any time:
- (i) QR Network has received Access Applications (other than from TOA Access Seekers) in respect of mutually exclusive Access Rights<sup>1</sup>; and
  - (ii) QR Network has received notification from Access Seekers, in accordance with Clause 4.4, of the intention to progress two or more of those Access Applications on the basis of the arrangements outlined in the relevant Indicative Access Proposal,
- then Clause 7.3.4 applies to those Access Applications except where all of those Access Applications are Competing Applications.
- (b) QR Network will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it is no longer an Access Application in respect of mutually exclusive Access Rights.
- (c) This Clause 7.3.3 does not apply to an Access Application:
- (i) by a Transferee to the extent that the Access Application relates to Nominated Access Rights; or
  - (ii) if Clause 7.3.7 applies, by an Access Seeker in respect of Transferred Access Rights.

### **7.3.4 Formation of a queue**

- (a) If, in accordance with Clause 7.3.3(a), this Clause 7.3.4 applies in respect of Access Applications for mutually exclusive Access Rights, QR Network will form a queue to determine which Access Seeker will be allocated those Access Rights. The order of that queue will initially be determined based upon the time when QR Network received each Access Application such that, for example, the Access Application received by QR Network at the earliest time is first in the queue and the Access Application received next by QR Network is second in the queue, and so on.
- (b) Access Applications to be included in a queue that are Competing Applications will be collectively positioned in the queue in accordance with Clause 7.3.4(a) as though they were a single application received by QR Network, for the purposes of the queue, at the time the earliest of the Competing Applications was received by QR Network.
- (c) Once formed, QR Network may change the order of a queue where:
- (i) subject to Clause 4.5.1(f), the Negotiation Period for an Access Seeker has ceased in accordance with Clause 4.5.1(e);
  - (ii) QR Network reasonably considers that an Access Seeker has no genuine intention of obtaining Access Rights or is unlikely to be able to utilise

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<sup>1</sup> Access Applications received by QR Network are for mutually exclusive Access Rights where, if QR Network granted Access to one or more of the Access Applications, it would not then be able to grant Access to the other Access Applications. That is, the relevant Access Seekers are effectively competing for Access where there is insufficient Capacity to satisfy all of the Access Applications. For example, Access Seekers seeking Access to the last remaining Train Path on particular Rail Infrastructure or seeking Access to Capacity to be created by Infrastructure Enhancements but where the total Capacity sought exceeds that to be provided by the Infrastructure Enhancements. For the avoidance of doubt, while an Access Application by an EU Access Seeker may be an Access Application in respect of mutually exclusive Access Rights, an Access Application of a TOA Access Seeker will not be, as such an Access Application only seeks rights to utilise Capacity that is already contracted by the relevant EU Access Holder or is sought to be contracted by the relevant EU Access Seeker.

- Access at the level sought, taking into account in both instances and without limitation, the factors listed in Clauses 4.6(c)(i) to (iii);
- (iii) subject to Clause 7.3.4(d), QR Network reasonably considers that its commercial performance is better served by allocating Access to an Access Seeker who is in the queue but not first in the queue;
  - (iv) QR Network receives a notification of intent in accordance with Clause 4.4 in relation to a further Access Application which is added to the queue; or
  - (v) QR Network has notified relevant Access Holders in accordance with Clause 11.3(c)(v) of an Access Rights Reduction.
- (d) Without limiting Clause 7.3.4(c)(iii), QR Network may reasonably consider that its commercial performance is better served by allocating Access to an Access Seeker who is in the queue but not first in the queue:
- (i) if:
    - (A) that Access Seeker's Access Application ("Higher NPV Application") has a NPV Value that is 2% or more higher than the NPV Value of an earlier Access Application ("Lower NPV Application") in that queue; and
    - (B) no more than one of the Higher NPV Application and the Lower NPV Application is an Access Application for coal carrying Train Services operating in the Central Queensland Coal Region ("CQCR Application");
  - (ii) if:
    - (A) that Access Seeker has a CQCR Application seeking Access Rights for a term of at least ten (10) years and is ready and willing to execute an Access Agreement that is consistent with a Standard Access Agreement; and
    - (B) there are one or more other CQCR Applications with a higher position in the queue seeking Access Rights for a term of less than ten (10) years (excluding any Renewal Application for an existing mine with a proposed term representing a reasonable estimate of the remaining life that existing mine) ("Earlier CQCR Applications"); or
  - (iii) if that Access Seeker has an Access Application seeking Access Rights for a term of less than ten (10) years but that term is longer than the term sought by one or more of the other Access Applications higher in the queue ("Shorter Term Applications"),
- provided that:
- (iv) if Clause 7.3.4(d)(i) applies, QR Network moves the Higher NPV Application so that it is above the Lower NPV Application in the queue;
  - (v) if Clause 7.3.4(d)(ii) applies, QR Network moves that Access Seeker's CQCR Application so that it is above the Earlier CQCR Application in the queue; or
  - (vi) if Clause 7.3.4(d)(iii) applies, QR Network moves that Access Seeker's Access Application so that it is above the Shorter Term Application in the queue.

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

### **7.3.5 Capacity Resumption**

- (a) Where an Access Holder (other than a TOA Access Holder) (or another Railway Operator(s) appointed by the Access Holder or for an EU Access Holder, its relevant TOA Access Holders in aggregate), for any reason other than the occurrence of a Force Majeure Event or the failure of QR Network to make the Access Holder's Access Rights available, does not:
  - (i) for Cyclic Traffic, operate, over any four (4) consecutive Quarters, at least eighty five percent (85%) of the Train Services allowed under the Access Holder's Train Service Entitlement for that period; or
  - (ii) for Timetabled Traffic, operate a Train Service on a Scheduled Train Path seven (7) or more (not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular Scheduled Train Path exists,

QR Network may, within forty (40) Business Days, give that Access Holder written notice (“Resumption Notice”) of:

- (iii) that underutilisation;
  - (iv) that QR Network is considering reducing the Access Holder’s Access Rights from a nominated date (“Date of Resumption”) to the extent of that underutilisation; and
  - (v) requesting the Access Holder to demonstrate a sustained requirement for the Access Rights that have not been utilised.
- (b) If a Resumption Notice is given to an Access Holder, QR Network may reduce that Access Holder’s Access Rights from the Date of Resumption by:
- (i) for Cyclic Traffic, reducing the Access Holder’s Access Rights to the extent that the Access Holder’s Train Service Entitlement was underutilised; or
  - (ii) for Timetabled Traffic, deleting the Scheduled Train Path referred to in Clause 7.3.5(a)(ii) from the Access Holder’s Train Service Entitlement, provided that:
    - (iii) the Access Holder has not demonstrated, to QR Network’s reasonable satisfaction, a sustained requirement for the Access Rights that were not utilised; and
    - (iv) QR Network is satisfied that it can demonstrate that it has a reasonable expectation of:
      - (A) a sustained alternative demand for the Capacity used by the Access Rights in question; or
      - (B) receiving a commercial benefit sufficiently material to justify the resumption of the Capacity used by the Access Rights in question.
- (c) QR Network may withdraw a Resumption Notice prior to the later of the Date of Resumption and fourteen (14) days after the determination of a Dispute in relation to the Resumption Notice in accordance with Clause 10.1.
- (d) If QR Network resumes an Access Holder’s Access Rights in accordance with this Clause 7.3.5, then the Access Charge payable by the Access Holder will be varied in accordance with the terms of the relevant Access Agreement and the Access Agreement (and for an EU Access Holder, the TOA Access Agreements of the relevant TOA Access Holders to the extent they provide for payment of Access Charges) will be varied accordingly.
- (e) If there is a Dispute in connection with a decision by QR Network to resume an Access Holder’s Access Rights in accordance with this Clause 7.3.5:
- (i) that Dispute may only be referred to the dispute resolution process contained in the relevant Access Agreement by that Access Holder if it does so within twenty-eight (28) days after receiving the relevant Resumption Notice; and
  - (ii) if so, QR Network will not implement the resumption until the dispute resolution process has been concluded, and then only to the extent that such resumption is consistent with the outcomes of the dispute resolution process.

### **7.3.6 Capacity Relinquishment and Transfer**

- (a) Unless otherwise specified in the Access Holder's Access Agreement, an Access Holder (other than a TOA Access Holder) may relinquish Access Rights or transfer Access Rights in accordance with this Clause 7.3.6.
- (b) An Access Holder who intends to relinquish Access Rights must give QR Network reasonable notice of its intention to do so ("Notice of Intention to Relinquish") specifying:
  - (i) the "Nominated Access Rights";and
  - (ii) subject to Clause 7.3.6(d), the date ("Relinquishment Date") on which and the period for which the Nominated Access Rights are to be relinquished; and
- (c) An Access Holder who intends to transfer all or part of its Access Rights to an Access Seeker (the 'Transferee") must give QR Network reasonable notice of its intention to do so ("Notice of Intention to Transfer"), specifying:
  - (i) the Nominated Access Rights;
  - (ii) subject to Clause 7.3.6 (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:
    - (A) Access Rights are to be relinquished or transferred under an Access Agreement that was executed on or after 30 June 2006; and
    - (B) that Access Agreement is for coal carrying Train Services (including those Train Services in relation to the Access Rights that are to be relinquished or transferred) operating in the Central Queensland Coal Region; or
  - (ii) exceed six (6) months, where Clause 7.3.6(d)(i) does not apply.
- (e) An Access Holder who wishes to relinquish or transfer Nominated Access Rights must pay a Relinquishment Fee to QR Network. The relinquishment or transfer of any Nominated Access Rights in accordance with this Clause 7.3.6 is subject to and conditional on the Access Holder's payment of the Relinquishment Fee to QR Network.
- (f) The Access Holder immediately prior to paying the Relinquishment Fee (but not less than 5 Business Days prior to the Relinquishment Date or Transfer Date), must request QR Network to calculate the Relinquishment Fee. Upon being so requested, QR Network will, calculate the relinquishment Fee in accordance with this Clause 7.3.6. Subject to Clause 7.3.6(g), QR Network will notify the Access Holder as soon as reasonably practical of the Relinquishment Fee and how it was calculated.
- (g) If the calculation of the Relinquishment Fee in accordance with this Undertaking changes during the period from the time QR Network notifies the Access Holder under Clause 7.3.6(f) to the time the Access Holder seeks to pay the Relinquishment Fee, then QR Network:

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

("Pre-30 June 2006 Coal Access Agreements")

40% of the Access Charges that would be payable if the Access Holder operated the Train Services pursuant to the Nominated Access Rights over the following two (2) year period less the product of that amount and the Reduction Factor;
  - (ii) in respect of an Access Agreement, other than Pre-30 June 2006 Coal Access Agreements, that includes an obligation to pay take or pay if an



Access Holder does not operate Train Services, the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement if the Nominated Access Rights were not relinquished but the Access Holder (or for an EU Access Holder, their nominated TOA Access Holders) did not operate the relevant Train Services less the product of that amount and:

- (A) if the Nominated Access Rights to be relinquished:
    - (1) are for coal carrying Train Services operating in the Central Queensland Coal Region under an Access Agreement executed on or after 30 June 2006; and
    - (2) are not to be transferred to a Transferee, the greater of the Reduction Factor and 0.5; or
  - (B) if Clause 7.3.6(k)(ii)(A) does not apply, the Reduction Factor; and
  - (iii) in respect of an Access Agreement to which neither Clauses 7.3.6(k)(i) nor (ii) apply, the amount that would have been contributed over the following two (2) year period to the Common Costs of providing the Rail Infrastructure as a result of the operation of the Train Services pursuant to the Nominated Access Rights and payment of the applicable Access Charge less the product of that amount and the Reduction Factor.
- (l) If:
- (i) a calculation in accordance with Clauses 7.3.6(k)(i), (ii) or (iii) results in an amount that is less than zero (0); or
  - (ii) the Nominated Access Rights to be transferred:
    - (A) are for coal carrying Train Services operating in the Central Queensland Coal Region; 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 Central Queensland Coal Region
- then, despite any other provision of this Clause 7.3.6, the Relinquishment Fee is deemed to be zero (0).
- (m) For the purposes of Clause 7.3.6(k)(ii), if:
- (i) the relevant Train Services of the existing Access Holder and of the new Access Holder or Transferee are coal carrying Train Services;
  - (ii) the Transferee's or new Access Holder's Train Services that will use the Nominated Access Rights will operate predominantly in and have a Nominated Unloading Facility in, the same Individual Coal System as the Train Services of the existing Access Holder that used those Nominated Access Rights; and
  - (iii) a System Premium applies in relation to the Nominated Access Rights, then the amount under Clause 7.3.6(k)(ii) (as applicable) must be further adjusted by QR Network to account for any consequential increase in the System Premium that would otherwise result in QR Network over recovering amounts from the Access Holder due to the application of the System Premium and that amount, as so adjusted, will be the Relinquishment Fee.

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

then:

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

an amount calculated as follows:

$$TOP_B / TOP_A$$

where:

$TOP_A$  is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement ("Remainder of the Original Term") if the Nominated Access Rights were not relinquished but the existing Access Holder (or for an EU Access Holder, their nominated TOA Access Holders) 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 (or for an EU Access Holder, their nominated TOA Access Holders) during the same period as the Remainder of the Original Term; or

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

A / B

where:

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

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

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

(ii) if Clause 7.3.6(n)(i) does not apply, zero (0).

(o) For the purposes of Clause 7.3.6(k)(ii) and Clause 7.3.6(n)(i)(C), if the Nominated Access Rights are for Train Services in the Central Queensland Coal Region, then:

(i) QR Network must calculate any relevant take or pay amount in accordance with the relevant Access Agreement; and

(ii) if that calculation requires information about future events, QR Network may make assumptions about those future events – for example, assumptions about Reference Train Services or Train Services – for the purpose of calculating the maximum amount of take or pay that could potentially be payable.

But QR Network will:

(iii) not make any assumptions about the amount of future Reference Tariffs except in relation to the escalation of Reference Tariffs in accordance with this Undertaking or the relevant Access Agreement by reference to an index.

(iv) must assume that the forecast inflation rate is 2.5%.

(p) Within one (1) month of the Approval Date, QR Network must publish on its website worked examples of the calculation of the calculation of a Relinquishment Fee in accordance with this Clause 7.3.6.

### **7.3.7 Customer Initiated Capacity Transfer**

(a) Subject to Clause 7.3.7(b), where an Access Holder (other than a TOA Access Holder) has a Customer or Customers, who has or have provided written notification to QR Network requesting the transfer to a specified Access Seeker of some or all of the Access Holder's Access Rights for which they are the Customer or Customers, then:

(i) QR Network will reduce the Access Rights of the Access Holder in accordance with that request, provided that:

- (A) the equivalent Access Rights (“Transferred Access Rights”) are included in a new or varied Access Agreement with that specified Access Seeker (“New Access Agreement”); and
- (B) that New Access Agreement commences at the same time as the Access Holder’s Access Agreement (“Old Access Agreement”) is varied or terminated (whichever is applicable); and
- (ii) the terms of the Old Access Agreement relating to Take or Pay and Relinquishment Fees will apply to the New Access Agreement:
  - (A) to the extent that the New Access Agreement relates to the Transferred Access Rights; and
  - (B) until the date that the Transferred Access Rights would have terminated under the Old Access Agreement.

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

- (b) The transfer of Access Rights in accordance with Clause 7.3.7(a) will only be permitted to proceed if:
  - (i) the relevant Customer or Customers has or have warranted to QR Network in writing that they either are the sole end Customer or collectively constitute one hundred percentage points (100%) of the Customers, in respect of any Train Services operated by the Access Holder pursuant to the Access Rights that they are requesting QR Network to transfer from the Access Holder;
  - (ii) where there is more than one Customer in respect of the Train Services operated by the Access Holder pursuant to those Access Rights, all the Customers warrant to QR Network in writing that they have agreed to request QR Network to transfer those Access Rights from the Access Holder;
  - (iii) the Access Holder’s rail haulage agreement or rail haulage agreements with its Customer or Customers:
    - (A) was or were signed after 1 March 2002; or
    - (B) where a relevant rail haulage agreement was signed on or before 1 March 2002 and the particulars of that agreement (such as the parties and term) were notified to the QCA prior to 30 June 2006, the agreement has been varied after 1 March 2002 to extend the term of the agreement and the period that is the extension of that term has commenced;
  - (iv) QR Network is satisfied that:
    - (A) the New Access Agreement has been developed in accordance with the requirements of this Undertaking;
    - (B) the Access Seeker to be granted the Transferred Access Rights has agreed in writing and on terms and conditions satisfactory to QR Network to pay all Adjustment Charges (“Transferred Adjustment Charges”) that, but for the transfer in accordance with this Clause 7.3.7, are or would have become payable by the existing Access Holder in relation to Train Services operated prior

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

that QR Network's costs will be borne by the Customer or Customers initiating the transfer and the Access Holder in the proportions determined by the QCA.

- (e) For the avoidance of doubt, this Clause 7.3.7 does not apply to any change in nominations by an EU Access Holder or other changes in allocations of rights to act as operator in respect of an EU Access Holder's Access Rights between TOA Access Holders.

#### **7.4 COMMITTED CAPACITY**

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

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

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

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

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

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

## **7.5 NETWORK INVESTMENT**

### **7.5.1 General Extension Principles**

- (a) Extensions which are undertaken by QR Network (including User Funded Extensions) must be designed to create sufficient Capacity to accommodate provision of all Access Rights being sought by Access Seekers which have submitted an expression of interest during the period described in clause 7.5.2(b)(ii) (or for which a relevant Customer has submitted such an expression of interest) except where there is a Funding Shortfall.
- (b) Where an extension (including a User Funded Expansion) produces Available Capacity, negotiation for Access rights in respect of that Available capacity occurs in accordance with the provisions of this Undertaking (including the negotiation framework in Part 4 and the queuing mechanism in clause 7.3.4) without preference being given to any Funding User.
- (c) QR Network shall construct all Extensions other than Customer Specific Branch Lines undertaken and funded by an Access Seeker or their Customer.
- (d) QR Network shall expeditiously construct all Extensions it is required to develop in accordance with this Undertaking, subject to Funding Users' rights pursuant to Clause 7.5.5(l).

### **7.5.2 Extension Process**

- (a) Where QR Network:
  - (i) believes an Extension is reasonably required to meet demand for Access Rights within a coal supply chain;
  - (ii) is requested to do so by the owner or operator of an expanding or new unloading facility that services users of the Rail Infrastructure;
  - (iii) is requested to do so by a Supply Chain Group;
  - (iv) has received Access Applications which would utilise in excess of 70% of the Planned Capacity to be created by an Extension; or
  - (v) has received Access Applications for less than 70% of the Planned Capacity to be created by an Extension, but the Access Seekers or their Customers are willing in aggregate to meet at least 70% of the projected costs of developing the Extension; or
  - (vi) is required to do so pursuant to Clause 4.2(e),it will make a request in accordance with Clause 7.5.2(b) (a Request for Proposals).
- (b) Where Clause 7.5.2(a) applies, QR Network must:
  - (i) inform all Access Holders, Access Seekers or Customers which it has reason to believe may have an interest in utilising Planned Capacity arising from the proposed Extension (other than any Access Holder or Access Seeker which solely has an interest as a TOA Access Holder or TOA Access Seeker), including all parties on the Committed Capacity Register; and
  - (ii) give all such parties a reasonable time (being no less than three (3) months) to submit an expression of interest (which must meet the usual requirements for an Access Application) in relation to obtaining Access

Rights in connection with such an Extension and indicate whether they wish to enter a User Funding Agreement or would be willing to do so if QR Network chooses not to fund the Extension.

- (c) the information given in accordance with paragraph (b) must include:
  - (i) timetables and deadlines for Access Applications, feasibility studies, and development of the Extension;
  - (ii) confirmation as to whether QR Network requires that Access Seekers or Customers submitting an expression of interest agree to fund a feasibility study (with costs shared in proportion to the Capacity sought); and
  - (iii) any additional information requirements to those usually required in Access Applications.
- (d) Where the need for an Extension is reasonably anticipated, QR Network must undertake the necessary scoping and planning studies. If QR Network unreasonably delays the necessary studies, Access Seekers may refer the issue to the Dispute resolution process set out in Clause 10.1, and in any arbitration the QCA has the power to require QR Network to permit Access Seekers to undertake the necessary scoping and planning studies at their own costs, including provision to the Access Seekers of all reasonable assistance, including necessary information provision and the site access.
- (e) The costs of any necessary scoping and planning studies will be included in the Regulated Asset Base (assuming they meet the prudency requirements in Schedule A) irrespective of whether the Extension is completed through to the commissioning stage.

### **7.5.3 Customer Specific Branch Lines**

- (a) QR Network may undertake investment in a Customer Specific Branch Line if QR Network is satisfied that it is commercially justified to do so and, if so, QR Network will own and operate that Customer Specific Branch Line.
- (b) Where QR Network has not agreed to undertake investment in a Customer Specific Branch Line and an Access Seeker (or their Customer or the relevant EU Access Holder or EU Access Seeker) intends to undertake such investment, QR Network must permit such investment by the relevant Access Seeker (or their Customer or relevant EU Access Holder or EU Access Seeker (as applicable)) by:
  - (i) providing reasonable access to land for the relevant Access Seeker (or that Access Seeker's Customer- if any, or the relevant EU Access Holder or EU Access Seeker (as applicable)) who is proposing to construct the Customer Specific Branch Line to the extent that access to the land is incidental to and essential for construction and ongoing operation of the Customer Specific Branch Line, provided that:
    - (A) the land is owned by QR Network, or QR Network has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
    - (B) the access is not consistent with the terms of any lease, license or other arrangement to which QR Network is party in respect of the land; and
  - (ii) subject to Clause 8.3, entering into a Rail Connection Agreement with the relevant Access Seeker or Customer or relevant EU Access Holder or EU



Access Seeker (as applicable), in relation to the relevant Customer Specific Branch Line; and

- (iii) notifying the Access Seeker or Customer or relevant EU Access Holder or EU Access Seeker (as applicable) of the interface standards required by QR Network.

#### **7.5.4 Incremental investments**

- (a) QR Network will undertake and fund all Extensions that:
  - (i) consist of replacement capital expenditure;
  - (ii) are needed to provide Conditional Access Holders with additional Access Rights equivalent to Access Rights reductions which have occurred in accordance with Clause 11.3;
  - (iii) are needed to reduce a deficit between Capacity and Committed Capacity caused by a change in Supply Chain Operating Assumptions; or
  - (iv) are required to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker unless the Extension is:
    - (A) a Customer Specific Branch Line; or
    - (B) a Significant Investment,  
except to the extent that such an Extension is a User Funded Extension and QR Network is required to develop and/or fund that Extension in accordance with Clause 7.5.5
- (b) If QR Network refuses to undertake or fund an Extension on the basis it considers it is not an Extension of the type covered by Clause 7.5.4(a)(i) to (iv), an Access Seeker may refer the issue to the Dispute resolution process set out in Clause 10.1.
- (c) If QR Network refuses to fund all or part of an Extension on the basis it is Significant Investment it must:
  - (i) provide the QCA with a statement setting out the reasons for the decision; or
  - (ii) where the refusal to fund is a consequence of a decision by its Ultimate Holding Company, procure from its Ultimate Holding Company a statement setting out the reasons for its decision,  
which, in either case, the QCA must publish on its website.

#### **7.5.5 User Funded Infrastructure**

- (a) All Access Seekers (other than TOA Access Seekers) or their Customers may choose to fund the costs of an Extension (other than Extensions that consist of replacement capital expenditure) even if QR Network is willing to do so.
- (b) An Extension partly or wholly funded by Access Seekers (or their Customers) in accordance with Clause 7.5.5 will be owned and operated by QR Network and constitute part of Rail Infrastructure.
- (c) If an Access Seeker (or their Customer) chooses to fund the costs of an Extension, they are required to fund a proportion of the projected capital costs of the Extension (including any relevant feasibility study) reflecting the proportion of the total Planned Capacity to be developed which would be required to provide the Access Rights the relevant Access Seeker is seeking.

- Ongoing operating and maintenance costs will be included in Reference Tariffs and are not required to be funded by Access Seeker (or their Customers).
- (d) QR Network has the right to fund the development of additional Capacity as part of an Extension that is not required for the provision of Access Rights sought by Access Seekers (or their Customers) which chose to fund the costs of the Extension.
  - (e) QR Network will undertake the development of an Extension (including a Significant Investment) if Access Seekers (or their Customers) enter into User Funding Agreements which provides funding for all the projected cost of an Extension which QR Network does not wish to fund, except for any funding which QR Network is obliged to fund in the circumstances set out in paragraph (f).
  - (f) Where an Access Seeker (or their Customer) is unable to fund the proportion of the projected costs of the Significant Investment which the Access Rights they are seeking bears to the total Capacity to be created by the Significant Investment by debt financing on reasonable terms from a reputable financial institution (the "Unfunded Portion"):
    - (i) QR Network is required to fund the Unfunded Portion of the costs of the Significant Investment, on the basis of the Access Conditions approved by the QCA pursuant to Clause 6.5.4, subject to:
      - (A) not being required to fund more than 30% of any Significant Investment on this basis; and
      - (B) not being obliged to fund more than \$300 million in respect of Significant Investments on this basis during the Term; and
    - (ii) to the extent the amount of the Unfunded Portion is greater than that required to be funded by QR Network pursuant to Clause 7.5.5 (f) (i), and QR Network is not willing to fund the difference:
      - (A) where QR Network's estimate of the cost of building the smallest efficient Extension is less than Committed Funding, QR Network will design the level of Planned Capacity to be created by the extension to reflect the Committed Funding and the Capacity created will be first allocated to all the Funding Users (in the proportions their funding bore to the total development cost) and any remaining Available Capacity will be allocated among the other Users who put forward an expression of interest but did not provide User Funding based on the formation of a queue in accordance with Clause 7.3.4; and
      - (B) where QR Network's estimate of the cost of building the smallest efficient Extension is more than Committed Funding (with the difference being the Funding Shortfall) QR Network will advise the Funding User of the Funding Shortfall and the Funding Users will be given a reasonable opportunity to elect to fund the Funding Shortfall (in which case they will be given the first right of refusal of Planned Capacity proportionate to the additional funding provided). If the Funding Users in aggregate:
        - (1) fail to provide sufficient additional funding to rectify the Funding Shortfall, then QR Network is not obliged to develop the Extension until other Users are willing to provide the Funding Shortfall (but may do so if it wishes to itself fund the Funding Shortfall); or

- (2) do provide sufficient additional funding to rectify the Funding Shortfall, the Extension will be developed to reflect the smallest efficient Extension with Capacity created by the Extension being first allocated to all of the Funding Users (in the proportions their funding bore to the total development cost except to the extent a Funding User providing funding but did not exercise their right of first refusal) and any remaining Available Capacity will be allocated among the other Users who put forward any expression of interest but did not provide User Funding based on the formation of a queue in accordance with the principles in Clause 7.3.4.
- (g) Where an Access Seeker or their relevant Customer indicates it is unable to fund the proportion of the projected costs of the Significant Investment which the Access Rights they are seeking bear to the total Capacity to be created by the Significant Investment by debt financing on reasonable terms from a reputable financial institution, and QR Network disputes their inability to fund such costs via such debt financing:
  - (i) QR Network may refer the issue to the Dispute resolution process set out in Clause 10.1; and
  - (ii) If the Dispute is arbitrated by the QCA in accordance with Clause 10.1, the relevant Access Seeker (or Customer) bears the onus of proving their inability to fund such costs via debt financing.
- (h) Where Funding User intends to provide the funding required under its User Funding Agreement by way of debt financing:
  - (i) QR Network remains entitled to provide its financiers with security over the Rail Infrastructure (including the funded Extension) and related cash flows; and
  - (ii) the Funding User is entitled to provide its financiers with security over the Funding User's rights under the User Funding Agreement and associated cash flows.
- (i) If an Access Seeker or their Customer is in Dispute with QR Network regarding:
  - (i) proposed terms of a User Funding Agreement; or
  - (ii) issues arising under an existing User Funding Agreement,
 either party to the proposed or existing User Funding Agreement may refer the issue to the Dispute resolution process set out in Clause 10.1.
- (j) QR Network must give Funding Users reasonable opportunities to collaborate in relation to all key matters affecting the cost and timing of any User-Funded Extension, including but not limited to the scope, cost, procurement strategy, construction and timing in respect of the Extension.
- (k) In relation to any User Funded Extension, a Funding User who believes that QR Network is unnecessarily delaying construction of such an Extension may refer the issue to the Dispute resolution process set out in Clause 10.1, and in any arbitration the QCA has the power to require QR Network to permit the Funding Users to undertake the development at the Funding User's expense.
- (l) Where a User-Funded Extension creates Available Capacity in excess of that need for an efficient expansion of the Rail Infrastructure, the costs of creating the Available Capacity may not be incorporated into the Regulatory Asset Base initially and instead may be carried forward for inclusion in the Regulatory Asset

Base at a later date if it is classified as being Excluded Capital Expenditure in accordance with Clause 3.3.2 of Schedule A.

- (m) Funding Users will, unless their User Funding Agreement provides otherwise:
  - (i) have their capital investment refunded to them by QR Network in accordance with the depreciation profile associated with the capital expenditure;
  - (ii) receive from QR Network a return at the Varied WACC or Approved WACC (as applicable to the Extension being funded) on the un-refunded balance of the funding provided; and
  - (iii) receive from QR Network compensation for any tax or other financial benefits accruing to QR Network as legal owner of the Rail Infrastructure created by such funding,

subject to QR Network receiving Access Charges in respect of the Capacity developed by User Funding that are sufficient to make such payments after meeting approved operating and maintenance costs in respect of utilisation of such Capacity.

If the relevant Access Charges are not sufficient to make such payments, QR Network's payment obligations are capped at the difference between the relevant Access Charges and the relevant operating and maintenance costs, with:

- (iv) the deficit first being allocated to each Funding User (or the relevant Access Seeker in the case of a Funding User which is a Customer) which did not utilise Access Rights they had contracted by subtracting the Access Charges they (or any relevant TOA Access Holder) would have paid if those Access Rights had been fully utilised; and
- (v) any remaining deficit being allocated among the Funding Users in proportion to the amount of funding provided by the Funding Users.

#### **7.6 Investment Framework Amendments and Standard User Funding Agreement**

- (a) Within three (3) months after the Approval date, following consultation with stakeholders, QR Network will submit to the QCA:
  - (i) a Proposed Standard User Funding Agreement; and
  - (ii) a draft amending access undertaking incorporating amendments to this Undertaking it considers reasonably necessary to fully implement the principles set out in Schedule J ("Investment Framework Amendments").
- (b) The QCA may develop a Proposed Standard User Funding Agreement and Investment Framework Amendments, if:
  - (i) QR Network does not submit the Proposed Standard User Funding Agreement and Investment Framework Amendments in accordance with Clause 7.6(a); or
- (c) Where QR Network submits, or the QCA develops, a Proposed Standard User Funding Agreement and Investment Framework Amendments, the QCA will:
  - (i) publish the Proposed Standard User Funding Agreement and Investment Framework Amendments on its website;
  - (ii) invite persons to make submissions to the QCA on the Proposed Standard User Funding Agreement and Investment Framework

- Amendments within a reasonable period of time specified by the QCA;  
and
- (iii) consider any submission it receives within the time.
- (d) The QCA may approve a Proposed Standard User Funding Agreement and Investment Framework Amendments (including those developed by the QCA) only if the QCA:
- (i) is satisfied that the Proposed Standard User Funding Agreement is consistent with this Undertaking (as proposed to be amended by the Investment Framework Amendments);
  - (ii) is satisfied that the Investment Framework Amendments will fully implement the principles set out in Schedule J;
  - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
  - (iv) has complied with Clause 7.6(c).
- (e) The QCA will consider a Proposed Standard User Funding Agreement and Investment Framework Amendments given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives them under this Clause 7.6 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.
- (f) If the QCA approves the Proposed Standard User Funding Agreement and Investment Framework Amendments submitted under Clause 7.6(a) or resubmitted under Clause 7.6(g)(ii):
- (i) the Standard User Funding Agreement will apply and the Undertaking will be amended by the Investment Framework Amendments, from the date of the QCA decision, or any other date following the date of the QCA decision that the QCA determines;
  - (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
  - (iii) QR Network must publish the Standard User Funding Agreement and Undertaking (incorporating the Investment Framework Amendments) on its website;
- (g) If the QCA refuses to approve a Proposed Standard User Funding Agreement and Investment Framework Amendments, the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal; and
  - (ii) requiring QR Network to amend the Proposed Standard User Funding Agreement and Investment Framework Amendments in the way the QCA considers appropriate and resubmit the amended Proposed Standard User Funding Agreement and Investment Framework Amendments to the QCA within 30 days after the giving of that notice.
- (h) If QR Network complies with the notice given under Clause 7.6(g)(ii), the QCA may approve the resubmitted Proposed Standard User Funding Agreement and Investment Framework Amendments in accordance with Clause 7.6(i).
- (i) The QCA may approve the resubmitted Proposed Standard User Funding Agreement and Investment Framework Amendments only if the QCA:
- (i) is satisfied that it is in accordance with the notice under Clause 7.6(g);

- (ii) is satisfied that the Proposed Standard User Funding Agreement is consistent with this Undertaking (as proposed to be amended by the Investment Framework Amendments);
  - (iii) is satisfied that the Investment Framework Amendments fully implement the principles set out in Schedule J; and
  - (iv) considers it appropriate to do having regard to the matters listed in section 13892) of the Act.
- (j) A proposed Standard User Funding Agreement and Investment Framework Amendments submitted or resubmitted in accordance with this Clause 7.6 may only be withdrawn by QR Network if approved by the QCA.
  - (k) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a Proposed Standard User Funding Agreement and Investment Framework Amendments, if:
    - (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
    - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
  - (l) If the QCA grants QR Network an extension of time under Clause 7.6(k), QR Network must submit, or resubmit (whichever is applicable), a Proposed Standard User Funding Agreement and Investment Framework Amendments within the time specified by the QCA.
  - (m) Prior to the approval of the Investment Framework Amendments, the principles in Schedule J will apply except to the extent they are directly inconsistent with the provisions of this Undertaking.
  - (n) Any User Funding Agreement to be entered pursuant to this Undertaking after a Standard User Funding Agreement exists must be consistent with the terms of the Standard User Funding Agreement, except to the extent:
    - (i) otherwise agreed between QR Network and a Funding User (to satisfy an Access Condition or otherwise); or
    - (ii) variations are approved by the QCA in respect of particular User Funded Extension on application by QR Network.

### **7.7 Investment Contrary to Undertaking**

QR Network must not

- (a) refuse to undertake an Extension which it is required to undertake in accordance with Part 7 of this Undertaking;
- (b) undertake an Extension subject to conditions, or seek to impose terms of Access, which would be contrary to:
  - (i) Parts 6 or 7 of this Undertaking; and
  - (ii) until the Investment Framework Amendments have been incorporated into the Undertaking in accordance with Clause 7.6, the principles set out in Schedule J; or
- (c) seek to provide terms of Access to the Rail Infrastructure which excludes the operation of this Undertaking.

## **PART 8: INTERFACE CONSIDERATIONS**

### **8.1 INTERFACE RISK MANAGEMENT PROCESS**

#### **8.1.1 General Interface Responsibilities**

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

#### **8.1.2 The Interface Risk Assessment**

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

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

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

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

### **8.1.3 The Interface Risk Management Plan**

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



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

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

- (g) If an expert, the Safety Regulator or the QCA is called upon, under Clause 8.1.3(f), to make a determination the effect of which would be to

establish the content of any aspect of the IRMP, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding principles for the resolution of a dispute under Clause 8.1.3(f) that may from time to time be determined by the Safety Regulator.

#### **8.1.4 Operating Plan**

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

#### **8.1.5 Provision of Assistance by QR Network**

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

#### **8.1.6 Rollingstock Authorisation**

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

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

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

#### **8.1.7 Audit, Inspection and Review**

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

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

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

    - (C) given access to the commercially sensitive information by QR Network; and
    - (D) prohibited from disclosing that commercially sensitive information to the Access Holder; and
  - (iv) if the Access Holder carries out the inspection or audit, the Access Holder:
    - (A) must not interfere unreasonably with the provision of Above Rail Services and Below Rail Services; and
    - (B) must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the business activities of QR Network or other Access Holders.
- (g) Any other rights of inspection or audit will be specified in the Access Agreement.

- (h) At any time that either party has reasonable grounds to believe that the IRMP is no longer effective either in managing the Interface Risks that it was intended to manage or in managing new Interface Risks, QR Network and the Access Holder will, in accordance with the Access Agreement, jointly review the effectiveness of the IRMP in addressing the Interface Risks posed by the Access Holder's operations on the Rail Infrastructure.
- (i) The Access Holder's Access Agreement will specify the obligations of both QR Network and the Access Holder in relation to the implementation of the outcomes of inspections, audits and/or reviews conducted in accordance with the processes outlined in this Clause 8.1.7.
- (j) The Access Holder's Access Agreement will specify the circumstances in which QR Network may suspend the operation of an Access Holder's Rollingstock or Trains, or the right of an Access Holder's Train Services to operate on the relevant part of the Rail Infrastructure during the course of the Access Holder's Access Agreement.
- (k) The Access Holder's Access Agreement will specify the circumstances in which QR Network may vary System-wide Requirements, including Safeworking Procedures, Safety Standards and Rollingstock Interface Standards, during the course of an Access Holder's Access Agreement.
- (l) Where an Access Holder (or group of Access Holders) and QR Network agree to vary Rollingstock Interface Standards, either in accordance with Clause 8.1.7(k) or as otherwise agreed, and such variation(s) involve an additional cost funded exclusively by that Access Holder (or group of Access Holders), QR Network will be entitled to restrict other Access Holders from benefiting from the variation in the Rollingstock Interface Standards unless and until they make an appropriate contribution to the costs thereof.
- (m) The party whose operations are audited or inspected under Clause 8.1.7(e) or (f) shall bear the reasonable costs of conducting such audit or inspection unless it is demonstrated that the stated grounds for requiring the conduct of the audit did not exist. In circumstances where the stated grounds for such audit have not been demonstrated to exist, the party that required the conduct of the audit or inspection shall bear the costs of conducting such audit or inspection.

## **8.2 ENVIRONMENTAL RISK MANAGEMENT PROCESS**

### **8.2.1 Environmental Investigation and Risk Management Report**

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

Where Access Rights are, or are to be, held via an EU Access Agreement, the relevant Access Seeker or Access Holder for the purposes of this clause 8.2 will be each relevant TOA Access Seeker or TOA Access Holder and not the relevant EU Access Seeker(s) or EU Access Holder(s), and the relevant Access Agreement will be the relevant TOA Access Agreement and not the EU Access Agreement(s).

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

- (i) If QR Network gives the Access Seeker or Access Holder a notice pursuant to Clause 8.2.1(g), the Access Seeker or Access Holder may respond to QR Network, by a date agreed by the parties, with a written proposal that:
  - (i) contains an investigation of the areas of risk and/or additional relevant environmental risks referred to in the notice provided pursuant to Clause 8.2.1(g);
  - (ii) specifies risk abatement or attenuation measures that the Access Seeker or Access Holder proposes to undertake in relation to the relevant risks, or specifies how the Access Charge might contain a component reflecting the cost to QR Network of assuming all or some portion of the risk (provided a TOA Access Seeker or TOA Access Holder can only specify such a component of the Access Charge with the written consent of each relevant EU Access Seeker or EU Access Holder (as applicable));
  - (iii) where risk abatement or attenuation measures are proposed pursuant to Clause 8.2.1(i)(ii), specifies a timeframe for implementation of those measures; and
  - (iv) specifies details of any public consultation the Access Seeker or Access Holder proposes to undertake in connection with the implementation of any such measures.
- (j) QR Network may, acting reasonably, accept or reject all or part of the Access Seeker's or Access Holder's proposal (the "Proposal") provided that, if QR Network:
  - (i) accepts the Proposal, the Proposal will be incorporated into and form part of the EIRMR, which will then be accepted; or
  - (ii) rejects all or part of the Proposal, QR Network may advise the Access Seeker or Access Holder of the risks not adequately managed or not identified or adequately dealt with in the Proposal.
- (k) If the Access Seeker or Access Holder fails to submit its Proposal within the specified time, or if QR Network rejects all or part of the Proposal, then either QR Network or the Access Seeker or Access Holder may refer the issue of whether the EIRMR and/or the Proposal does not adequately manage or does not identify or adequately deal with the relevant environmental risks to:
  - (i) if an Access Agreement has not been signed, Dispute resolution in accordance with Clause 10.1; or
  - (ii) if an Access Agreement has been signed, Dispute resolution in accordance with that Access Agreement.
- (l) If the outcome of a Dispute resolution process referred to under Clause 8.2.1(k) is that the EIRMR and/or the Proposal:
  - (i) adequately manage the risks or identify and adequately deal with the risks, then the EIRMR (as modified by the Proposal, where applicable) will be accepted;
  - (ii) fails to adequately manage the risks or identify and adequately deal with the risks and the Access Seeker or Access Holder amends the EIRMR in accordance with that outcome (including any nominated time frame for completion of the amendments), then the EIRMR (as amended) will be accepted; or
  - (iii) fails to adequately manage the risks or identify and adequately deal with the risks and the Access Seeker or Access Holder fails to amend the

EIRMR in accordance with that outcome (including any nominated time frame for completion of the amendments), then QR Network may cease negotiations or terminate the Access Agreement (whichever is applicable).

- (m) An EIRMR accepted under this Clause 8.2.1 will be incorporated as a schedule to the Access Seeker's or Access Holder's Access Agreement. If the Access Agreement has already been negotiated before the acceptance of the EIRMR, the implementation of the EIRMR may necessitate changes in the terms and conditions of the Access Agreement (including for an EIRMR agreed by a TOA Access Seeker or TOA Access Holder, the Access Agreement of each relevant EU Access Holder), including variations to the Access Charge and the IRMP.
- (n) A new or varied EIRMR shall be prepared as outlined in this Clause 8.2.1 for all new Train Services and for any variation to Train Services prior to the operation of such new or varied Train Services.

### **8.2.2 Environmental Management System**

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

### **8.2.3 Audit and Review of EIRMR**

- (a) As noted in Clause 8.2.1(a)(ii), an Access Holder's EIRMR will specify the environmental audit requirements for its Train Services. The frequency of environmental audits must be reasonably linked to the risks identified in the EIRMR.
- (b) An Access Holder will provide QR Network with copies of those parts of any environmental audits undertaken by or on behalf of the Access Holder that are relevant to the operation of its Train Services on the Rail Infrastructure.
- (c) QR Network will provide an Access Holder with copies of those parts of QR Network's environmental audits that are relevant to the Access Holder's operation of Train Services on the Rail Infrastructure.
- (d) An Access Holder must advise QR Network of any failure to comply with its EIRMR, as and when the Access Holder becomes aware of such failure. QR



Network must advise an Access Holder of any failure to comply with the EIRMR applicable under the Access Holder's Access Agreement, as and when QR Network becomes aware of such failure. The Access Agreement will specify the consequences for a party's failure to notify in accordance with this Clause 8.2.3(d).

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

### **8.3 CONNECTING INFRASTRUCTURE**

- (a) Subject to Clause 8.3(c), in the event that an Access Seeker or Access Holder proposes to construct Connecting Infrastructure which connects Private Infrastructure to the Rail Infrastructure QR Network must consent to such a connection provided:
- (i) the Connecting Infrastructure meets the technical specifications reasonably required by QR Network for connection to the Rail Infrastructure;
  - (ii) the Connecting Infrastructure has been constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining Rail Infrastructure, and there is no adverse impact on safety;

- (iii) the Connecting Infrastructure will not, by virtue of its existence, reduce Capacity or Supply Chain Capacity; and
- (iv) the Access Seeker or Access Holder meets the initial and continued costs associated with constructing and maintaining the Connecting Infrastructure, including the reasonable costs incurred by QR Network in connection with the Connecting Infrastructure,

but neither the Private Infrastructure nor any Connecting Infrastructure is required to be of a standard or to be of any condition which exceeds the standards and condition of any QR Network infrastructure.

- (b) Where Connecting Infrastructure is constructed by an Access Seeker or Access Holder in accordance with Clause 8.3(a), QR Network must:
  - (i) do all things reasonably necessary, and in a timely manner, to ensure that the Connecting Infrastructure is physically connected to the Rail Infrastructure and to facilitate the movement of Trains between the Connecting Infrastructure and the Rail Infrastructure; and
  - (ii) offer to provide train control and planning services for the Connecting Infrastructure in a manner consistent with the QR Network operated network. These services must be provided by QR Network on a basis agreed by the parties or, in the event of a dispute, determined by the QCA in accordance with Clause 10.1.4.
- (c) Unless otherwise agreed, where an Access Seeker or Access Holder proposes to construct Connecting Infrastructure which connects Private Infrastructure to the Rail Infrastructure, QR Network reserves the right to design, project manage, construct, commission, maintain, upgrade, and in any other way manage the Connecting Infrastructure, provided that:
  - (i) the standard of works is appropriate to the nature of the traffic and the current service standards of the adjoining Rail Infrastructure; and
  - (ii) the Access Seeker or Access Holder:
    - (A) is given a reasonable period within which to provide comments to QR Network on any design or construction matters; and
    - (B) may provide comments to QR Network identifying any matters relating to QR Network's proposed project management of the construction of the Connecting Infrastructure that the Access Seeker or Access Holder considers will result in unreasonable costs of delays being incurred.
- (d) The Access Seeker or Access Holder will, subject to the terms and conditions of any agreement governing the development of the Connecting Infrastructure, meet the reasonable costs incurred by QR Network in respect of work undertaken in accordance with Clause 8.3(a), provided that QR Network will pay the reasonable costs (excluding Consequential Loss) incurred by the Access Seeker or Access Holder where QR Network has unreasonably delayed the development of the Connecting Infrastructure.
- (e) Where the Access Seeker or Access Holder and QR Network cannot agree as to:
  - (i) whether standard of the works referred to under Clause 8.3(c)(i) are reasonable;
  - (ii) what is a reasonable period within which to provide comments to QR Network under Clause 8.3(c)(ii)(A);

- (iii) whether QR Network's proposed project management of the construction of the Connecting Infrastructure will result in unreasonable costs or delays being incurred;
- (iv) an amount payable under Clause 8.3(d);
- (v) whether QR Network has unreasonably delayed the construction of Connecting Infrastructure; or
- (vi) any other aspect of a Rail Connection Agreement,

then, subject to any other remedies sought by a party at law, either party may seek to resolve the Dispute in accordance with Clause 10.1.

- (f) QR Network will include operating and maintenance costs of Connecting Infrastructure in the cost build up for Reference Tariffs and not through separate agreements with the owner of the Private Infrastructure.

#### **8.4 DEVELOPMENT OF STANDARD RAIL CONNECTION AGREEMENT**

- (a) Following consultation with stakeholders, QR Network will submit to the QCA Proposed Standard Rail Connection Agreement within nine (9) months after the Approval Date, or such further period as the QCA may in its absolute discretion determine.
- (b) The QCA will consider a Proposed Standard Rail Connection Agreement given to it by QR Network under Clause 8.4(a) and either approve or refuse to approve it within sixty (60) days after it is received by the QCA or such further period as the QCA may determine.
- (c) If the QCA refuses to approve a Proposed Standard Rail Connection Agreement submitted under Clause 8.4(a), the QCA will give QR Network a notice in writing:
  - (i) stating the reasons for its refusal; and
  - (ii) requiring QR Network to amend the Standard Rail Connection Agreement in the way the QCA considers appropriate and to resubmit the amended Standard Rail Connection Agreement to the QCA within 30 days after the giving of that notice or such further period as the QCA may in its absolute discretion determine.
- (d) The QCA may develop a Proposed Standard Rail Connection Agreement that is consistent with the Undertaking, if:
  - (i) QR Network does not submit a Proposed Standard Rail Connection Agreement in accordance with Clause 8.4 (a);
  - (ii) QR Network does not re-submit the Proposed Standard Rail Connection Agreement in accordance with Clause 8.4(c); or
  - (iii) the QCA refuses to approve a Proposed Standard Rail Connection Agreement that was re-submitted in accordance with Clause 8.4(c).
- (e) The QCA may approve a Proposed Standard Rail Connection Agreement (including a Proposed Standard Rail Connection Agreement developed by the QCA) only if the QCA:
  - (i) is satisfied that, in the case of a resubmitted Proposed Standard Rail Connection Agreement, it is in accordance with the notice given under Clause 8.4(c);

- (ii) is satisfied that the Proposed Standard Rail Connection Agreement is consistent with this Undertaking;
  - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
  - (iv) has complied with Clause 8.4(f).
- (f) Where QR Network submits a Proposed Standard Rail Connection Agreement under Clause 8.4(a) or the QCA develops a Proposed Standard Rail Connection Agreement under Clause 8.4(d), the QCA will:
- (i) publish the Proposed Standard Rail Connection Agreement on its website;
  - (ii) invite persons to make submissions on the Proposed Standard Rail Connection Agreement to the QCA within a reasonable period of time specified by the QCA; and
  - (iii) consider any submission it receives within the time specified.
- (g) If the QCA approves a Proposed Standard Rail Connection Agreement:
- (i) the Standard Rail Connection Agreement will apply from the date of the QCA decision, or such later date that the QCA determines;
  - (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
  - (iii) QR Network must publish the Standard Rail Connection Agreement on its website.
- (h) An approved Standard Rail Connection Agreement which was submitted in accordance with Clause 8.4(a) or resubmitted in accordance with this Clause 8.4(c) may only be withdrawn by QR Network if approved by the QCA.
- (i) If the QCA considers it necessary to do so, the QCA may ask QR Network to submit a replacement Standard Rail Connection Agreement within a reasonable period advised by the QCA, in which case clauses 8.4(b) to (h) will apply but with references to clause 8.4(a) being read as a reference to this clause 8.4(i).
- (j) Unless otherwise agreed between QR Network and a proponent of infrastructure which is proposed to connect to Rail Infrastructure (but for which QR Network will not be the Railway Manager), any Rail Connection Agreement entered pursuant to this Undertaking after a Standard Rail Connection Agreement has been approved must be consistent with the terms of the Standard Rail Connection Agreement.

## **PART 9: REPORTING**

### **9.1 QUARTERLY NETWORK PERFORMANCE REPORTS**

(a) Within thirty (30) days after the end of each Quarter in the Term, QR Network will publicly release a quarterly report in relation to that Quarter:

(i) containing the information set out in Clauses 9.1(d) to (i) and/or other indicators approved by the Authority from time to time (except for the quarterly report for first Quarter in the Term that begins on or after the Approval Date (“First Quarter Report”), which is only required to contain the information set out in Paragraphs 9.1(e) to (m) of the 2008 Undertaking); and

(ii) In a format to be approved by the Authority from time to time.

QR Network will use reasonable efforts to ensure that the information contained in each quarterly report is accurate.

(b) In publishing a quarterly report in accordance with Clause 9.1(a), QR Network will include in the quarterly report a comparative presentation of the information in the subject Quarter and the four (4) preceding Quarters in respect of the information set out in Clauses 9.1(d) to (i) provided that for the First Quarter Report, the information for a preceding Quarter for the purposes of the comparative presentation shall be that published for the relevant Quarter under the 2008 Undertaking or, if applicable, published in accordance with Clauses 12.4(c) or (d).

(c) Where a quarterly report has been published in accordance with Clause 9.1(a) and QR Network has actual knowledge of a material error in the quarterly report, QR Network will, as soon as practicable but no later than the date by which the next quarterly report is to be publicly released, publish either, at QR Network’s discretion, an erratum or a corrected quarterly report identifying the material errors. An error will be a material error where:

(i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or

(ii) otherwise, QR Network or the QCA considers the error to be material.

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

(d) Information on the number and reliability of Train Services that have operated in the subject Quarter, as follows:

(i) the number and percentage of Train Services that reach their destination within the Allotted Time Threshold;

(ii) the number and percentage of Train Services that do not reach their destination within the Allotted Time Threshold:

(A) due solely to the acts or omissions of QR Network;

(B) due solely to delays attributed to an Access Holder; and

(C) that are not Train Services of the types identified in Subparagraphs 9.1(d)(ii) (A) or (B); and

(iii) the total number of Train Services.

- (e) Information on the transit time of Train Services that have operated in the subject Quarter, as follows:
  - (i) for all Train Services, the average Above Rail Delay, in minutes, per one hundred (100) train kilometres;
  - (ii) for all Train Services, the average Below Rail Delay, in minutes, per one hundred (100) train kilometres; and
  - (iii) for all Train Services, the average Unallocated Delay, in minutes, per one hundred (100) train kilometres.
- (f) Information on the availability of the network for Train Services in the subject Quarter, as follows:
  - (i) number and percentage of Train Services scheduled in the ITP cancelled due to a reason that can be attributed directly to QR Network as Railway Manager;
  - (ii) number and percentage of Train Services scheduled in the ITP cancelled due to a reason that can be attributed directly to an Access Holder (which would include cancellations attributable to its Nominated Railway Operator); and
  - (iii) number and percentage of Train Services scheduled in the ITP cancelled due to a reason that cannot be clearly assigned as directly attributable to an Access Holder or to QR Network as Railway Manager.
- (g) Information on the safety of Train Services that have operated in the subject Quarter, being the number of major reportable incidents, as reported to the Safety Regulator.
- (h) Information on network service quality, as follows:
  - (i) speed restrictions in the subject Quarter, being the average percentage and the average number of kilometres of Track under temporary speed restriction; and
  - (ii) the most recent measure of Track quality for the network measured by a quality index with component measures including gauge, top, twist and versine.
- (i) Information for each Individual Coal System on coal carrying Train Services that have operated in the subject Quarter, being:
  - (i) the aggregate gtk;
  - (ii) the aggregate nt;
  - (iii) the aggregate ntk;
  - (iv) the aggregate egtk;
  - (v) the average actual Below Rail Transit Time Percentage (including the methodology for calculating the amount);
  - (vi) the aggregate Train Paths used by the relevant Train Services;
  - (vii) the aggregate Train Paths contracted for relevant Train Services in accordance with the relevant Train Service Entitlements;
  - (viii) the aggregate number of Train paths available for coal carrying Train Services;
- (j) Unless otherwise agreed by QR Network and the QCA, information for each Individual Coal System for the subject Quarter in respect of:

- (i) the aggregate number of Train Paths scheduled;
  - (ii) the aggregate number of Train Paths used for planned maintenance;
  - (iii) the aggregate number of Train Paths used for unplanned maintenance; and
  - (iv) the percentage of Train Paths available but not used.
- (k) Unless otherwise agreed by QR Network and the QCA, for the purposes of Clauses 9.1(d) to (g), the Train Services will be aggregated as follows, Train Services operated for the purpose of:
- (i) transporting coal within each Individual Coal System;
  - (ii) transporting freight products, and bulk minerals (other than coal); and
  - (iii) providing long distance passenger transport.
- (l) For the purposes of Clause 9.1(h), information on network service quality will be reported in the following segments:
- (i) each Individual Coal System (unless otherwise agreed by QR Network and the QCA); and
  - (ii) the remainder of the network, with the exception of:
    - the Metropolitan Region; and
    - Standard Gauge Rail Infrastructure.
- (m) QR Network will, in conjunction with its public release of a quarterly report in accordance with this Clause 9.1, provide to the QCA a supplementary quarterly report that presents the information included in the public quarterly report (except for the information in Clause 9.1(h)) for each Railway Operator. If a supplementary quarterly report relates to a Railway Operator, QR Network will provide to that Railway Operator those parts of the supplementary quarterly report that relate to that Railway Operator.

## **9.2 ANNUAL REPORTS**

### **9.2.1 Annual Financial Report**

Within six (6) months after the end of each Year in the Term, or such longer time as agreed by the QCA, QR Network will publicly release Financial Statements in relation to the subject Year, that have been prepared and certified by the QR Network Executive General Manager in accordance with Clause 3.3.1 and, for Financial Statements prepared under Clause 3.3.1(a)(i), which will be accompanied by the audit certificate prepared in accordance with Clause 3.3.2.

### **9.2.2 Annual Performance Report**

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

performance report identifying the material errors. An error will be a material error where:

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

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

- (c) Information in relation to QR Network's compliance with the Undertaking over the subject Year as follows:
  - (i) the number of requests for Preliminary Information received in accordance with Clause 4.1(d) and the average time (in days) taken to provide the Preliminary Information;
  - (ii) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in Clause 4.2(c);
  - (iii) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in Clause 4.2(c), the average delay (in days) taken to acknowledge the Access Applications;
  - (iv) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in Clause 4.3(a);
  - (v) the number and percentage of Access Applications received in accordance with this Undertaking for which the time for the provision of an Indicative Access Proposal was extended in accordance with either Clause 4.3(b)(i) or (ii);
  - (vi) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in Clauses 4.3(a) and (b), the average delay (in days) taken to provide the Indicative Access Proposals;
  - (vii) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 10.1;
  - (viii) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 10.1 and QR Network was found to have committed a breach of the Undertaking;
  - (ix) the number of instances where QR Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.4;
  - (x) the number of instances where QR Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.4 and QR Network was found to have committed a breach of those ring fencing obligations;



- (xi) the number of instances where an Access Holder has made a written complaint to QR Network about an incorrectly calculated bill, and where QR Network's investigation into the complaint identifies that the bill was incorrectly calculated; and
- (xii) in respect of written complaints that QR Network Train Control has made a decision in breach of QR Network's traffic management decision making matrix contained in Appendix 3, Part B of Schedule G (for each of Third Party Access Holders collectively and Related Operators as Access Holders collectively):
  - (A) the number of complaints received by QR Network;
  - (B) of the complaints received by QR Network, the number which are currently being assessed by QR Network; and
  - (C) of the complaints received by QR Network, the number which, after being assessed by QR Network, were verified.
- (d) Information in relation to the outcome of QR Network's negotiations with Access Seekers over the subject Year as follows:
  - (i) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker;
  - (ii) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of any reason other than the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker; and
  - (iii) the number of instances where a Negotiation Period commenced in accordance with this Undertaking has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker.
- (e) QR Network will, in conjunction with its public release of an annual performance report in accordance with this Clause 9.2.2, provide to the QCA a supplementary annual performance report that presents the information included in the public annual performance report for the following classes of Access Holders:
  - (i) Access Holders who are QR Parties (in aggregate); and
  - (ii) Access Holders who are Third Parties (in aggregate).

### **9.2.3 Maintenance Cost Report**

- (a) Within two (2) months after the Approval Date, QR Network must submit to the QCA a draft template of its proposed maintenance cost report. The QCA will consider the draft template and approve the proposed format provided it discloses the information required to be reported in accordance with this clause in a reasonably transparent manner. If the QCA considers that the proposed format fails to satisfy that requirement, the QCA will decide how the proposed format is required to be amended in order to satisfy that requirement. The approved format may be varied from time to time as agreed between QR Network and the Authority or, failing agreement, as required by the Authority.

- (b) Within four (4) months after the end of each Year in the Term, or such longer time as agreed by the QCA, QR Network will publicly release an annual report of actual maintenance costs and scope of maintenance in the subject Year containing the information set out in Clause 9.2.3(c) for the geographic areas specified in Clause 9.2.3(d) in the format approved or required in accordance with clause 9.2.3(a).
- (c) QR Network will:
- (i) report its actual maintenance costs and scope of maintenance in the subject Year compared to the forecast maintenance costs and scope of maintenance accepted by the QCA for the purpose of determining Reference Tariffs, and will provide an explanation of significant variations between actual and forecast maintenance costs and scope of maintenance; and
  - (ii) for the Central Queensland Coal Region:
    - (A) report the MCI for the subject year (including the indices, if any, comprised in the MCI); and
    - (B) provide an explanation of any significant difference between the variation in the overall (weighted average) MCI index and the variation in total actual maintenance costs for the subject year; and
    - (C) report on the effect on the completion of planned maintenance work of action necessarily taken to restore QR Network's rail network after derailments (but QR Network is not obliged to report in respect of any derailment with a repair cost of less than or equal to \$100,000).
- (d) The actual and forecast maintenance costs and scope of maintenance will be separately reported for:
- (i) each Individual Coal System; and
  - (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted forecast maintenance costs and scope of maintenance for the purpose of assessing the relevant Reference Tariff(s),
- unless otherwise agreed by QR Network and the QCA.
- (e) Where a report has been published in accordance with Clause 9.2.3(a) and QR Network has actual knowledge of a material error in the report, QR Network will, as soon as practicable but no later than six (6) months after acquiring knowledge of the material error, publish either, at QR Network's discretion, an erratum or a corrected report identifying the material errors. An error will be a material error where:
- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
  - (ii) otherwise, QR Network or the QCA considers the error to be material.
- In addition, QR Network shall notify the QCA of any errors that QR Network has actual knowledge of in the report unless the QCA has otherwise been notified or is aware of the error.

#### **9.2.4 Maintenance Cost Report to the QCA**

- (a) Within two (2) months after the Approval Date, QR Network must submit to the QCA a draft template of its proposed maintenance cost report. The QCA will

consider the draft template and approve the proposed format provided it discloses the information required to be reported in accordance with this clause in a reasonably transparent manner. If the QCA considers that the proposed format fails to satisfy the requirement, the QCA will decide how the proposed format is required to be amended in order to satisfy that requirement. The approved format may be varied from time to time as agreed between QR Network and the Authority or, failing agreement, as required by the Authority.

- (b) Within four (4) months after the end of each Year in the Term, unless otherwise agreed between QR Network and the QCA, QR Network will report its actual maintenance cost and scope of maintenance in the subject Year compared to the forecast maintenance cost and scope of maintenance accepted by the QCA for the purpose of determining Reference Tariffs, in the format to be approved or required in accordance with the clause 9.2.4(a), including:
- (c) a detailed description of its actual maintenance cost and scope of maintenance in the following categories:
  - (i) mechanised maintenance;
  - (ii) general track maintenance;
  - (iii) structures and facilities maintenance;
  - (iv) trackside systems maintenance;
  - (v) electrical overhead maintenance; and
  - (vi) telecommunication maintenance;
- (d) an explanation of significant variations between the actual and forecast maintenance costs and scope of maintenance; and
- (e) separate reports on the actual and forecast maintenance costs and scope of maintenance for:
  - (i) each Individual Coal System; and
  - (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of QR Network's forecast maintenance costs and scope of maintenance for the purposes of assessing the relevant Reference Tariff(s),unless otherwise agreed by QR Network and the QCA.

### **9.2.5 Operational Data Report to the QCA**

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

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

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

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

### **9.3 CAPITAL EXPENDITURE AND REGULATORY ASSET BASE REPORTS**

#### **9.3.1 Capital Expenditure Report to the QCA**

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

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

#### **9.3.2 Regulatory Asset Base Roll-forward Report to the QCA**

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

- (a) the opening value of the Regulatory Asset Base for the subject Year;
- (b) indexation of the Regulatory Asset Base;
- (c) depreciation of the Regulatory Asset Base;
- (d) capital expenditure that is included in the Regulatory Asset Base;
- (e) disposals and transfers from the Regulatory Asset Base; and
- (f) the closing value of the Regulatory Asset Base for the subject Year, separately reported for:
  - (g) each Individual Coal System; and
  - (h) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted a value for a Regulatory Asset Base for the purposes of assessing the relevant Reference Tariff(s).

#### **9.3.3 Public Regulatory Asset Base Roll-forward Report**

- (a) Within one (1) month after notification by the QCA of its acceptance of QR Network's roll-forward of the Regulatory Asset Base for a Year, QR Network will publicly release an annual report of changes to the Regulatory Asset Base for that Year, containing the information set out in Clause 9.3.3(b) for the geographic areas specified in Clause 9.3.3(c) in a format to be agreed with the QCA from time to time.
- (b) QR Network will report for the subject Year the roll-forward of the Regulatory Asset Base including details of:
  - (i) the opening value of the Regulatory Asset Base for the subject Year;
  - (ii) indexation of the Regulatory Asset Base;
  - (iii) depreciation of the Regulatory Asset Base;

- (iv) capital expenditure that is included in the Regulatory Asset Base, separately identifying individual projects with a value in excess of \$10 million;
  - (v) disposals and transfers from the Regulatory Asset Base;
  - (vi) the closing value of the Regulatory Asset Base for the subject Year; and
  - (vii) for comparative purposes, the value of the Capital Indicator for the subject Year.
- (c) The roll-forward of QR Network's Regulatory Asset Base will be separately reported for:
- (i) each Individual Coal System; and
  - (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted a value for a Regulatory Asset Base for the purposes of assessing the relevant Reference Tariff(s) unless otherwise agreed by QR Network and the QCA.

#### **9.4 BREACH REPORTS TO THE QCA**

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

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

- (b) Where QR Network does not report a breach or a remedial action proposed or taken by QR Network to the QCA on the basis of exception in this Clause 9.4, QR Network must notify the QCA of this and QR Network or the QCA may apply to the Supreme Court of Queensland for a determination of whether that exception applies.

#### **9.5 INFORMATION REQUESTED BY THE QCA**

- (a) The QCA has the right, by written notice, to request that QR Network provide to the QCA information or a document that the QCA reasonably requires for the purpose of:
- (i) performing its obligations or functions in accordance with either this Undertaking or an Access Agreement; or
  - (ii) determining whether it should exercise powers in this Undertaking, such as requiring the conduct of an audit.

The notice must include a description of the information or document required, the purpose for which it is required, and the day by which it is required, provided that the day stated in the notice must be reasonable.

- (b) QR Network will comply with a request by the QCA under Clause 9.5(a) by the day stated in the notice unless QR Network has a reasonable excuse for non-compliance.

#### **9.6 COMPLIANCE**

- (a) The Compliance Officer is to be responsible for using best efforts to undertake the following activities:
  - (i) notifying the QR Network Executive General Manager:
    - (A) as soon as possible of any material breach of the Undertaking by QR Network and advising of any remedial action proposed or taken by QR Network in respect of the breach; and
    - (B) in respect of other breaches and the remedial action proposed or taken by QR Network in respect of those breaches, on a monthly basis;
  - (ii) taking all steps necessary to ensure that QR Network is able to meet its obligations under Clauses 3.3.1, 9.1(a), 9.2.1 to 9.3.3 and 9.5; and
  - (iii) taking all steps necessary to ensure that QR Network is able to meet any other obligation under the Undertaking nominated by the QR Network Executive General Manager and agreed to by the QCA in writing.
- (b) The QR Network Executive General Manager will be responsible for taking all steps necessary for ensuring that QR Network is able to meet any other reporting obligation or activity imposed on QR Network by the Undertaking not identified or nominated under Clause 9.5(a).
- (c) Information provided to the QCA in accordance with Clauses 9.2.4, 9.2.5, 9.3.1, and 9.3.2 will be accompanied by a responsibility statement signed by the QR Network Executive General Manager and one independent director of QR Network.

#### **9.7 REPORT AUDITING**

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

#### **9.8 AUDIT REQUESTED BY THE QCA**

- (a) Notwithstanding any other provisions of this Undertaking that require the conduct of an audit, the QCA may request QR Network to undertake an audit, in accordance with Clause 10.3, in relation to whether any specific conduct or decisions of QR Network comply with this Undertaking provided that the QCA has:

- (i) reasonable grounds to believe that such an audit is necessary; and
  - (ii) has given QR Network written notice of those grounds and why it believes such an audit is necessary.
- (b) If the QCA, in accordance with Clause 9.8(a), has requested QR Network to undertake an audit, then the audit will be conducted in accordance with Clause 10.3.

## **PART 10: DISPUTE RESOLUTION AND AMENDMENT PROCESSES**

### **10.1 DISPUTE RESOLUTION**

#### **10.1.1 Disputes**

- (a) If any dispute or question (“**Dispute**”) arises in relation to:
- (i) the operation of or anything required to be done by QR Network under this Undertaking; or
  - (ii) the negotiation of Access between an Access Seeker and QR Network, then, unless otherwise agreed by the parties to the Dispute or provided for in this Undertaking, that Dispute shall be resolved in accordance with this Clause 10.1 and any party to the Dispute may give to the other parties a Dispute Notice.
- (b) Unless otherwise agreed by the parties, Disputes in connection with an Access Agreement shall be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking (even if the Dispute relates to provisions included in that Access Agreement that are similar to or are inconsistent with this Undertaking).
- (c) If a Dispute to be resolved in accordance with this Clause 10.1 involves an EU Access Seeker or TOA Access Seeker:
- (i) QR Network must provide:
    - (A) where the Dispute involves an EU Access Seeker, each relevant TOA Access Seeker;
    - (B) where the Dispute involves a TOA Access Seeker, each relevant EU Access Seeker or EU Access Holder (with an EU Access Seeker or EU Access Holder not being considered 'relevant' for these purposes to any Dispute the resolution of which will solely affect another EU Access Seeker or EU Access Holder, even if Access Rights relevant to both EU Access Seekers or EU Access Holders are proposed to be contracted under the same proposed TOA Access Agreement),with:
    - (C) a copy of the Dispute Notice and any subsequent notices or correspondence given by QR Network in connection with the Dispute to the EU Access Seeker or TOA Access Seeker involved in the Dispute (as applicable); and
    - (D) a reasonable opportunity to participate in any discussions pursuant to clause 10.1.2; and
  - (ii) the entity or entities referred to in clause 10.1.1(c)(i)(A) or (B) (as applicable) will have a right to elect, by written notice to QR Network and the EU Access Seeker or TOA Access Seeker involved in the Dispute (as applicable) provided within 5 Business Days of receiving the Dispute Notice, to become a party to the Dispute for the purposes of clauses 10.1.2 to 10.1.4.

#### **10.1.2 Chief Executive Resolution**

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



- (a) any Dispute shall within five (5) Business Days of the Dispute Notice be referred in the first instance to each party's chief executive (or his or her nominee) for resolution; and
- (b) if:
  - (i) the Dispute is not resolved within ten (10) Business Days after the referral under Clause 10.1.2(a); or
  - (ii) a chief executive appoints a nominee in accordance with Clause 10.1.2(a) that is unacceptable to the other party,the relevant Dispute may, by agreement between the parties, be referred for resolution by an expert in accordance with Clause 10.1.3 and failing such agreement, either party may refer the Dispute to the QCA in accordance with Clause 10.1.4.

### **10.1.3 Expert Determination**

- (a) Where a Dispute is referred to an expert pursuant to this Clause 10.1 or otherwise in accordance with this Undertaking:
  - (i) an expert shall be appointed by agreement between the parties, or in default of such appointment within ten (10) Business Days of the need to refer the Dispute to an expert, the expert appointed is to be the person nominated at the request of a party by:
    - (A) if the parties agree that the Dispute is of a financial nature, the President (for the time being) of CPA Australia;
    - (B) if the parties agree that the Dispute is of a non-financial nature, the President (for the time being) of Engineers Australia – Queensland Division; or
    - (C) in any other case, the President (for the time being) of the Queensland Law Society Incorporated;
  - (ii) the expert shall:
    - (A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
    - (B) have no interest or duty which conflicts or may conflict with his or her function as expert, he or she being required to fully disclose any such interest or duty by written notice to the parties before his or her appointment;
    - (C) not be an employee of the parties or of a Related Party of any of them;
    - (D) not be permitted to act until he or she has given written notice to each party that he or she is willing and able to accept the appointment;
    - (E) have regard to the provisions of this Undertaking and consider all submissions (including oral submissions by each party provided that such oral submissions are made in the presence of all the parties), supporting documentation, information and data with respect to the matter submitted by the parties;
    - (F) not make a determination in relation to a Dispute that is inconsistent with this Undertaking;

- (G) provide the parties with a copy of his or her determination in relation to the Dispute in the form of a report within a reasonable time after his or her appointment;
  - (H) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties; and
  - (I) be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration (including the *Commercial Arbitration Act 1990 (Qld)*), shall not apply to him or her or to the determination or the procedures by which he or she may reach a determination.
- (b) The parties shall, upon request by the expert, provide or make available to the expert, as soon as reasonably practicable, all information in their possession or control and all assistance, that the expert may reasonably require.
  - (c) In the absence of manifest error, the decision of the expert shall be final and binding upon the parties. If a party believes that there has been a manifest error it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error, then the parties may agree to refer the Dispute to another expert in accordance with this Clause 10.1.3, or failing such agreement, either party may refer the Dispute to the QCA for resolution in accordance with Clause 10.1.4.
  - (d) Unless otherwise agreed by the parties:
    - (i) the parties shall be liable for the costs of the expert and any advisers to the expert in equal shares; and
    - (ii) each party shall bear their own costs of participating in the expert determination.

#### **10.1.4 Determination by the QCA**

- (a) If a Dispute is referred to the QCA pursuant to this Clause 10.1 or otherwise in accordance with this Undertaking, then Division 5 of Part 5 of the Act shall apply in relation to any determination by the QCA of that Dispute. If there is an inconsistency between this Undertaking and Division 5 of Part 5 of the Act then Division 5 of Part 5 of the Act prevails to the extent of that inconsistency.
- (b) If an issue is referred to the QCA for determination as specified in accordance with this Undertaking, but does not constitute a Dispute of a type that could be notified to the QCA for the purposes of Division 5 of Part 5 of the Act, then the QCA will make a determination through any process that it considers appropriate, provided that:
  - (i) prior to considering the issue, the QCA advises both parties of the process that it will use to make the determination and both parties are given the opportunity to advise the QCA of any concerns with that process; and
  - (ii) the process and any determination by the QCA is otherwise consistent with Division 5 of Part 5 of the Act and, except to the extent of any inconsistency with Division 5 of Part 5 of the Act, the provisions of this Undertaking.
- (c) If a Dispute is referred to the QCA in accordance with this Clause 10.1.4, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any

advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the parties a copy of any advice it receives from the Safety Regulator.

- (d) Where the QCA calls upon the Safety Regulator to provide advice to the QCA in relation to a Dispute, the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportion as the QCA determines.
- (e) Where a matter is referred to the Safety Regulator for resolution in accordance with Clause 8.1.3(f)(ii), the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportions as the Safety Regulator determines.
- (f) If a Dispute relating to Clause 7.3.4(d) is referred to the QCA in accordance with this Clause 10.1.4, QR Network bears the onus of demonstrating to the QCA that a reduction or elimination of the other sources of revenue would reasonably be expected to occur as a consequence of QR Network not providing Access to the particular traffic.
- (g) If a Dispute is referred to the QCA in accordance with this Clause 10.1.4 and that Dispute relates to the presumption under Clause 6.5.2(c), QR Network will bear the onus of demonstrating that presumption should not apply.
- (h) If a Dispute is referred to the QCA in accordance with Clause 11.1.3(c), the following principles also apply:
  - (i) the QCA shall, in determining the Dispute, ensure the Supply Chain Operating Assumptions developed by QR Network are consistent with the efficient use of, and investment in, the relevant coal supply chain as a whole, provided that:
    - (A) the Supply Chain Operating Assumptions that apply for part of the relevant coal supply chain must be consistent with the Supply Chain Operating Assumptions that apply to the other parts of that coal supply chain;
    - (B) QR Network's ability to efficiently operate its business and the Central Queensland Coal Region and to meet its obligations to Access Holders and Access Seekers (including those outside the relevant coal supply chain) is not compromised;
    - (C) all of QR Network's Access Holders (and where relevant Customers) are equitably treated; and
    - (D) the resolution of the Dispute must not adversely affect the right of QR Network to only grant Access Rights in respect of Capacity.
  - (ii) the QCA may request other participants in the relevant Supply Chain Group and other persons who use or control components of the relevant coal supply chain who may be affected by the Supply Chain Operating Assumptions developed by QR Network to participate in the Dispute resolution process.

## **10.2 QCA DECISION-MAKING**

- (a) The QCA may not make a decision ("Decision") under this Undertaking that may affect QR Network (including to require QR Network to do, give or submit anything to the QCA, to resolve a Dispute or to refuse to approve, approve or consent to or grant anything), unless:
  - (i) the QCA observed the rules of natural justice;
  - (ii) the QCA observed any procedures that were required by law or this Undertaking;

- (iii) the QCA had jurisdiction to make the Decision under this Undertaking;
- (iv) the QCA was authorised to make the Decision under this Undertaking;
- (v) the QCA's Decision would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
  - (A) taking an irrelevant consideration into account in the exercise of a power;
  - (B) failing to take a relevant consideration into account in the exercise of a power;
  - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
  - (D) an exercise of a discretionary power in bad faith;
  - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
  - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
  - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
  - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
  - (I) any other exercise of a power in a way that is an abuse of the power;
- (vi) the QCA's Decision did not involve an error of law (whether or not the error appears on the record of the Decision);
- (vii) the QCA's Decision was not induced or affected by fraud;
- (viii) to the extent that any matters were required to be established before the Decision could be made or taken, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the Decision or, to the extent that the existence of a particular fact forms the basis on which the Decision is made, the fact did or does exist; and
- (ix) the Decision was not otherwise contrary to law or this Undertaking.

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

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

### **10.3 AUDIT PROCESS**

An audit required under Clause 2.2, 3.3.2, 3.6(d), 3.7, 9.7 or 9.8 must be conducted in accordance with the following process:

- (a) QR Network will annually appoint the auditor subject to the QCA's prior approval of the auditor. Where the QCA does not approve the appointment of a particular auditor, QR Network must nominate an alternative auditor or replacement auditor as soon as practicable;
- (b) The auditor must:
  - (i) be independent of QR Network and other QR Parties; and
  - (ii) be appropriately qualified and experienced;
- (c) the QCA's approval of an auditor (or replacement auditor) in accordance with Clause 10.3(a) continues unless and until withdrawn in accordance with Clause 10.3(d);
- (d) if the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may, within three (3) months after completion of the audit, notify QR Network in writing that its approval of that Auditor in relation to the next audit of those matters is withdrawn;
- (e) the Auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the Auditor's obligations to QR Network and its duty of care to the QCA, the Auditor's duty of care to the QCA will take precedence;
- (f) prior to commencing the audit the Auditor must agree an audit plan with QR Network, document that audit plan, and obtain the QCA's approval of the audit plan;
- (g) the audit plan will:
  - (i) consist of a proposed work program for the execution of the audit, including audit costs (which shall be payable by QR Network); and
  - (ii) provide for the establishment of an audit liaison group, comprising the Auditor, QR Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise;
- (h) QR Network will provide:
  - (i) any relevant information the Auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the Auditor to be reasonable after consultation with QR Network; and
  - (ii) if the audit is required under Clause 3.3.2, access to QR Network's financial records and information systems necessary for the purpose of conducting the audit;
- (i) the Auditor will be required to enter into a confidentiality deed with QR Network in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report; and
- (j) the Auditor will provide to QR Network and the QCA a copy of:
  - (i) the audit report (which the QCA may publish); and
  - (ii) any letter or report from the Auditor accompanying the audit report which explains the audit findings in greater detail.

- (k) QR Network must use reasonable endeavours to implement any recommendations made by the auditor in the audit report or any other letters or reports provided undertaking subparagraph 10.3(j) (except to the extent the non-implementation is approved by the QCA) as soon as reasonably practicable after the documents are provided by the auditor.

## **PART 11: COORDINATION AND PLANNING**

### **11.1 COAL SUPPLY CHAIN COORDINATION FOR CENTRAL QUEENSLAND COAL REGION**

#### **11.1.1 Whole of Supply Chain Coordination**

QR Network will use reasonable endeavours to:

- (a) participate in a Supply Chain Group for the purpose of contributing to the coordination and effective performance of the relevant coal supply chain; and
- (b) coordinate its maintenance activities with other service providers and participants in the coal supply chains.

#### **11.1.2 Supply Chain Master Plan**

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

#### **11.1.3 Supply Chain Operating Assumptions**

- (a) Within 6 months of the Approval Date, QR Network will develop Supply Chain Operating Assumptions in relation to each Individual Coal System.
- (b) If a Supply Chain Group seeks to develop Supply Chain Operating Assumptions for a coal supply chain, QR Network will:
  - (i) participate in the development of those Supply Chain Operating Assumptions;
  - (ii) notify the Supply Chain Group of the Supply Chain Operating Assumptions applicable to the relevant coal supply chain;
  - (iii) consider any submissions from the Supply Chain Group in respect of whether the Supply Chain Operating Assumptions are reasonable; and
  - (iv) respond to any submissions from the Supply Chain Group as soon as reasonably practicable including whether and, if so, how QR Network has varied the relevant Supply Chain Operating Assumptions in response to those submissions.
- (c) The Supply Chain Operating Assumptions in relation to each Individual Coal System must be reviewed at least once each year, or more frequently following a change to a coal system that would result in a material change in Supply Chain Operating Assumptions or in conjunction with the development of a Coal Rail Infrastructure Master Plan. In undertaking the review, QR Network will:
  - (i) notify the Supply Chain Group of the Supply Chain Operating Assumptions applicable to the relevant coal supply chain and the time in which to make submissions;
  - (ii) consider any submissions from the Supply Chain Group in respect of whether the Supply Chain Operating Assumptions are reasonable and whether variation is required; and
  - (iii) respond to any submissions from the Supply Chain Group as soon as reasonably practicable including whether and, if so, how QR Network has varied the relevant Supply Chain Operating Assumptions in response to those submissions.
- (d) If a participant in a Supply Chain Group is not satisfied that the relevant Supply Chain Operating Assumptions developed by QR Network are reasonable or

with QR Network's response to submissions made by that Supply Chain Group regarding those Supply Chain Operating Assumptions, that participant may refer the matter to the QCA for determination in accordance with Clause 10.1.4.

#### **11.1.4 Regular review of capacity**

- (a) Within 6 months of the Approval date, QR Network will conduct a review of:
  - (i) Capacity; and
  - (ii) the difference between Capacity and Committed Capacity,
- (b) in relation to each Individual Coal system (a "Capacity Review").
- (c) A Capacity Review must then subsequently be undertaken:
  - (i) in relation to each Individual Coal System, whenever a review of System Operating Assumptions occurs in accordance with Clause 11.1.3; and
  - (ii) in relation to a particular Individual Coal System, whenever a Change in Existing Capacity is assessed in accordance with Clause 11.3.
- (d) In calculating Capacity in a Capacity Review, QR Network will apply the latest Supply Chain Operating Assumptions applicable to the relevant Individual Coal System developed in accordance with Clause 11.1.3, which are not subject of an unresolved referral to the QCA in accordance with paragraph 11.1.3(d).
- (e) If a Capacity Review reveals that, for a Individual Coal System, Committed Capacity at a particular point in time will exceed Capacity at that time, then:
  - (i) where Clause 7.5.4 applies, QR Network will be obliged to develop Infrastructure Enhancements in that Individual Coal System which it reasonably expects to be sufficient to ensure that Capacity will be equal to or greater than Committed capacity at that time;
  - (ii) QR Network will not contract for provision of additional Access Rights that would increase the deficit between Capacity and Committed Capacity at that time;
  - (iii) If queue for Available Capacity has been formed in accordance with Clause 7.3.4 QR Network will not provide Access Rights to Access Seekers in the queue where doing so would increase the deficit between Capacity and Committed Capacity at that time; and
  - (iv) where QR Network proposes to contract for the provision of Access Rights conditional on the completion of the relevant Infrastructure Enhancements, the Infrastructure Enhancements will be designed to provide sufficient Planned Capacity to provide the additional Access Rights conditionally contracted for and rectify the deficit between Capacity and Committed Capacity, unless separate Infrastructure Enhancements are being developed to rectify that deficit in accordance with paragraph 11.1.4(d); and
- (f) QR Network will use reasonable endeavours to liaise with other participants in any impacted coal supply chain (including via any relevant Supply Chain Group) regarding the most efficient timing of track possessions for scheduled maintenance activities.

#### **11.1.5 Review of Undertaking following LTS Outcome**

- (a) If the LTS Process results in an LTS Outcome or if QR Network considers that other circumstances have arisen that have materially impacted coal chain stakeholders, QR Network will promptly submit to the QCA for approval:



- (i) a draft amending access undertaking (the “Coal Chain DAAU”); and
- (ii) amendments to the Standard Access Agreement or new Proposed Standard Access Agreements (the “Coal Chain SAAs”),

which between them incorporate in appropriate detail all relevant amendments to this undertaking and the Standard Access Agreements which are reasonably necessary to implement such of the LTS Outcome as is relevant to the provision of Access or this Undertaking;

- (b) Clause 2.6(c)-(k) will apply in relation to the Coal Chain DAAU as if:
  - (i) all references to the Draft Incentive Mechanism Amendments were to the Coal Chain DAAU;
  - (ii) 2.6(f)(ii) was deleted and replaced with: “the amendments introduced by the Coal Chain DAAU are reasonably necessary to implement such of the LTS Outcomes as is relevant to the provision of Access or this Undertaking; and
  - (iii) 2.6(g)(i)-(ii) was deleted.
- (c) Clause 5.2 will apply in relation to the Coal Chain SAAs as if:
  - (i) the Coal Chain SAAs were a Proposed Standard Access Agreement required to be submitted in accordance with Clause 5.2(n).
  - (ii) references to the principles contained in Clause 5.2(n) are a reference to the principle in Clause 11.1.4(a)(iv).

## **11.2 COAL RAIL INFRASTRUCTURE MASTER PLANNING**

### **11.2.1 Master Plan Process**

- (a) QR Network will develop a Coal Rail Infrastructure Master Plan in accordance with this Clause 11.2.
- (b) The Coal Rail Infrastructure Master Plan may be made for a period of up to three (3) years but can extend to a longer time period.
- (c) QR Network will establish a Coal Rail Infrastructure Master Planning Forum comprising:
  - (i) Customers for coal carrying Train Services;
  - (ii) Access Holders that hold Access Rights for coal carrying Train Services and Access Seekers that are seeking Access Rights for coal carrying Train Services;
  - (iii) each Railway Operator that has an agreement with an Access Holder to provide Train Services to that Access Holder in respect of some or all of the Access Rights subject to the Access Holder’s Access Agreement;
  - (iv) the owners and/or operators of ports utilised by coal carrying Train Services and other coal unloading destinations;
  - (v) the Queensland Resources Council Ltd ABN 59 050 486 952,
  - (vi) the QCA, and
  - (vii) other interested parties in the coal supply chain (e.g. a Supply Chain Group).

- (d) The Coal Rail Infrastructure Master Planning Forum's function is to act as a consultative body for the purposes of QR Network's development of the Coal Rail Infrastructure Master Plan.
- (e) QR Network will actively involve the Coal Rail Infrastructure Master Planning Forum in the development of the Coal Rail Infrastructure Master Plan. QR Network must:
  - (i) as soon as reasonably practical after the Approval Date and then prior to 1 July in each Year (other than the first Year) in the Term, give each member of the Coal Rail Infrastructure Master Planning Forum a program setting out the consultations that are intended to occur through the Coal Rail Infrastructure Master Planning Forum over the forthcoming Year (including any processes for obtaining Customer Group acceptance of the scope of capital expenditure projects);
  - (ii) use reasonable endeavours to comply with a plan given to members of the Coal Rail Infrastructure Master Planning Forum in accordance with Clause 11.2.1(e)(i);
  - (iii) give participants at least ten (10) Business Days prior notice of any proposed meetings of the Coal Rail Infrastructure Master Planning Forum; and
  - (iv) at least five (5) Business Days prior to the proposed meeting, provide each participant with an agenda of the issues to be discussed, and any materials to be considered at that meeting.
- (f) QR Network is to provide an updated Coal Rail Infrastructure Master Plan to the Coal Rail Infrastructure Master Planning Forum (including the QCA) where changes in Supply Chain Operating Assumptions or other factors relevant to the development of the Coal Rail Infrastructure Master Plan would be reasonably expected to result in any material change to the Coal Rail Infrastructure Master Plan.

#### **11.2.2 Content of Master Plan**

- (a) QR Network must:
  - (i) to the extent that QR Network considers it reasonable to do so, align the Coal Rail Infrastructure Master Plan to each applicable Supply Chain Master Plan; and
  - (ii) if applicable, identify in its Coal Rail Infrastructure Master Plan the reasons why it does not agree with a Supply Chain Master Plan;
  - (iii) if there is any material difference between QR Network's Coal Rail Infrastructure Master Plan and a Supply Chain Master Plan, include in the Coal Rail Infrastructure Master Plan an explanation of the reasons for those differences; and
  - (iv) if there are any differences in the Supply Chain Operating Assumptions used in the Coal Rail Infrastructure Master Plan and a Supply Chain Master Plan, include in its Coal Rail Infrastructure Master Plan;
    - (A) the reasons for; and
    - (B) to the extent that QR Network is reasonably able to assess the potential impacts of,
      - the differences; and

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

### **11.3 CONTRACTING FOR CAPACITY IN COAL SUPPLY CHAINS**

- (a) QR Network will use reasonable endeavours to grant Access Rights to an Access Seeker in respect of coal carrying Train Service only where QR Network has formed a reasonable opinion that the Access Seeker (or in the case of a TOA Access Seeker, each relevant EU Access Holder or EU Access Seeker) has secured or is reasonably likely to secure the rights required to unload at its destination.
- (b) Where the provision of Access Rights to an Access Seeker (other than to a TOA Access Seeker or TOA Access Holder) is partly or wholly dependent on Planned Capacity, to be created other than by the user funded Expansion, becoming Available Capacity, QR Network must:
  - (i) only contract for the provision of such access rights conditional on the completion of the relevant Infrastructure Enhancements in accordance with this clause 11.3; and
  - (ii) only contract for the provision of such Access rights to the extent of the surplus Capacity above Committed Capacity that the Infrastructure Enhancement(s) are expected to result in.
- (c) If QR Network grants Access Rights (“Conditional Access Rights”) to Access Seekers (“Conditional Access Holders”) that are conditional on the completion of particular Infrastructure Enhancements, then:
  - (i) after the commissioning of the last of the relevant Infrastructure Enhancements, QR Network will, subject to Clause 11.3(d), undertake an assessment of the change in Existing Capacity arising as a result of those Infrastructure Enhancements (“Change in Existing Capacity”);
  - (ii) where Change in Existing Capacity is measured as the Existing Capacity at the time, less the Existing Capacity of the system in the absence of the Infrastructure Enhancement, using consistent 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:
    - the Conditional Access Rights of each Conditional Access Holder will be reduced on a pro rated basis, to a proportion of the Capacity that is:
      - (1) the Change in Existing Capacity; less

- (2) the Capacity required to be provided to existing non-conditional Access Holders (excluding TOA Access Holders, but including any relevant EU Access Holders) to rectify any existing deficit of Available Capacity to Committed Capacity in respect of the relevant Rail Infrastructure,  
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;
- (C) QR Network will notify each of the Conditional Access Holders:
- (1) of the assessment that has been undertaken;
  - (2) of the reduction in that Conditional Access Holder's Conditional Access Rights ("Access Rights Reduction") and the basis of that calculation; and
  - (3) that 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 clause 7.3.4 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 QR Network within 30 days that they do wish to seek the additional Access Rights; and
- (D) for the purposes of the Conditional Access Holders' position in a queue, QR Network and each Conditional Access Holder is taken to have complied with Clauses 4.1 to 4.4 provided that:
- (1) each Conditional Access Holder's Access Application is taken to be on the same terms as the previous Access Application made by that Conditional Access Holder for those Access Rights but only to the extent of its Access Rights Reduction; and
  - (2) if QR Network considers it reasonably necessary to do so, QR Network will as soon as reasonably practical provide supplementary material to the Indicative Access Proposal previously provided to each Conditional Access Holder (including in respect of the Infrastructure Enhancements that may be needed to provide the Conditional Access Holders with Access Rights equivalent to their Access Rights Reductions); and
- (E) QR Network must:
- (1) as soon as practicable after the assessment for the purpose of clause 11.3(c) occurred, commence planning for the Infrastructure Enhancements that would be needed to provide the Conditional Access Holders with additional Access Rights equivalent to their Access rights reductions; and
  - (2) provided sufficient of the Conditional Access Holders remain interested in seeking the additional Access Rights to justify the development of such Infrastructure Enhancements, as soon as practicable commence construction of the required Infrastructure Enhancements.

- (d) QR Network may defer an assessment for the purposes of Clause 11.3(b) until such time as QR Network reasonably considers that the relevant Infrastructure Enhancements are fully operational and the demand conditions are such that a reasonable assessment can be undertaken.
- (e) If, subject to clause 11.4, QR Network does not comply with any respect of this clause 11.3, it must notify all supply chain participants, and publish on its website, the reasons why it has not complied provided that QR Network is not obliged to disclose any other persons Confidential Information in doing so.
- (f) This Clause 11.3 is in addition to and is not intended to limit or restrict either Part 4 or Part 7. For the avoidance of doubt, if QR Network cannot comply with both its obligations in accordance with this Clause 11.3 and its obligations in accordance with Part 4 and Part 7, then QR Network's obligations in accordance with Part 4 and Part 7 prevail to the extent of the inconsistency.

#### **11.4 NO FETTER**

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

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

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

## PART 12: DEFINITIONS & INTERPRETATION

### 12.1 DEFINITIONS

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

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

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

**“2008 Undertaking”** means the access undertaking prepared by QR Network and approved by the QCA pursuant to the Act which commenced on 23 October 2008 (as amended during the term of that access undertaking);

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

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

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

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

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

(but, for the avoidance of doubt, not including the sale or supply of electric energy); and

- (vi) entry upon land:
  - (A) to the extent that entry upon the land is incidental to and essential for the use of Rail Infrastructure; or
  - (B) for access to walkways and crew changeover points referred to in paragraph (v)(C) of this definition to the same degree as is available to Related Operators,

provided that:

- (C) the land is owned by QR Network or a QR Party, or QR Network or a QR Party has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
- (D) the entry is not inconsistent with the terms of any lease, licence or other arrangement to which QR Network or a QR Party is a party in respect of the land,

(including, for the avoidance of doubt, both the right of an EU Access Holder to nominate a TOA Access Holder to conduct such utilisation on its behalf and the rights of a TOA Access Holder to conduct such utilisation);

**“Access Agreement”** means an agreement between QR Network and an Access Holder for the provision of Access. For the avoidance of doubt, except where expressly provided otherwise, a reference to “Access Agreement” includes each form of approved Standard Access Agreement (including an EU Access Agreement and TOA Access Agreement);

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

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

**“Access Charge”** means:

- (i) for all EU Access Holders and TOA Access Holders, the aggregate price paid by an EU Access Holder and the relevant TOA Access Holder(s) for Access under the relevant EU Access Agreement and TOA Access Agreement(s); and
- (ii) for all other Access Holders, the price paid by an Access Holder for Access under an Access Agreement;

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

- (i) an upfront contribution;
- (ii) a payment of an Access Facilitation Charge;
- (iii) a prepayment of all or part of an Access Facilitation Charge;
- (iv) a varied or an additional take or pay arrangement including, for example, to address ‘back-end’ payment risk to an appropriate value equivalent to the exposure (for example, for the development of infrastructure for a new coal



mine, the undepreciated component of any relevant Infrastructure Enhancements that were constructed solely for the purpose of the mine);

- (v) a bank guarantee or other security that is unconditional, irrevocable, payable on demand and otherwise in a form acceptable to QR Network, acting reasonably, to support payment of an amount (including, for example, payment of an Access Facilitation Charge or under an additional take or pay arrangement);
- (vi) the forfeiting of any right to relinquish Access Rights that may arise under this Undertaking,
- (vii) Access Charges being calculated on the basis of a Varied WACC or other risk-adjustments to projected cash flows,

but which are not inconsistent with the Act.

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

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

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

**“Access Holder”** means (unless expressly stated otherwise) a person who holds Access Rights, including except in those contexts where expressly excluded:

- (i) an EU Access Holder; and
- (ii) a TOA Access Holder;

For the avoidance of doubt, where an Access Agreement defines Access Holder where used in that agreement to have the meaning given in this Undertaking, it is intended that any exclusions of an EU Access Holder or TOA Access Holder from the definition of Access Holder in this Undertaking would apply to all equivalent contexts in that Access Agreement;

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

**“Access Rights Reduction”** has the meaning given to that term in Clause 11.3(c)(v)(C)(2);

**“Access Seeker”** means a person who is seeking new or additional Access Rights, including (unless expressly stated otherwise):

- (i) an EU Access Seeker; and
- (ii) a TOA Access Seeker;

For the avoidance of doubt, where an Access Agreement defines Access Seeker where used in that agreement to have the meaning given in this Undertaking, it is intended that any exclusions of an EU Access Seeker or TOA Access Seeker from the definition of Access Seeker in this Undertaking would apply to all equivalent contexts in that Access Agreement;

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

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

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

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

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

**“Additional Information”** means that information set out in:

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

but only to the extent required by the Access Seeker;

**“Additional Risks”** has the meaning given in Clause 6.5.4(a)(iv).

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

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

**“Agreed Paths”** means the lesser of:

- (i) the number of Train Paths required for the operation of the number of Train Services that an Access Holder is entitled to operate (or in the case of an EU Access Holder, to nominate TOA Access Holders to operate) in accordance with an Access Right specified under an Access Agreement (as varied from time to time in accordance with the Access Agreement); and
- (ii) the actual Train Paths that QR Network agrees, upon request by the Access Holder from time to time, to make available for the operation of the Access Holder’s Train Services;

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

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

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

**“Application Requirements”** means:

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

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

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

**“Approved WACC”** means 9.96% per annum.

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

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

**“AT<sub>2-4</sub>”** means the aggregate of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> components of Access Charges;

**“AT<sub>2-4</sub> Revenue Adjustment Amount”** means the amount calculated under Clause 3.2.1(a), Part B of Schedule F;

**“AT<sub>5</sub> Revenue Adjustment Amount”** means the amount calculated under Clause 3.2.1(b), Part B of Schedule F;

**“Auditor”** means an auditor appointed by QR Network and approved by the QCA in accordance with Clauses 10.3(a) and (c);

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

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

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

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

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

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

- (i) the relevant nominated section running times (in the direction of travel) as specified in the Train Service Entitlement;
- (ii) identified Below Rail Delays for that Train Service;
- (iii) time taken in crossing other Trains to the extent that such time is not contributed to by Above Rail causes or Force Majeure Events or otherwise included in paragraph (i) of this definition; and

- (iv) delays due to Operational Constraints directly caused by the activities of QR Network in maintaining the Rail Infrastructure or due to a fault or deficiency in the Rail Infrastructure provided such delays are not contributed to by Above Rail causes or Force Majeure Events or otherwise included in paragraph (ii) or (iii) of this definition;

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

**“Blackwater System”** means that Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory, Minerva and Rolleston mines, and all branch lines directly connecting coal mine loading facilities to those corridors with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond);

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

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

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

- (i) whether there is sufficient Available Capacity to accommodate the requested Access Rights;
- (ii) if there is not sufficient Available Capacity to accommodate the requested Access Rights, the Infrastructure Enhancements required to provide the additional Capacity to accommodate the requested Access Rights (and an indicative estimate of the cost of such works and timing for completion); and
- (iii) the operational impacts of the requested Access Rights including, in the Central Queensland Coal Region, the impact of the requested Access Rights on the System Operating Assumptions,

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

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

**“Capacity Review ”** has the meaning given to the term in Clause 11.1.4(a);

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

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

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

**“Central Queensland Coal Region”** means the rail corridors:

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

**“Change in Law”** means:

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

**“Change in Relevant Taxes”** means:

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

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

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

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

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

**“Coal Chain DAAU”** has the meaning given to that term in Clause 11.1.5(a);

**“Coal Chain SAA”** has the meaning given to that term in Clause 11.1.5(a);

**“Commencing Date”** means 1 July 2009;

**“Committed Capacity”** means that portion of the Capacity:

- (i) that is required:
  - (A) to meet the Train Service Entitlements of Access Holders; and
  - (B) to comply with any Passenger Priority Obligation; and
- (ii) arising from a User Funded Expansion to the extent that a person has a right of first refusal in accordance with Clause 7.5.5 and has not waived that right;

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

**“Committed Funding”** for an Extension means the aggregate of funding to be provided by Users under User Funding Agreement and funding to be provided by QR Network (voluntarily or in accordance with Clause 7.5.5(f)).

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

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

**“Competing Applications”** means the Access Applications of two or more Access Seekers that are seeking Access Rights relating to the same traffic task – including, for example:

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

provided that, for the avoidance of doubt, Access Applications of TOA Access Seekers can never constitute Competing Applications;

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

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

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

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

provided that such information:

- (iii) is not already in the public domain;

- (iii) does not become available to the public through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in Clause 3.4(c);
- (iv) was not in the other party's lawful possession prior to such disclosure; and
- (v) is not received by the other party independently from a third party free to disclose such information, data or other matter,

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

- (vi) the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;
- (vii) the information is now in the public domain through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in Clause 3.4(c); or
- (viii) the information has been received by the recipient independently from a third party free to disclose the information;

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

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

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

but **Consequential Loss** does not include:

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

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

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

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

- (i) for Financial Statements prepared under Clause 3.3.1(a)(i), the process for identifying, from QR Network's Ultimate Holding Company's audited general

purpose financial statements, the cost base for Below Rail Services, separate from other services provided by QR Parties to which those Financial Statements relate; and

- (ii) within the cost base for Below Rail Services, the process for identifying costs attributable to specified line sections (line section costs), costs not attributable to specified line sections but attributable to specified geographic regions (regional costs), and costs not attributable to specified line sections or any specified geographic region (network costs); and
- (iii) the format of Financial Statements;

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

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

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

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

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

**“Customer”** means:

- (i) except for Clause 7.3.7, a person that the Access Holder or Access Seeker is providing or intending to provide Train Services (as a Railway Operator) for or on behalf of, and for the purpose of providing such Train Services, the Access Seeker or Access Holder is acquiring or has acquired Access Rights; and
- (ii) for the purposes of Clause 7.3.7, a person that has a rail haulage agreement with the Access Holder (that is a Railway Operator) in respect of some or all of the Access Rights subject to the Access Holder’s Access Agreement,

but, for the avoidance of doubt, excluding any entity in so far as they would meet this definition due to being an EU Access Holder or EU Access Seeker;

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

**“Customer Specific Branch Line”** means an Extension that when constructed will solely connect an Access Holder or Customer’s single loading facility to Rail Infrastructure;

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

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

**“DBCT Coal Chain”** means all infrastructure relating to railing and shipping of coal (from mine outloaders to terminal shiploaders and adjacent infrastructure), generally referred to as the DBCT Coal Chain, but (unless all relevant stakeholders otherwise



agree) disregarding the Goonyella to Abbott Point expansion rail line (also referred to as the Northern Missing Link) and any part of the coal chain which solely relates to the Hay Point Terminal;

**“Declared Service”** means the service that is declared pursuant to section 250 (1)(a) of the Act;

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

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

**“Destination System”** means:

- (i) for any Train Services which originates in the Blackwater System and uses the Northern Missing Link, the Goonyella to Abbot Point System; or
- (ii) in all other cases, the Individual Coal System on which the Nominated Unloading Facility is located;

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

**“Dispute”** has the meaning given to that term in Clause 10.1.1(a);

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

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

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

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

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

**“Efficient Cost”** means the cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Rail Infrastructure to the required service standard, having regard to any matters particular to the environment in which QR Network operates, and including any transitional arrangements agreed between QR Network and the QCA to reflect the transition from QR Network’s actual cost to that efficient cost;

**“egtk”** means the electric gross tonne kilometres attributed to the relevant Train Service, being:

- (i) the gtk for the Train Service, if that Train Service uses electric traction; and

- (ii) zero (0), if the Train Service does not use electric traction;

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

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

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

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

- (i) a Change in Law or a Change in Relevant Taxes occurs, that either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since the Commencing Date, would cause a change in the costs reflected in, for Reference Tariffs specified in Part B of Schedule F, the AT<sub>3</sub>, AT<sub>4</sub>, and/or AT<sub>5</sub> input of the relevant Reference Tariff and, for Reference Tariffs specified in Part C of Schedule F, the AT<sub>1</sub> input of the relevant Reference Tariff, of greater than two and a half percentage points (2.5%) excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a variation of the Reference Tariff;
- (ii) a change in the pricing of one or more Distribution Entities and/or Transmission Entities that, either alone or in combination with all other changes in the pricing of relevant Distribution Entities and/or Transmission Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the AT<sub>5</sub> input of the relevant Reference Tariff of greater than two and a half percentage points (2.5%);
- (iii) a change in the pricing of one or more Retail Entities that either alone or in combination with all other changes in the pricing of relevant Retail Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the EC input of the relevant Reference Tariff of greater than two and a half percentage points (2.5%); or
- (iv) the QCA Levy is reviewed (taking into account any over or under recovery of fees via the QCA Levy in the previous year) following the QCA’s announcement of its fees for the provision of regulatory services for the rail industry.

**“Environmental Authorities”** means:

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

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

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

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

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

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

**“EU Access Agreement”** means an Access Agreement for a coal carrying Train Services that is substantially in the form of the approved Standard Access Agreement in Volume 2 of this Undertaking referred to as the ‘End User Access Agreement (Coal)’;

**“EU Access Seeker”** means an entity which is seeking Access Rights of the type provided by entry into an EU Access Agreement;

**“EU Access Holder”** means an entity which has entered an EU Access Agreement with QR Network;

**“Evaluation Period”** means:

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

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

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

**“Expansion”** means an Extension that is not a Customer Specific Branch Line;

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

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

**“Financial Statements”** has the meaning given to that term in Clause 3.3.1(a);

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

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

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

and includes:

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

**“Funding Shortfall”** has the meaning given in Clause 7.5.5(f);

**“Funding User”** means an Access Seeker or Customer which has entered a User Funding Agreement with QR Network;

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

**“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;

**“Goonyella System”** means that Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of:

- (A) the branch line to Gregory mine; and

- (B) the corridor beyond North Goonyella mine to Newlands mine (and beyond);

**“Goonyella to Abbot Point System”** means:

- (a) the Northern Missing Link; and
- (b) that part of any other Individual Coal System which is used by a Train Service that also uses or connects to any part of the Northern Missing Link, except where that Train Service originates or terminates south of Gregory.

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

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

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

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

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

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

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

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

- (i) the Newlands System;
- (ii) the Goonyella System;
- (iii) the Blackwater System;
- (iv) the Moura System; or
- (v) the Goonyella to Abbot Point System.

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

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

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

- (i) an indicative assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights; and
- (ii) if there is not sufficient Available Capacity, to accommodate the requested Access Rights either:

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

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

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

**“Interface Coordination Plan”** means a plan that identifies the procedures to be followed and the responsible officers from both QR Network and the Access Holder (or where Access Rights are, or are to be, held via an EU Access Agreement, the relevant TOA Access Seeker or TOA Access Holder), in respect of all regular operational interfaces between the parties that arise in the exercise of rights and the performance of obligations under an Access Agreement other than those specified in the Network Management Principles;

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

**“Interface Risk Management Process”** means a risk management framework to evaluate and address Interface Risks, conducted collaboratively by QR Network and an Access Seeker or Access Holder (or where Access Rights are, or are to be, held via an EU Access Agreement, the relevant TOA Access Seeker or TOA Access Holder);

**“Interface Risks”** means all risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Access Seeker’s or Access Holder’s proposed operations (or where Access Rights are, or are to be, held via an EU Access Agreement, the relevant TOA Access Seeker’s or TOA Access Holder’s proposed operations) and:

- (i) the Rail Infrastructure;
- (ii) existing operations on the Rail Infrastructure (including other Train Services); and

- (iii) QR Network’s staff, other Access Holders’ staff or QR Network’s or other Access Holders’ interfaces with members of the public (including any activities on the Rail Infrastructure that may affect those matters);

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

**“Investment Framework Amendments”** has the meaning in Clause 7.6;

**“IRMP”** means an interface risk management plan identifying the Interface Risks associated with the Access Seeker’s or Access Holder’s proposed operations (or where Access Rights are, or are to be, held via an EU Access Agreement, associated with the relevant TOA Access Seeker’s or TOA Access Holder’s proposed operations) and outlines both the control mechanisms agreed between QR Network and an Access Seeker or Access Holder to ensure those Interface Risks are managed to an acceptable level, and the parties responsible for implementing those controls and ensuring they remain effective;

**“Law”** or **“Laws”** includes:

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

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

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

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

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

**“LTS Outcome”** means an agreement by all affected stakeholders (including QR Network) pursuant to an LTS process, to a course of action which requires an amendment to the Undertaking or to the Standard Access Agreement;

**“LTS Process”** means:

- (a) an initiative undertaken by stakeholders in the DBCT Coal Chain to implement a series of objectives (generally referred to at the Commencement Date as the “LTS” or “Long Term Solution”) to (amongst other things) align Access Agreements with access arrangements at the Dalrymple Bay Coal Terminal and rail freight agreements, and to provide both efficiency and certainty in

respect of optimum usage and future expansion of the capacity of the DBCT Coal chain; or

- (b) a similar initiative undertaken by stakeholders in another coal supply chain which includes access to Rail Infrastructure, to implement alignment of Access Agreements with access arrangements at relevant coal port terminals and rail freight agreements, and to provide both efficiency and certainty in respect of optimum usage and future expansion of capacity of infrastructure in that coal supply chain.

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

**“Major External Development”** means:

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

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

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

**“Major Yards”** means:

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

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

**“Material Default”** means:

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

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

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

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



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

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

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

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

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

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

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

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

**“Newlands System”** means that Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor, with the exception of the corridor between the Newlands mine and the North Goonyella mine (and beyond);

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

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

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

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

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

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

**“Northern Missing Link”** means that Rail Infrastructure comprising the rail corridor between the North Goonyella mine and the Newlands mine and all branch lines directly connecting coal mine loading facilities to that corridor;

**“Non-Funding Access Holder”** has the meaning given in Clause 7.5.5(j);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Proposed Standard Access Agreement”** means:

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

**“Proposed Standard Rail Connection Agreement”** means a proposed pro forma Rail Connection Agreement.

**“Proposed Standard User Funding Agreement”** means a proposed pro forma User Funding Agreement.

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

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

**“QR”** means QR Limited ACN 124 649 967;

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

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

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

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

provided that the above reasons are not in any way attributable to the Access Holder (or in the case of an EU Access Holder, the relevant TOA Access Holder(s));

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

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

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

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

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

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

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

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

**“Rail Infrastructure”** means rail transport infrastructure (as defined under the TIA) for which QR Network is the owner, lessee, or operator, the use of which is declared pursuant to section 250 (1)(a) of the Act for the purposes of Part 5 of the Act;

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

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

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

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

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

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

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

**“Regulatory Asset Base”** means the asset value for the Central Queensland Coal Region, accepted by the QCA for the purpose of developing Reference Tariffs for coal carrying Train Services;

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

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

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

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

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

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

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

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

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

**“Replacement Mine”** means a mine:

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

**“Request for Proposal”** has the meaning given in Clause 7.5.2(a).

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

**“Revenue Adjustment Amounts”** means collectively the AT<sub>2-4</sub> Revenue Adjustment Amount and the AT<sub>5</sub> Revenue Adjustment Amount and **“Revenue Adjustment Amount”** means one of them;

**“Review Event”** means:

- (a) where QR Network’s maintenance costs have been prudently and efficiently incurred, but are greater than its maintenance cost allowance, which has caused, or will cause, a change in the costs reflected in the AT<sub>3</sub>, AT<sub>4</sub> and/or AT<sub>5</sub> components of a Reference Tariff specified in Part B of Schedule F, of greater than two and a half percentage points (2.5%);

- (b) a change in QR Network’s maintenance practices, reasonably requested by an Access Holder or Customer subsequent to the Commencing Date, which has caused, or will cause a change in the costs reflected in the AT<sub>3</sub>, AT<sub>4</sub> and/or AT<sub>5</sub> components of the relevant Reference Tariff;
  - of greater than two and a half percentage points (2.5%) excluding the impact of:
  - (i) any change in maintenance practices that have previously resulted in a variation of the Reference Tariff since the Approval Date; and
  - (ii) any adjustment to the Reference Tariff to reflect changes in the MCI;
- (c) a Force Majeure Event – of the type set out in either paragraph (v) or (xii) of the definition of that term – affecting QR Network to the extent that QR Network has incurred or will incur additional incremental costs of greater than \$1 million that have not previously resulted in a variation of the relevant Reference Tariff;
- (d) the implementation of a self-insurance function for QR Network, by no later than 31 December 2010, which must include:
  - (i) a resolution by the QR Network Board resolving which events are being self-insured and acknowledging that it is considered that QR Network will have sufficient financial capacity to assume such self-insured risks;
  - (ii) operation of an appropriate claims management system and implementation of other procedures to ensure that full and accurate costs of any self-insured losses are identified and claimed by QR Network;
  - (iii) varying accounting systems to establish a self-insurance fund and separate expense items for self-insurance;
  - (iv) expanding the current claims management team to provide sufficient capacity to assess and manage additional claims against self-insured risks including the pursuit of recovery against third parties (including QR Parties) where appropriate;
  - (v) establishing any other appropriate policies, processes and procedures for the management of claims against self-insured risks; and
  - (vi) either demonstrating to the QCA that self-insured losses would not be otherwise recovered through revenue recovery provided for by this Undertaking, or submitting a Draft Amending Undertaking to remove the potential for any such recovery;
- (e) an increase in the number of contracted coal carrying Train Services using Rail Infrastructure between Burngrove and Minerva;
- (f) where QR Network has committed to developing a Significant Investment; or
- (g) any other material change in circumstances that QR Network can reasonably demonstrate may give rise to a need to vary the relevant Reference Tariff;

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

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

**“Rollingstock Configuration”** means the description of the combination of Rollingstock comprising a Train including identification number and gross mass of

individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

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

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

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

**“Safety Management System”** means:

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

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

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

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

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

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

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

**“Significant Investment”** means investment in a Major Expansion projected to cost in excess of \$300million;

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

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

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

**“Standard Rail Connection Agreement”** means a Proposed Standard Rail Connection Agreement which has been approved pursuant to clause 8.4;

**“Standard User Funding Agreement”** means a Proposed Standard User Funding Agreement which has been approved pursuant to clause 7.6.

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

**“Stowage”** means:

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

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

**“Supply Chain Group”** means a group:

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

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

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

**“System Allowable Revenue”** means:

- (i) for AT<sub>2-4</sub> in relation to an Individual Coal System, the total revenue from AT<sub>2-4</sub> arising from all Access Agreements in relation to that Individual Coal System that QR Network is entitled to earn over the relevant Year, as specified in Clauses 5.3, 6.3, 7.3, 8.3, and 9.3, Part B of Schedule F; and
- (ii) for the AT<sub>5</sub> component of Access Charges for the Central Queensland Coal Region, the total revenue from the AT<sub>5</sub> component of Access Charges arising from all Access Agreements in relation to the Central Queensland Coal Region that QR Network is entitled to earn over the relevant Year, as specified in either Clause 5.3 or 6.3, Part B of Schedule F,

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

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



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

**“System Gtk”** means the sum of the gtk for all coal carrying Train Services (excluding any Train Services which terminate at Wiggins Island Coal Terminal) to the extent those Train Services travel on the relevant Individual Coal System over the relevant period;

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

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

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

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

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

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

**“Terminating Date”** means the earlier of 30 November 2015 and the date on which this Undertaking is withdrawn in accordance with the Act;

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

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

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

**“TOA Access Agreement”** means an Access Agreement for a coal carrying Train Services that is substantially in the form of the approved Standard Access Agreement in Volume 2 of this Undertaking referred to as the ‘Train Operations Agreement (Coal)’;

**“TOA Access Seeker”** means an entity which is seeking Access Rights of the type provided by entry into a TOA Access Agreement;

**“TOA Access Holder”** means an entity which has entered a TOA Access Agreement with QR Network;

**“Total Actual Revenue”** means:

- (i) for AT<sub>2.4</sub> in relation to an Individual Coal System, the amount calculated in accordance with Clauses 3.2.3, 3.2.4 and 3.2.15, Part B of Schedule F; and
- (ii) for the AT<sub>5</sub> component of Access Charges for the Central Queensland Coal Region, the amount calculated in accordance with Clauses 3.2.5 and 3.2.15, Part B of Schedule F;

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

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

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

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

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

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

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

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

**“Train Service”** means:

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

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

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

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

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

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

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

**“Ultimate Holding Company”** means the holding company (as defined in the Corporations Act 2001 (Cth)) of QR Network, which is the ultimate owner of QR Network;

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

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

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

**“Unfunded Portion”** has the meaning given in Clause 7.5.5(f).

**“User”** means Access Seekers (other than TOA Access Seekers) and/or their Customers.

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

**“User Funded Extension”** means an Extension which is funded wholly or partly by Funding Users entering into User Funding Agreements;

**“User Funding”** means the provision of funding to QR Network by an Access Holder or Customer pursuant to a User Funding Agreement;

**“User Funding Agreement”** means the agreement by which a Customer, Access Seeker or Access Holder agrees to provide funding to QR Network for the development of Infrastructure Enhancements and/or feasibility study in respect of proposed Infrastructure Enhancements;

**“Varied WACC”** means a weighted average cost of capital different to that of the Approved WACC.

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

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

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

## **12.2 INTERPRETATION**

- (a) In this Undertaking unless the context otherwise requires:
- (i) where reference is made to a position or group name, and that position or group name changes during the course of the Undertaking, provided the position or group retains responsibility for the same or substantially the same tasks, the reference will be taken to cover the changed name;
  - (ii) reference to a person includes a partnership, an unincorporated joint venture, an unincorporated association, a corporation, a government or statutory body or authority and any other entity recognised by law;
  - (iii) where:

- (A) a group of persons are in a partnership, an unincorporated joint venture, an unincorporated association or other similar arrangement; and
- (B) that group of persons together execute or seek to execute an agreement (including an Access Agreement or a rail haulage agreement) or such an agreement is executed or is sought to be executed for or on behalf of that group of persons,

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

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

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

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

- (d) Notwithstanding any other provision in this Undertaking, this Undertaking does not expressly or impliedly waive any claim that QR Network may have to legal professional privilege in respect of any information, reports, documents or other material (in whatever form).

### **12.3 NOTICES**

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

### **12.4 TRANSITIONAL PROVISIONS**

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

- (ii) QR Network is only obliged to provide information for the period prior to the Approval Date as would have been required to be provided under the 2008 Undertaking in respect of that same type of report.
- (d) If the Approval Date is the first day of a Quarter, then QR Network will report on the last Quarter prior to the Approval Date in accordance with the requirements of the 2008 Undertaking.
- (e) If the Approval Date is the first day of a Year, then QR Network will report on the prior Year in accordance with the requirements of the 2008 Undertaking.
- (f) QR Network must calculate the relevant adjustment of 2<sup>nd</sup> Year System Allowable Revenue in accordance with this Undertaking for the whole of the 2009/2010 Year, provided that if the Approval Date is after the date by which QR Network would have been obliged:
  - (i) to submit Revenue Adjustment Amounts to the QCA for the 2009/2010 Year; or
  - (ii) to calculate the relevant adjustment of 2<sup>nd</sup> Year System Allowable Revenue for the 2009/2010 Year,
 then QR Network will comply with those obligations as soon as reasonably practicable after the Approval Date.
- (g) For the purposes of Clause 3.1.1(a), Part B of Schedule F a reference to an adjustment of 2<sup>nd</sup> Year System Allowable Revenue in accordance with Clause 3.4 includes an adjustment calculated under Clause 12.4(f).
- (h) This Undertaking was amended on 31 May 2013, together with various amendments including the insertion of this **clause 12.4(h)**, to extend the Term by amending the Terminating Date to refer to 30 June 2014 rather than 30 June 2013 (**Terminating Date Amendment**). This had the effect of adding an extra Year commencing on 1 July 2013 (**2013/14 Year**) to the Term. Despite any other provision in this Undertaking, the Terminating Date Amendment does not apply, and must not be interpreted, so as to give rise to any liability, requirement or non-compliance under this Undertaking that is retrospective in effect. For example, prior to the QCA's approval of the Terminating Date Amendment, Aurizon Network was not required to submit a Reference Tariff variation, by 28 February 2013, referred to under clause 2.2.1(b)(ii), Part A and clause 3.1.1, Part B of Schedule F in respect of the 2013/14 Year as that was not a Year in the Term. The approval of the Terminating Date Amendment does not act to change that position by retrospectively giving rise to any liability or requirement for Aurizon Network under, or non-compliance by Aurizon Network with, clause 2.2.1(b)(ii), Part A and clause 3.1.1, Part B of Schedule F in respect of the 2013/14 Year and the QCA may take no action under clause 2.2.2(b)(ii) or clause 2.2.4(a), Part A of Schedule F as a result.
- (i) This Undertaking was further amended, together with various amendments including the insertion of this **clause 12.4(i)**, to extend the Term by amending the Terminating Date to refer to 30 June 2015 rather than 30 June 2014 (**Further Terminating Date Amendment**). This had the effect of adding a further Year commencing on 1 July 2014 to the Term. Despite any other provision in this Undertaking, the Further Terminating Date Amendment does not apply, and must not be interpreted, so as to give rise to any liability, requirement or non-compliance under this Undertaking that is retrospective in effect, including matters of the type referred to by way of example in clause 12.4(h).

- (j) This Undertaking was further amended, together with various amendments including the insertion of this **clause 12.4(i)**, to extend the Term by amending the Terminating Date to refer to 30 November 2015 rather than 30 June 2015 (**Further Terminating Date Amendment**). Despite any other provision in this Undertaking, the Further Terminating Date Amendment does not apply, and must not be interpreted, so as to give rise to any liability, requirement or non-compliance under this Undertaking that is retrospective in effect, including matters of the type referred to by way of example in clause 12.4(h).



## **SCHEDULE A**

### ***MAINTENANCE OF REGULATORY ASSET BASE***

- 1. MAINTENANCE OF REGULATORY ASSET BASE**
- 1.1 QR Network will maintain a Regulatory Asset Base for the purposes of Clause 6.2.4(c) of this Undertaking.
- 1.2 For the purposes of Clause 1.1, on an annual basis, QR Network will roll forward the asset values in its Regulatory Asset Base, applying the following principles:
  - (a) the opening asset value will be indexed for the Year using CPI;
  - (b) depreciation of the assets will be calculated for the Year using asset lives and a depreciation profile endorsed by the QCA;
  - (c) the value of asset disposals and transfers during the Year will be subtracted from the Regulatory Asset Base;
  - (d) prudent capital expenditure will be added to the Regulatory Asset Base, where prudent capital expenditure is that accepted by the QCA in accordance with Clause 2; and
  - (e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with Clauses 1.3 to 1.4.
- 1.3 The value of assets contained in the Regulatory Asset Base may be increased by QR Network if:
  - (a) it is at the end of the Term and QR Network is seeking to include a valuation for intangible assets, being a matter that was not considered as part of the initial valuation of assets contained in the Regulatory Asset Base; or
  - (b) additional sections of existing Rail Infrastructure are incorporated into the Central Queensland Coal Region, in which case the additional sections will be initially valued in accordance with the Depreciated Optimised Replacement Cost methodology,provided that the increase in asset value must first be accepted by the QCA.
- 1.4 The QCA will not require the value of assets contained in the Regulatory Asset Base to be reduced unless:
  - (a) the QCA made its decision to accept the expenditure in the Regulatory Asset Base on the basis of information provided by QR Network that QR Network knew, or should have known, was false or misleading at the time it provided the information;
  - (b) circumstances arise in the future where demand has deteriorated to such an extent that regulated prices on an unoptimised asset would result in a further decline in demand;
  - (c) it becomes clear that there is a possibility of actual (not hypothetical) bypass; or
  - (d) an End of Period Assessment conducted in accordance with clause 5 of this Schedule determines that the Rail Infrastructure has deteriorated by more than would have been the case had good operating practice and prudent and effective maintenance and asset replacement policies and practices been pursued.

- 1.5 QR Network must, at all times during the Term, maintain the Rail Infrastructure in a condition which is fit for the purpose of provision of contracted Train Service Entitlements to Access Holders.

## **2. ACCEPTANCE OF CAPITAL EXPENDITURE INTO THE REGULATORY ASSET BASE**

- 2.1 The QCA will determine what capital expenditure should be accepted into QR Network's Regulatory Asset Base. The QCA's prior approval is not required for any capital expenditure.

- 2.2 The QCA will accept all prudent capital expenditure into the Regulatory Asset Base. Prudence has three aspects:

- (a) prudence in scope;
- (b) prudence in standard of works; and
- (c) prudence in cost.

The QCA's consideration of prudent capital expenditure will be in accordance with Clause 3 provided that the assessment of whether actual capital expenditure will be accepted into the Regulatory Asset Base will only be made after the expenditure has been incurred, subject to Clause 3.1 which provides for pre-approval by the QCA of certain aspects of the capital expenditure.

- 2.3 While Reference Tariffs may include a Capital Indicator at the beginning of a regulatory period, this does not imply an acceptance by the QCA of this level of capital expenditure for inclusion in the Regulatory Asset Base. For clarity, actual capital works undertaken by QR Network during a regulatory period may be determined by the QCA to not be prudent and therefore not accepted by the QCA for inclusion in the Regulatory Asset Base, even though total capital expenditure may be within the Capital Indicator.

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

- 2.5 The QCA will consider for inclusion in the Regulatory Asset Base any capital expenditure on commissioned projects or projects that have been formally discontinued. The QCA will not consider for inclusion in the Regulatory Asset Base any capital expenditure on projects that have either not been commissioned or have not been formally discontinued. The QCA will either:

- (a) advise QR Network in writing that it has approved the capital expenditure for inclusion in the Regulatory Asset Base; or

- (b) if the QCA is considering refusing approval for the inclusion of an element of QR Network's capital expenditure in the Regulatory Asset Base, the QCA will give to QR Network a preliminary notice of the QCA's decision, stating the reasons and the way it considers it appropriate to adjust the amount of the capital expenditure.
- 2.6 If the QCA gives QR Network a preliminary notice under Clause 2.5:
- (a) within thirty (30) days of QR Network being given the preliminary notice, QR Network may revise the amount of the capital expenditure and/or provide additional information supporting its view that the capital expenditure was prudent; and
  - (b) the QCA will consider the information provided under Clause 2.6(a) and either approve or refuse to approve the capital expenditure.

### **3. ASSESSMENT OF CAPITAL EXPENDITURE**

#### **3.1 Regulatory Pre-Approval of Capital Expenditure**

QR Network may seek pre-approval of the scope or the standard of a capital expenditure project or of a procurement strategy in accordance with this Clause 3.1. If QR Network seeks such a pre-approval, the QCA will assess the prudence of the scope or the standard of the capital expenditure project or the procurement strategy in accordance with this Clause 3.1, provided that a failure to obtain that pre-approval does not affect the right to seek approval in accordance with Clause 3.3 for that capital expenditure.

##### **3.1.1 Regulatory Pre-Approval of Scope of Capital Expenditure**

- (a) The QCA will accept the scope of a capital expenditure project as prudent if:
  - (i) it is Asset Replacement Expenditure and is consistent with the asset age and composition of the assets in, as applicable, the Central Queensland Coal Region and asset replacement is in accordance with the Asset Management Plan. However, the QCA retains the right to review the composition of Asset Replacement Expenditure; or
  - (ii) it is General Expansion Capital Expenditure and the scope of the capital expenditure has been accepted by a Customer Group in accordance with Clause 3.2.2(f); or
  - (iii) it is Customer or, if an Access Holder has no Customer, Access Holder specific capital expenditure for a branch line to a mine which is to be included as a loading point for a Reference Tariff developed in accordance with Part 6 of the Undertaking, and the scope of the capital expenditure has been accepted by the Customer or Access Holder concerned.
- (b) QR Network, an Access Seeker, an Access Holder or a Customer may make a submission to the QCA seeking regulatory pre-approval of the scope of a capital expenditure project where a capital expenditure project has not been accepted by a Customer Group in accordance with Clause 3.2.2(f) (including a project that has been omitted from the Coal Rail Infrastructure Master Plan and/or the Customer Group acceptance process under Clause 3.2.2), provided that QR Network, the Access Seeker, the Access Holder or the Customer (as the case may be) has provided sufficient information to the QCA to allow it to

reasonably consider the request for pre-approval given the criteria set out in Clause 3.3.2.

- (c) The QCA must:
  - (i) consider a submission made under Clause 3.1.1(b) in accordance with the requirements set out in Clause 3.3.2 and taking into account the outcome of a Customer Group vote (if any), in accordance with Clause 3.2.2, in respect of that capital expenditure project; and
  - (ii) notify the person who made a submission under Clause 3.1.1(b) and QR Network:
    - (A) whether the scope of the capital expenditure project is pre-approved by the QCA; and
    - (B) if refused (in whole or in part), stating the reasons for that refusal.

### 3.1.2 Regulatory Pre-Approval of Standard of Capital Expenditure

- (a) QR Network may make a submission to the QCA seeking regulatory pre-approval of the standard of a capital expenditure project which has received regulatory pre-approval of scope in accordance with Clause 3.1.1, provided that submission includes sufficient information to allow the QCA to reasonably consider the request for pre-approval.
- (b) The QCA must:
  - (i) consider such a submission made under Clause 3.1.2(a) in accordance with the requirements set out in Clause 3.3.3; and
  - (ii) notify QR Network:
    - (A) whether the standard of the capital expenditure project is pre-approved by the QCA; and
    - (B) if refused (in whole or part), stating the reasons for its refusal.

### 3.1.3 Regulatory Pre-approval of Procurement Strategy

- (a) QR Network may make a submission to the QCA seeking regulatory approval of a procurement strategy for all or aspects of a capital expenditure project, if the QCA has approved the scope of that capital expenditure project as prudent in accordance with Clause 3.1.1.
- (b) The QCA must consider a submission made under Clause 3.1.3(a) in accordance with Clauses 3.1.3(c) and (d) and taking into account the likely outcomes of QR Network's compliance with that procurement strategy and the requirements for prudence of costs set out in Clause 3.3.4.
- (c) The QCA will approve QR Network's procurement strategy if it is satisfied that it is consistent with the following general principles, namely that the procurement strategy:
  - (i) is in accordance with good industry practice;
  - (ii) will generate an efficient and competitive outcome;
  - (iii) will avoid conflict of interest or collusion amongst tenderers;
  - (iv) is prudent in the circumstances of the capital expenditure project (including tending to assist in achieving the requirements for prudence of cost set out in Clause 3.3.4); and
  - (v) will avoid unreasonable exposure to contract variation claims.

- (d) In particular, in considering whether or not to approve QR Network's procurement strategy, the QCA will consider whether, inter alia:
- (i) there is a clear process for the calling of tenders, including having clear specifications for tenders, and processes for mitigating conflicts of interest (except when it is assessed that calling tenders is likely to be less advantageous than an alternative means of negotiating a contract);
  - (ii) there is a tender assessment process which contains clear and appropriate processes for determining the successful tender, with any decisions to approve a tender that is not the lowest tender being appropriately justified and documented;
  - (iii) the basis of payment for works is clearly specified and the basis for undertaking the works is in accordance with good commercial practice;
  - (iv) there is a process for managing contracts before and after award that accords with good commercial practice for a project of the type and scale of the capital expenditure project and provides appropriate guidance on the criteria that QR Network should apply to decisions regarding the management of the capital expenditure project, including but not limited to:
    - (A) safety during construction and operation;
    - (B) compliance with environmental requirements during construction and operation;
    - (C) minimising disruption to Existing Capacity during construction;
    - (D) accommodation of the reasonable requests of Access Holders and their Customers (if applicable) to change the scope and sequence of construction to suit their needs;
    - (E) a prudent balance between:
      - (1) a higher price in return for more certainty as to final cost;
      - (2) a lower price accepting that final cost may be less certain; and
      - (3) costs, schedule and minimising disruption to Existing Capacity during construction;
    - (F) minimising whole of asset life costs including future maintenance and operating costs;
    - (G) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
  - (v) there is a process for managing contract variations and/or escalation that occurs post award of a contract, requiring that reasonable consideration be given to managing the risk of contract variations and/or escalation and the allocation of potential risks during the management of the contract and requiring the provision of clear documentary evidence regarding the nature and reasonableness of any variation and/or escalation; and

- (vi) QR Network has engaged an auditor in accordance with Clause 3.1.3(h) to monitor compliance with the procurement strategy.
- (e) The QCA will give QR Network a notice in writing regarding:
  - (i) whether the procurement strategy is approved; and
  - (ii) if the QCA decides not to approve the procurement strategy (in whole or part) the reasons for its refusal and the way the processes should be amended.
- (f) The QCA will accept that the value of a contract as awarded is prudent and will include it into the Regulatory Asset Base if:
  - (i) the QCA has approved QR Network's procurement strategy in accordance with Clause 3.1.3(e);
  - (ii) the QCA is satisfied that contract provisions regarding contract variations and escalation accord with good commercial practice; and
  - (iii) the auditor engaged in accordance with Clause 3.1.3(h) certifies that the tender has been conducted in accordance with the approved procurement strategy.
- (g) The QCA will accept that contract variations and/or escalations post award of a contract are prudent and will include them into the Regulatory Asset Base if:
  - (i) a contract (the value of which as awarded has been accepted as prudent under Clause 3.1.3(f)) has been managed in accordance with the approved procurement strategy;
  - (ii) the auditor engaged in accordance with Clause 3.1.3(h) has certified that the contract variations and/or escalations have been handled in a manner consistent with the relevant contract provisions; and
  - (iii) the QCA is satisfied that the cost of contract variations and/or escalations is otherwise appropriate, having regard to:
    - (A) whether adequate consideration was given to properly managing the risk of contract variations and/or escalation or the allocation of potential risks during the awarding and management of the contract;
    - (B) whether the contract has been appropriately managed having regard to the matters in Clause 3.1.3(d)(iv);
    - (C) whether the contract variations and/or escalations are appropriately justified; and
    - (D) whether the contract has been managed with regard to a prudent balance between costs, schedule and minimising disruption to Existing Capacity during construction.
- (h) As part of the implementation of an approved procurement strategy, QR Network will engage an independent external auditor (at QR Network's cost unless otherwise approved by the QCA) to audit the compliance of QR Network's tender and contract management processes with the procurement strategy approved under Clause 3.1.3(e) in accordance with the following process:

- (i) QR Network will appoint the auditor, subject to obtaining the QCA's prior approval of the selection of the auditor and the terms and conditions of the engagement of the auditor;
  - (ii) the auditor will be required to acknowledge and accept that the auditor owes a separate duty of care to the QCA in the provision of the audit and, in the event of a conflict between the auditor's obligations to QR Network and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence;
  - (iii) the auditor must agree the processes for conducting an audit with QR Network and obtain the QCA's approval of the audit process (which will consist of a proposed work program, including audit costs, for the execution of the audit);
  - (iv) QR Network will, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network, provide any relevant information the auditor reasonably requires for the purpose of conducting the audit;
  - (v) if required by QR Network, the auditor will enter into a confidentiality deed with QR Network in relation to any information provided by QR Network to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report detailed below;
  - (vi) the auditor will compile an audit report:
    - (A) identifying whether QR Network has complied in all material respects with the approved procurement strategy including in relation to contract variations and/or escalation; and
    - (B) if the auditor identifies that QR Network has not complied in all material respects with the approved procurement strategy:
      - (1) details on the relevant non-compliance;
      - (2) any reasons stated by QR Network for the relevant non-compliance; and
      - (3) whether the non-compliance was reasonable in the circumstances;
  - (vii) the auditor will provide to QR Network and the QCA:
    - (A) progress reports on the audit process every 6 months; and
    - (B) a copy of the audit report upon completion of the audit (which the QCA may publish if it considers it appropriate); and
  - (viii) if the QCA forms the view that any of the auditor's reports (whether progress reports or a final report) are lacking in detail or otherwise deficient, the QCA may direct QR Network to instruct the auditor to review their report and, in doing so, to address the concerns of the QCA.
- (i) When deciding whether to approve a procurement strategy, the QCA may take advice as it considers necessary from appropriately qualified

and experienced independent advisors and, if so, the cost of those advisors will be borne by QR Network.

- (j) The QCA will accept for inclusion into the Regulatory Asset Base all costs, paid for by or incurred by QR Network, that QR Network can demonstrate were prudently incurred and solely and directly related to complying with Clause 3.1.3 (including in Clauses 3.1.3(h) and (i)).

### **3.2 Customer Group Acceptance of Projects**

#### **3.2.1 Identification of Customer Groups**

- (a) A Customer Group is defined as all Customers and Access Holders who do not have Customers (including EU Access Holders but excluding TOA Access Holders), who have responsibility for Reference Tonnes. Reference Tonnes means that portion of, as applicable, a Customer's or an Access Holder's annual tonnage that:
  - (i) is charged, or will be charged, an Access Charge which is based on a Reference Tariff (including for the avoidance of doubt, Access Charges which are varied from the Reference Tariff pursuant to Clause 6.1.2(b) of the Undertaking or Clause 3, Part A of Schedule F); and
  - (ii) will have its Access Charge affected at any future time by the inclusion in the Regulatory Asset Base of the capital expenditure projects for which acceptance is sought in accordance with Clause 3.2.2(f) (i.e. typically, for the Central Queensland Coal Region, within the same Individual Coal System),

and, either:

- (iii) is:
  - (A) if included in an Access Agreement that will be in force at the time that is five (5) years after Customer Group acceptance is sought in accordance with Clause 3.2.2; and
  - (B) if subject to a legally binding commitment in the Access Agreement (even if that commitment is conditional upon the completion of Infrastructure Enhancements or upon other conditions which are the responsibility of QR Network to satisfy or can be waived by QR Network),

comprised of the number of tonnes specified in that Access Agreement for a twelve (12) month period starting five (5) years after the first day of the month in which Customer Group acceptance is sought in accordance with Clause 3.2.2; or

- (iv) is:
  - (A) if included in an Access Agreement which is due to expire within five (5) years after Customer Group acceptance is sought in accordance with Clause 3.2.2; and
  - (B) if it is reasonably expected by QR Network that the Access Agreement will be extended or a new Access Agreement entered in respect of substantially the same annual tonnages from the existing mine which has the benefit of the Access under the existing Access Agreement or a Replacement Mine (taking into account



factors such as whether the relevant Customer (or Customer's Access Holder) or the relevant Access Holder is seeking an extension of the Access Agreement and the projected remaining life of the existing mine or Replacement Mine),

comprised of the annual tonnage in the last year of the current Access Agreement.

- (b) QR Network will identify the members of a particular Customer Group with reference to Access Agreements that are in place at the date that Customer Group acceptance of capital projects is sought.

### 3.2.2 Customer Group Voting Process

- (a) Subject to Clause 3.2.2(b), QR Network may seek a Customer Group acceptance of the scope of capital expenditure projects that are included in the Coal Rail Infrastructure Master Plan prior to proceeding with the projects in order to gain pre-approval of the scope of the project in accordance with Clause 3.1.1(a)(ii). If QR Network seeks such Customer Group acceptance of the scope of a capital expenditure project:

- (i) QR Network will provide a written request to each member of the Customer Group seeking that acceptance and provide:
  - (A) advice on:
    - (1) the specific list of capital expenditure projects from the Coal Rail Infrastructure Master Plan for which it is seeking Customer Group acceptance; and
    - (2) QR Network's assessment of the member's Reference Tonnes and the total number of Reference Tonnes relating to the list of capital expenditure projects; and
  - (B) an outline of the rights and obligations of a member of a Customer Group in relation to a Customer Group voting process as set out in this Clause 3.2.2,

provided that if, after discussions with QR Network, the member wishes to query these tonnages or the composition of the Customer Group:

- (C) the member must, within two (2) weeks after receiving QR Network's written request in accordance with Clause 3.2.2(a)(i), notify the QCA to seek verification of those matters;
- (D) if the member has notified the QCA under Clause 3.2.2(a)(i)(C), QR Network and the member must, on request from the QCA, make available all documents necessary to verify the member's tonnages or its assessment of the Customer Group (and the QCA will confine its assessment to the information provided); and
- (E) the QCA shall notify QR Network and the member of its decision within two (2) weeks after receiving the member's notification under Clause 3.2.2(a)(i)(C); and

- (ii) QR Network will notify contemporaneously any applicable Customer or Access Holder (other than any TOA Access Holders) which has not been included within the Customer Group on the basis of QR Network's assessment that Clause 3.2.1(a)(iv) has not been satisfied provided that if, after discussions with QR Network, the Customer or Access Holder wishes to query its non-inclusion in the Customer Group:
  - (A) the Customer or Access Holder must, within two (2) weeks after receiving such notice in accordance with Clause 3.2.2(a)(ii), notify the QCA to seek verification of that matter;
  - (B) if the Customer or Access Holder has notified the QCA under Clause 3.2.2(a)(ii)(A), QR Network and the Customer or Access Holder must, on request from the QCA, make available all documents necessary to verify whether the Customer or Access Holder should have been included in the Customer Group and, if so, the Customer's or Access Holder's Reference Tonnes (and the QCA will confine its assessment to the information provided);
  - (C) the Customer or Access Holder bears the onus of demonstrating to the QCA's satisfaction that Clause 3.2.1(a)(iv) was satisfied; and
  - (D) the QCA shall notify QR Network and the Customer or Access Holder of its decision within two (2) weeks after receiving the Customer's or Access Holder's notification under Clause 3.2.2(a)(ii)(A).
- (b) Unless otherwise approved by the QCA, QR Network may only seek a Customer Group acceptance of the scope of a capital expenditure project that is General Expansion Capital Expenditure if the commencement of that capital expenditure project is anticipated by QR Network to occur not less than 6 months after QR Network provides the written request to each member of the Customer Group in accordance with Clause 3.2.2(a)(i).
- (c) Unless a member of a Customer Group has, within six (6) weeks after receiving the request under Clause 3.2.2(a)(i), lodged with QR Network bona fide objections to the proposed capital expenditure including reasons why it believes the proposed capital expenditure is not required, then the member will be deemed to have accepted the scope of the proposed capital expenditure projects. If any member of a Customer Group provides information, and claims confidentiality to the extent that it cannot be disclosed to the QCA, that confidential information will be disregarded.
- (d) If QR Network does not provide adequate or appropriate information in accordance with Clause 11.2.2(c) of the Undertaking, that may form a bona fide basis for a member of a Customer Group to object to the proposed capital expenditure for which Customer Group acceptance is sought.
- (e) When determining objections, QR Network may seek QCA approval to disregard any votes on the basis that a specific objection is not bona fide. The QCA shall consult with that member of the Customer Group in reaching a decision. The QCA shall advise QR Network and that

member of its decision within two (2) weeks after receiving this request from QR Network.

- (f) Customer Group acceptance of the scope of a capital expenditure project will be deemed to have been received if at least sixty percentage points (60%) of the Customer Group (as assessed by weighting members in accordance with their Reference Tonnes) accepts the scope of the proposed capital expansion projects.
- (g) Within ten (10) weeks after QR Network having sought acceptance of proposed capital expenditure projects under Clause 3.2.2(a), QR Network will notify each member of the Customer Group of the results of the vote. In the event that a project has not been accepted by the Customer Group, QR Network will provide each member with details regarding the number and percentage of objections received and, on request, will make available any objecting submissions, excluding any specific sections which the submitting member has specified as confidential.
- (h) A member of a Customer Group who considers that a project should receive regulatory pre-approval of scope, notwithstanding that Customer Group acceptance has not been secured, may apply to the QCA under Clause 3.1.1(b). In this case, QR Network will, on request from the QCA, make available to the QCA all relevant documents, including any confidential elements of objections.

### **3.3 Prudency of Capital Expenditure**

#### **3.3.1 Assessment of Prudency of Capital Expenditure**

- (a) In assessing whether the capital expenditure undertaken is prudent, the QCA will:
  - (i) only consider information that was, or would reasonably have been, available to QR Network at the time of making the investment decision (and in assessing the prudency of capital expenditure on the basis of that information, the QCA can take into account any advice or comments received pursuant to Clause 3.3.1(b)); and
  - (ii) take into account the extent to which QR Network has achieved compliance with Clause 3.2.2(f) (for example, where a significant number of the members of a Customer Group have accepted the scope of works but the threshold test for Clause 3.2.2(f) has not been met).
- (b) The QCA will take advice as it considers necessary from independent advisors using appropriate benchmarks and experience, and consult as it considers necessary with relevant stakeholders.

#### **3.3.2 Prudency of Scope of Works**

- (a) Assessing the prudency of scope of works involves assessing whether the works are reasonably required.
- (b) The QCA will accept the scope of a capital expenditure project:
  - (i) if it has been approved by a Customer Group under Clause 3.2.2(f) or pre-approved in accordance with Clause 3.1.1; or
  - (ii) if QR Network can demonstrate to the QCA's reasonable satisfaction, having regard to the factors set out in Clause 3.3.2(c), QR Network had reasonable grounds for proceeding

with a project given the circumstances relevant at the time the investment decision was made.

- (c) In assessing the scope of a capital expenditure project the QCA shall have regard to, inter alia:
  - (i) the Coal Rail Infrastructure Master Plan;
  - (ii) the need to accommodate what is reasonably required to comply with Access Agreements;
  - (iii) the extent of Reasonable Demand, and the need for new capital expenditure projects to accommodate that demand;
  - (iv) the age and condition of existing assets, the need for replacement capital expenditure projects and consistency with the Asset Management Plan;
  - (v) QR Network's legislative requirements, including relating to workplace health and safety and environmental requirements;
  - (vi) the appropriateness of QR Network's processes to evaluate and select proposed capital expenditure projects, including the extent to which alternatives are evaluated as part of the process;
  - (vii) the extent to which the capital expenditure project was subjected to the capital evaluation and selection process; and
  - (viii) the extent to which consultation has occurred with relevant stakeholders about the capital expenditure project.
- (d) The QCA may determine, in assessing the scope of a capital expenditure project, that:
  - (i) the scope of the capital expenditure project is in excess of that needed to accommodate current contracted demand, likely future demand within a reasonable timeframe and any spare capacity considered appropriate ("Reasonable Demand"); and
  - (ii) if the scope of that capital expenditure project is in excess of Reasonable Demand, the element of the prudent costs of the capital expenditure project that was not needed to meet Reasonable Demand ("Excluded Capital Expenditure").
- (e) If the QCA has determined Excluded Capital Expenditure in respect of a capital expenditure project, then:
  - (i) that Excluded Capital Expenditure will be set aside and escalated at the rate of Approved WACC or Varied WACC, as applicable to the relevant capital expenditure project (from the date of commissioning of the capital expenditure project) until the full scope of the capital expenditure project is accepted by the QCA as required to meet Reasonable Demand (whether on one occasion or in parts over time); and
  - (ii) when the QCA accepts that all or part of the excluded aspects of the capital expenditure project are required to meet Reasonable Demand:
    - (A) the QCA will accept all or the relevant part of the Excluded Capital Expenditure into the Regulatory Asset Base at its escalated value; and

- (B) if only part of the Excluded Capital Expenditure is included in the Regulatory Asset Base, paragraph (i) will continue to apply to the remainder.

### 3.3.3 Prudency of Standard of Works

- (a) Assessing the prudency of standard of works involves assessing whether the works are of a reasonable standard to meet the requirements of the scope and are not overdesigned such that they are beyond the requirements of the scope.
- (b) The QCA will accept the standard of the works undertaken where:
  - (i) the standard of works has been pre-approved in accordance with Clause 3.1.2;
  - (ii) QR Network can demonstrate to the QCA's reasonable satisfaction, having regard to the factors set out in Clause 3.3.3(c), QR Network had reasonable grounds for its design of the infrastructure; or
  - (iii) the proposed works are consistent in all material respects with the existing standard and configuration of adjacent infrastructure and/or existing infrastructure with similar usage levels, or its modern engineering equivalent, to the extent that the standard of the adjacent or existing infrastructure has previously been accepted by the QCA as being reasonable.
- (c) Where QR Network proposes to depart from the standard and configuration of adjacent and/or existing infrastructure with similar usage levels in assessing the standard of the works undertaken, or where the standard of such existing or adjacent infrastructure has not been accepted by the QCA as reasonable, the QCA will have regard to, inter alia:
  - (i) the requirements of Railway Operators and what is reasonably required to comply with Access Agreements;
  - (ii) current and likely future usage levels;
  - (iii) the requirements of the National Codes of Practice;
  - (iv) the requirements of other relevant Australian design and construction standards;
  - (v) QR Network's design standards contained within its Safety Management System and which is accepted by the Safety Regulator; and
  - (vi) all relevant legislation, including requirements by any Authority (e.g. the Safety Regulator and the EPA).

### 3.3.4 Prudency of Costs

- (a) Assessing the prudency of costs involves assessing whether the costs are reasonable for the scope and standard of work done.
- (b) The QCA will accept the prudency of costs of a capital expenditure project if the costs are reasonable for the scope and standard of works undertaken having regard to the matters set out in Clause 3.3.4(c) given the circumstances relevant at the time when the costs were incurred or the capital expenditure project was undertaken (as applicable).
- (c) In assessing the reasonableness of the cost of works undertaken, the QCA will have regard to, inter alia:

- (i) QR Network's Coal Rail Infrastructure Master Plan;
- (ii) the level of such costs relative to the scale, nature, cost and complexity of the project;
- (iii) the circumstances prevailing in the markets for engineering, equipment supply and construction;
- (iv) QR Network's compliance with any applicable procurement strategy approved by the QCA in accordance with Clause 3.1.3;
- (v) the Asset Management Plan; and
- (vi) the manner in which the capital expenditure project has been managed, including QR Network's balancing of:
  - (A) safety during construction and operation;
  - (B) compliance with environmental requirements during construction and operation;
  - (C) compliance with Laws and the requirements of Authorities;
  - (D) minimising disruption to the operation of Train Services during construction;
  - (E) accommodating reasonable requests of Access Holders to amend the scope and sequence of works undertaken to suit their needs;
  - (F) minimising whole of asset life costs including future maintenance and operating costs;
  - (G) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
  - (H) aligning other elements in the supply chain; and
  - (I) meeting contractual timeframes and dealing with external factors.

#### **4. CAPITAL EXPENDITURE CARRYOVER ACCOUNT**

- (a) QR Network will maintain a register in which it will annually record all Approved Capital Expenditure. The register will include the following information:
  - (i) capital expenditure by project;
  - (ii) categorisation of capital expenditure to that related to electrification assets and that not related to electrification assets; and
  - (iii) for capital expenditure not related to electrification assets, categorisation of capital expenditure based on Individual Coal System.
- (b) If, at the end of each Year, the Approved Capital Expenditure differs from the Capital Indicator, the difference will give rise to an entry in the Capital Expenditure Carryover Account. The balance recorded in the Capital Expenditure Carryover Account will be deemed as:
  - (i) an under recovery of revenue, if the Approved Capital Expenditure exceeds the Capital Indicator; or
  - (ii) an over recovery of revenue, if the Approved Capital Expenditure is less than the Capital Indicator.

- (c) The balance recorded in the Capital Expenditure Carryover Account will include:
- (i) a return on capital component, calculated as the difference between the return on capital assumed for the Capital Indicator and the return on capital that should have applied for the Approved Capital Expenditure, accrued at the Discount Rate;
  - (ii) a depreciation component, calculated as the difference between the depreciation assumed for the Capital Indicator and the depreciation that should have applied for the Approved Capital Expenditure; and
  - (iii) a tax depreciation component, calculated as the difference between the tax depreciation assumed for the Capital Indicator and the tax depreciation that should have applied for the Approved Capital Expenditure,
- and will be calculated using the modelling parameters and assumptions used to determine the Reference Tariffs.
- (d) The balance in the Capital Expenditure Carryover Account at the end of each Year will be rolled forward at the Discount Rate.
- (e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining Reference Tariffs to apply in the next undertaking with the intention of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking, the balance in the Capital Expenditure Carryover Account will be recovered from, or returned to, (as the case may be) Access Holders (including any EU Access Holders but excluding any TOA Access Holders) in the form of a single payment following the Terminating Date.

## **5. CONDITION BASED ASSESSMENTS**

- (a) QR Network must procure, at the cost of QR Network, a condition based assessment of the Rail Infrastructure in the Central Queensland Coal Region in accordance with this clause 5 within 3 months of the Approval Date (the Initial Assessment) and 6 months prior to the Terminating Date (the End of the Period Assessment);
- (b) If the End of Period Assessment finds that the condition of the Rail Infrastructure in the Central Queensland Coal Region has deteriorated between the Initial Assessment and End of Period Assessment by more than would have been the case had good operating practice and prudent and effective maintenance and asset replacement policies and practices been pursued, the Authority will be entitled to reduce the Regulatory Asset Base to reflect the additional deterioration;
- (c) QR Network will nominate three independent qualified consultants from which the QCA will select the independent consultant (the Assessor) which must be appointed to conduct both the Initial Assessment and the End of Period Assessment;
- (d) the Assessor will have a duty of care to the QCA in the conduct of the Initial Assessment and the End of Period Assessment and, in the event of a conflict between the Assessor's obligations to QR Network and its duty of care to the QCA, the Assessor's duty of care to the QCA will take precedence;
- (e) Prior to commencing an Initial Assessment or End of Period Assessment, the Assessor must agree an assessment plan with QR Network, document that assessment plan and obtain the QCA's approval of that assessment plan;

- (f) The assessment plan will:
  - (i) consist of a proposed work program for the execution of the Initial Assessment or End of Period Assessment (as applicable) including the costs which shall be payable by QR Network;
  - (ii) provide for the establishment of an assessment liaison group, comprising the Assessor, QR Network and the QCA, during the course of the Initial Assessment and the End of Period Assessment (as applicable) to provide a forum for the resolution of any issues that arise; and
  - (iii) propose a methodology for assessing track condition to be agreed between QR Network and the QCA and in the absence of agreement determined by the QCA;
- (g) QR Network will provide the Assessor with:
  - (i) any relevant information; and
  - (ii) access to land or sites,  
as reasonably required by the Assessor for the purposes of conducting an Initial Assessment or the End of Period Assessment.
- (h) To the extent QR Network is requested to provide confidential information to the Assessor, the Assessor will be required to enter into a confidentiality deed with QR Network in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the Initial Assessment and the End of Period Assessment and completing the assessment report.
- (i) The Assessor must provide to QR Network and the QCA a report on the findings of the Initial Assessment or the End of Period Assessment (as applicable), with the report of the End of Period Assessment including:
  - (i) identifying the extent to which the Rail Infrastructure in the Central Queensland Coal Region has deteriorated by more than would have been the case had good operating practice and prudent and effective maintenance and asset replacement policies and practices been pursued; and
  - (ii) to the extent such greater deterioration is identified, the value of that deterioration.



## **SCHEDULE B1**

### ***CONFIDENTIALITY DEED***

#### **BETWEEN**

**QR Network Pty Ltd (ACN 132 181 116)** of Level 14, 305 Edward Street, Brisbane  
in the State of Queensland

(“**QR Network**”)

#### **AND**

(“**Access Seeker**”)

#### **RECITALS**

- A.** The Access Seeker has made or intends to make enquiries of QR Network regarding the provision of Access and the parties may commence negotiation of the terms of an Access Agreement under which QR Network will provide the Access Seeker with Access to the Rail Infrastructure;
- B.** In the course of the Access Seeker’s enquiry and/or during the negotiations for the provision of Access to the Access Seeker and/or during the term of the Access Agreement it is envisaged that the parties will have to provide each other with Confidential Information;
- C.** This deed sets out the terms upon which the parties will disclose Confidential Information to each other.

## OPERATIVE PROVISIONS

### 1. Definitions

1.1. Unless the context otherwise requires, and subject to Clause 1.2, terms defined in the Undertaking have the same meanings when used in this deed.

1.2. In this deed, the following words and expressions shall have the respective meanings:

**“Confidential Information”** means:

(a) any information, data or other matter (‘information’) disclosed to a party by, or on behalf of, another party in contemplation of, or during the course of, the negotiations for Access in respect of which this deed was signed, or during the term of the Access Agreement that results from those Access negotiations, where:

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

(b) any information or data collected by QR Network or an Access Holder in the performance of an Access Agreement where the disclosure of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement, which party shall be deemed to be the owner of such Confidential Information,

provided that such information:

- (c) is not disclosed in relation to services other than the provision of Access to Rail Infrastructure for the purpose of operating Train Services;
- (d) is not already in the public domain;
- (e) does not become available to the public through means other than a breach of the confidentiality provisions in this deed;
- (f) was not in the other party’s lawful possession prior to such disclosure; and
- (g) is not received by the other party independently from a third party free to disclose such information, data or other matter,

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

- (h) the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;
- (i) the information is now in the public domain through means other than a breach of the confidentiality provisions in this deed; or
- (j) the information has been received by the recipient independently from a third party free to disclose the information.

**“Permitted Purpose”** means a purpose associated with responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement [or negotiating a related [TOA Access Agreement/EU Access Agreement] *[insert applicable bracketed text where Access Seeker is an EU Access Seeker or TOA Access Seeker]*].

**“Undertaking”** means the access undertaking prepared by QR Network and approved by the QCA in accordance with the Act.

## **2. Disclosure and Use of Confidential Information**

2.1. Each party (“Recipient”) undertakes to keep confidential and not disclose any Confidential Information of the other party (“Owner”) or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by that party) except in accordance with this deed or the Undertaking, and to use Confidential Information of the other party only for a Permitted Purpose, unless:

- a) the Owner provides its prior written approval, which approval shall not be unreasonably withheld; or
- b) the disclosure and/or use is:
  - (i) required or compelled by any law;
  - (ii) required or compelled by any order of a court;
  - (iii) required or compelled by notice validly issued by any Authority;
  - (iv) necessary for the conduct of any legal proceedings, including any dispute resolution process under the Undertaking or the Act;
  - (v) required under any stock exchange listing requirement or rule;
  - (vi) to the Safety Regulator;
  - (vii) to the Recipient’s solicitors, barristers, or accountants under a duty of confidentiality;
  - (viii) to the Recipient’s banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Owner;
  - (ix) requested by shareholding ministers of QR Network’s Ultimate Holding Company;
  - (x) for the purpose of facilitating Train Control directions where the disclosure of information is by QR Network in the usual course of undertaking Train Control Services;
  - (xi) by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure;

- (xii) to an infrastructure provider for infrastructure forming part of the supply chain in respect of which Access forms a part for the purpose of facilitating the coordination of the Capacity Allocation process of that infrastructure provider and of QR Network provided that the infrastructure provider has undertaken, in an agreement to which both QR Network and the Access Seeker are a party, to keep the information disclosed by it by QR Network confidential and use that information for the purpose for which it was disclosed;
  - (xiii) if the party disclosing the Confidential Information is QR Network to another Railway Manager of rail transport infrastructure as defined in the TIA but only to the extent required for the purpose of QR Network negotiating or providing access or that other Railway Manager negotiating or providing access to that Railway Manager's rail transport infrastructure (as defined in the TIA), as applicable in relation to the Access Seeker provided that the other Railway Manager has undertaken to keep the Confidential Information disclosed to it by QR Network confidential pursuant to a confidentiality deed in the form set out in B2; or
  - (xiv) to a QR Party provided that the disclosure is in accordance with clauses 2.4.
- c) the disclosure is one of the following permitted disclosures:
- (i) QR Network and a relevant TOA Access Holder may disclose to an EU Access Holder information and notices arising from or in connection with a relevant TOA Access Agreement or the Access Rights under such a TOA Access Agreement, except to the extent such information or notices only relate to and affect the Access Rights in respect of a different EU Access Holder;
  - (ii) QR Network and a relevant TOA Access Seeker may disclose to an EU Access Seeker or EU Access Holder, information and notices arising from or in connection with the negotiation of a relevant TOA Access Agreement, except to the extent such information or notices only relate to and affect the Access Rights in respect of a different EU Access Seeker or EU Access Holder;
  - (iii) QR Network and a relevant EU Access Holder may disclose to a TOA Access Seeker or TOA Access Holder, information and notices arising from or in connection with the relevant EU Access Agreement or the Access Rights under that EU Access Agreement; and
  - (iv) QR Network and a relevant EU Access Seeker may disclose to a TOA Access Seeker information and notices arising from or in connection with the negotiation of the relevant EU Access Agreement,
- to the extent that such disclosure is reasonably necessary for:
- (v) in respect of disclosures pursuant to Clauses 2.1(c)(i) and (iii), the performance of obligations or the exercise of rights under the EU Access Agreement or TOA Access Agreement (to which the relevant EU Access Agreement relates);
  - (vi) in respect of disclosures pursuant to Clauses 2.1(c)(ii) and (iv), the negotiation of the relevant TOA Access Agreement (to which the

relevant existing or proposed EU Access Agreement relates) or EU Access Agreement; or

- (vii) in respect of disclosures pursuant to Clauses 2.1(c)(i), (ii), (iii) or (iv), the safe operation of the Rail Infrastructure,

provided that, where Clause 2.1(c)(v) or 2.1(c)(vi) apply and the information is Confidential Information that is not expressly required to be disclosed pursuant to the terms of a relevant EU Access Agreement or TOA Access Agreement, the owner of the Confidential Information must first provide its written approval, with such approval not to be unreasonably withheld. In all cases, where the disclosure is between QR Network and a QR Party, the receiving party may only use the information for the purpose for which it is disclosed.

- 2.2. For the purposes of Clause 2.1(a), it is deemed to be unreasonable for QR Network to refuse to approve the disclosure of its Confidential Information by an Access Seeker to that Access Seeker's external consultant/s, independent adviser/s or Customer/s where the Access Seeker enters into a contract with the recipient of the Confidential Information on the following terms:
  - a) specifying the persons employed by the recipient who may have access to any QR Network Confidential Information provided under the contract;
  - b) specifying that those persons must not disclose any QR Network Confidential Information provided under the contract to any other person unless otherwise agreed by QR Network; and
  - c) if required by QR Network, requiring the recipient to execute a confidentiality deed in favour of QR Network on terms and conditions reasonably satisfactory to QR Network.
  
- 2.3. For the purposes of Clause 2.1(a), it is deemed to be unreasonable for the Access Seeker to refuse to approve the disclosure of its Confidential Information by QR Network to QR Network's external consultant/s or independent adviser/s where QR Network enters into a contract with the recipient of the Confidential Information on the following terms:
  - a) advising the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a Related Operator;
  - b) specifying:
    - (i) the persons employed by the recipient who may have access to the Access Seeker's Confidential Information provided under the contract; and
    - (ii) that those persons must not disclose any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract to any person outside of QR Network unless otherwise agreed by the Third Party Access Seeker or Third Party Access Holder;
    - (iii) if:

- (A) the external consultant or independent advisor is also advising a Related Operator in relation to the same or a related matter; and
  - (B) QR Network has not been able to reasonably avoid appointing that external consultant or independent advisor to provide advice in relation to that Confidential Information, requiring the recipient to ensure that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a Related Operator on the same or a related matter;
- c) if required by the Access Seeker, requiring the recipient to execute a confidentiality deed in favour of the Access Seeker on terms and conditions reasonably satisfactory to the Access Seeker.
  - d) This Clause 2.3 does not apply to the disclosure or use of Confidential Information in accordance with Clause 2.4.
- 2.4. a) Notwithstanding any other provision of this Clause 2.4, QR Network may disclose the Access Seeker's Confidential Information to:
- (i) individuals within QR Network; and
  - (ii) the Chief Executive Officer, the Chief Financial Officer and the QR board of directors of QR and QR Network's Ultimate Holding Company, and persons providing clerical or administrative assistance to any of them including any Company Secretary and Assistant Company Secretary.
- b) Subject to Clause 2.4(c), QR Network may disclose the Access Seeker's Confidential Information to persons
- (i) in the Rollingstock Engineering Division, QR Services in relation to Rollingstock or Rollingstock Interface issues;
  - (ii) in the Property Division, QR in relation to property issues; and
  - (iii) in QR Services in management level 2, 3 or 4 positions in relation to Rail Infrastructure issues,
- provided that disclosure to each recipient is limited to the extent necessary to carry out a Permitted Purpose.
- c) The Access Seeker may, in an Access Application, give notice to QR Network that it does not wish QR Network to disclose its Confidential Information to any one or more of the groups listed in Clause 2.4(b). If the Access Seeker gives such a notice to QR Network, then:
- (i) upon receipt of such notice QR Network may not disclose Confidential Information to the groups so noted;
  - (ii) QR Network will make reasonable efforts to suggest a reasonable alternate mechanism whereby QR Network can obtain the information it requires to respond to the Access Application and the Access Seeker will not unreasonably withhold its agreement to this alternate mechanism;
  - (iii) all:

- (A) reasonable costs incurred by QR Network in obtaining information by means of an alternate mechanism agreed in accordance with Clause 2.4(c)(ii) may be recovered by QR Network from the Access Seeker as a debt due and owing; and
  - (B) relevant timeframes applicable to QR Network under the Undertaking will be extended by the same number of days as equals the number of days from QR Network's receipt of the Access Application to QR Network's receipt of the information it requires to respond to the Access Application; and
- (iv) if
  - (A) the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR Network can reasonably obtain the information it requires to respond to the Access Application; or
  - (B) the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process,

QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Clause 4.6(a) of the Undertaking.
- d) QR Network may disclose the Access Seeker's Confidential Information to a Related Operator where:
  - (i) the Access Seeker approves such disclosure; or
  - (ii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management or Yard Control services, provided that any disclosure is limited to the extent required for that purpose.
- e) Subject to Clause 2.4(h), if, for a Permitted Purpose, QR Network wishes to disclose the Access Seeker's Confidential Information to an employee or group of a QR Party) not specified in Clauses 2.4(a), (b) or (d), or to a group specified in Clause 2.4(b) on an issue not specified in that clause, QR Network must:
  - (i) obtain the consent of the Access Seeker prior to making the disclosure; and
  - (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the Permitted Purpose.
- f) QR Network may, if not reasonably avoidable, disclose the Access Seeker's Confidential Information to an employee of a QR Party where that person is advising a Related Operator in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Clause 2.4(b), QR Network must obtain the consent of the Access Seeker prior to making the disclosure.
- g) If, QR Network seeks the consent of the Access Seeker for the disclosure of Confidential Information pursuant to Clause 2.4(e) or (f):

- (i) during the process of responding to an Access Application or negotiating an Access Agreement:
  - (A) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(a) of the Undertaking; or
  - (B) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR Network's request for consent within five (5) days of its receipt of QR Network's written request (referred to as the "Consent Response Date"), then all relevant timeframes applicable to QR Network will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date; or
- (ii) during the process of administering an Access Agreement:
  - (A) such consent shall not be unreasonably withheld; and
  - (B) if the Access Seeker fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then consent shall be deemed to have been given.

This Clause 2.4(g) does not apply where QR Network has requested consent to disclose the Confidential Information to a Related Operator.

- h) QR Network is permitted to disclose the Access Seeker's Confidential Information to QR employees in Internal Audit, the Information Services Division and Insurance Management, to the extent necessary for those employees to perform their duties, without obtaining the consent of the Access Seeker.
- i) Except where Clause 2.4(a) applies, QR Network may only disclose the Access Seeker's Confidential Information to a QR Party:
  - (i) if QR Network and the QR Party have entered into a legally enforceable agreement with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that QR Party to disclose) Confidential Information disclosed to the QR Party by QR Network; and
  - (ii) provided QR Network notifies the QCA of:
    - (A) any breach of such provisions of which QR Network becomes aware; and
    - (B) where there is a breach, the actions QR Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure.



- 2.5. For the purpose of this deed, a person who has been a consultant or contractor to either QR Network or the Access Seeker for a continuous period of at least three months, who works at least an average of 30 hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.

### **3. General Obligations**

- 3.1. Each Recipient acknowledges and agrees that:
- a) the Confidential Information of the Owner is confidential to the Owner and is and remains at all times the valuable and exclusive property of the Owner;
  - b) the Recipient is responsible for any use or disclosure of Confidential Information which is contrary to the provisions of this deed by persons to whom the Recipient discloses the Confidential Information, and shall take such steps as may be necessary to prevent any such improper use or disclosure (including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement pursuant to which the Recipient disclosed that Confidential Information);
  - c) the Recipient shall not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Confidential Information furnished to it by or on behalf of the Owner except to the extent necessary to carry out a Permitted Purpose;
  - d) this deed shall not be construed as assigning any other rights to use Confidential Information, or as granting to the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the Owner;
  - e) the Recipient shall secure and protect the Confidential Information received from the Owner from unauthorised disclosure, access or use;
  - f) the Owner may take legal proceedings against the Recipient and/or any third party if there is any actual, threatened or suspected breach of this deed or a breach by a QR Party of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it; and
  - g) damages may be inadequate compensation for breach of this deed and, subject to the court's discretion, the Owner shall be entitled to specific performance of this deed and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this deed.

### **4. Liquidated Damages**

- 4.1. Subject to Clause 5.1, where the Access Seeker can establish that a Related Operator is in possession of the Access Seeker's Confidential Information, QR Network will pay to the Access Seeker an amount of \$10,000 by way of

liquidated damages in full and final settlement of any claim that the Access Seeker may have against QR Network in respect of the breach, UNLESS QR Network can establish that the Related Operator came into possession of the Confidential Information by means other than as a result of a breach by QR Network of Clause 2.4 or a breach by a QR Party of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it.

- 4.2. Any Dispute arising in connection with this Clause 4 may be referred to the QCA. The QCA's review will determine whether QR Network is liable to pay the complainant the liquidated damages specified in Clause 4.1.

## **5. Compensation for loss in excess of \$50,000**

- 5.1 If the Access Seeker is able to establish that it has suffered more than \$50,000 loss or damage as a result of a breach by QR Network of Clause 2.4 or a breach by a QR Party of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it, this deed shall not preclude the Access Seeker from taking action to recover compensation from QR Network in any court of competent jurisdiction. In these circumstances the parties agree that QR Network shall not be liable to the Access Seeker for the payment of liquidated damages in accordance with Clause 4.

## **6. General**

- 6.1. Nothing in this deed obliges either party to disclose any particular Confidential Information or enter into any further agreement with the other party if it decides, in its absolute discretion, that it is not in its commercial interests to do so.
- 6.2. Unless otherwise terminated by mutual consent in writing, this deed will continue in force notwithstanding:
  - a) any subsequent termination of any discussions or negotiations between the parties; or
  - b) the return of all copies of the Confidential Information to the Owner.
- 6.3. This deed is personal to the parties and may not be assigned or otherwise transferred in whole or in part without the prior written consent of the other party.
- 6.4. The laws of Queensland will govern the construction and performance of this deed and the parties submit to the non-exclusive jurisdiction of the Supreme Court of Queensland. This deed constitutes the entire agreement between the parties in respect of the Confidential Information and supersedes all previous agreements and understandings in respect of the Confidential Information. Nothing in this deed derogates from any obligation of QR Network under the Undertaking with respect to the Confidential Information.

6.5. In this deed, references to Clauses are references to Clauses contained in this deed unless otherwise stated.

**[Appropriate execution clauses to be included.]**



## OPERATIVE PROVISIONS

### 1. Definitions

- 1.1. Unless the context otherwise requires, and subject to Clause 1.2, terms defined in the Applicable Undertaking which applies to QR Network will have the same meanings when used in this deed.
- 1.2. In this deed, the following words and expressions shall have the respective meanings:

**“Applicable Undertakings”** means the access undertaking approved by the QCA in accordance with Part 5 of the Act which applies in relation to access to some or all of the rail transport infrastructure for which QR Network is the Railway Manager (and any equivalent access undertaking approved by the QCA in relation to access to rail transport infrastructure for which the Second Railway Manager is the Railway Manager).

**“Confidential Information”** means:

- (a) any information, data or other matter (‘information’) disclosed to QR Network or the Second Railway Manager by, or on behalf of, an Owner in contemplation of, or during the course of, the negotiations for Access to rail transport infrastructure for which QR Network or the Second Railway Manager (as applicable) are the Railway Manager, or during the term of an Access Agreement that results from those Access negotiations, where:-
  - (i) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the Owner; or
  - (ii) the information is marked confidential by the Owner when disclosed; and
- (b) any information or data collected by QR Network or the Second Railway Manager in the performance of an Access Agreement where the disclosure of the information by QR Network or the Second Railway Manager (as applicable) might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement, which party shall be deemed to be the Owner of the Confidential Information;

provided that such information;

- is not disclosed in relation to services other than the provision of Access to rail transport infrastructure, which is either the subject of an Applicable Undertaking or managed by the Second Railway Manager, for the purpose of operating Train Services;
- is not already in the public domain;
- does not become available to the public through means other than a breach of the confidentiality provisions in this deed;

- was not in the other party's lawful possession prior to such disclosure; and
- is not received by QR Network or the Second Railway Manager (as applicable) independently from a third party free to disclose such information, data or other matter;

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

- the information is now in the public domain through means other than a breach of the confidentiality provisions in this deed; or
- the information has been received by QR Network or the Second Railway Manager (as applicable) independently from a third party free to disclose the information;

**“Owner”** means the Third Party Access Holder or Third Party Access Seeker who is the owner of the Confidential Information which QR Network or the Second Railway Manager wishes to disclose to the other.

**“Permitted Purpose”** means the purpose of one or both of QR Network or the Second Railway Manager negotiating or providing Access to their respective rail transport infrastructure in relation to the relevant Owner.

## 2. Disclosure and Use of Confidential Information

2.1. Each of QR Network and or the Second Railway Manager (“the Recipient”) undertakes to keep confidential and not disclose any Confidential Information disclosed by the other Railway Manager (“the Discloser”) or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by that party) except in accordance with this deed or an Applicable Undertaking, and to use Confidential Information disclosed by the other Discloser only for a Permitted Purpose, unless:

- a) the relevant Owner provides its prior written approval; or
- b) the disclosure and/or use is:
  - (1) required or compelled by any law;
  - (2) required or compelled by any order of a court;
  - (3) required or compelled by notice validly issued by any Authority;
  - (4) necessary for the conduct of any legal proceedings, including any dispute resolution process under the Applicable Undertaking or the Act;
  - (5) required under any stock exchange listing requirement or rule;
  - (6) to the Safety Regulator;
  - (7) to the Recipient's solicitors, barristers, or accountants under a duty of confidentiality;
  - (8) to the Recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has

executed a legally enforceable confidentiality deed in favour of the Owner;

- (9) requested by the shareholding ministers of QR Network's Ultimate Holding Company (for as long as it has ministers as shareholders);
- (10) for the purpose of facilitating Train Control directions where the disclosure of information is the usual course of undertaking of Train Control Services;
- (11) by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on rail transport infrastructure; or
- (12) subject to clause 2.2(a), by QR Network to a Related Party of QR Network ("QR Party") provided that the disclosure is in accordance with clauses 2.2(b) to (i) and subject to a legally enforceable agreement between QR Network and the QR Party with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that QR Party to disclose) Confidential Information disclosed to the QR Party by QR Network (provided that QR Network must notify the QCA of any breach of such provisions of which QR Network becomes aware, and the actions QR Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure).

- 2.2. a) QR Network may disclose the Owner's Confidential Information to:
  - (i) individuals within QR Network; and
  - (ii) the Chief Executive Officer, the Chief Financial Officer and the board of directors of QR and QR Network's Ultimate Holding Company, and persons providing clerical or administrative assistance to any of them including any Company Secretary and Assistant Company Secretary.
- b) Subject to Clause 2.2(c), QR Network may disclose the Owner's Confidential Information to those groups within QR specified in this Paragraph, provided that disclosure to each recipient is limited to the extent necessary to carry out a Permitted Purpose:
  - (i) Rollingstock Engineering Division, QR Services in relation to Rollingstock or Rollingstock Interface issues;
  - (ii) Property Division, QR in relation to real property issues; and
  - (iii) QR Services employees in management level 2, 3 and 4 in relation to issues regarding rail transport infrastructure subject to the Applicable Undertaking for QR Network.
- c) The Owner may, in applying for access, give notice to the Second Railway Manager that in the event of the Second Railway Manager disclosing its Confidential Information to QR Network that it does not wish QR Network to disclose its Confidential Information to any one or more of the groups listed in Clause 2.2(b). If the Owner gives such a notice to the Second Railway Manager, then:

- (i) the Second Railway Manager must advise QR Network of having received such a notice at the time that it first discloses relevant Confidential Information of that Owner to QR Network in accordance with this deed, and QR Network must then not disclose Confidential Information relating to that Access Application to the groups so noted; and
  - (ii) QR Network and the Second Railway Manager may agree a reasonable alternate mechanism (which must be approved by the QCA prior to being implemented) whereby QR Network can obtain the information it requires for the Permitted Purpose;
  
- d) QR Network may disclose the Owner's Confidential Information to a Related Operator where:
  - (i) the Owner approves such disclosure;
  - (ii) such disclosure is required for a Permitted Purpose in respect of Access to a station or platform, provided that any disclosure is limited to the extent required for this purpose;
  - (iii) such disclosure is required for a Permitted Purpose to facilitate the performance of Field Incident Management and Yard Control services, provided that any disclosure is limited to the extent required for this purpose; or
  - (iv) such disclosure is required for a Permitted Purpose to facilitate the performance of scheduling and Train Control Services in the Metropolitan Region, provided that any disclosure is limited to the extent required for this purpose.
  
- e) If, for a Permitted Purpose, QR Network wishes to disclose an Owner's Confidential Information to a QR employee or group (or an employee or group of a QR Party) not specified in Clauses 2.2(a), (b) or (d), or to a group specified in Clause 2.2(b) on an issue not specified in that Clause, QR Network must:
  - (i) obtain written consent of the Owner prior to making the disclosure; and
  - (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the Permitted Purpose.
  
- f) QR Network will not, without first obtaining the consent of the Owner, disclose an Owner's Confidential Information to a QR employee (or an employee of a QR Party) where that person is advising one of the Related Operators in relation to the same or a related matter.
  
- g) If, during the process of responding to an Access Application or negotiating an Access Agreement, QR Network seeks the consent of an Owner for the disclosure of Confidential Information pursuant to Clause 2.2 (e) or (f) and:
  - (i) where such consent has been sought during the Negotiation Period and the Owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR Network's request for consent within thirty (30) days of its



receipt of QR Network's written request, then QR Network may give a Negotiation Cessation Notice to the Owner, in accordance with Paragraph 4.6(b) of the Applicable Undertaking; or

- (ii) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the Owner of the Confidential Information fails to respond to QR Network's request for consent within five (5) days of its receipt of QR Network's written request (referred to as the "Consent Response Date"), then all relevant timeframes applicable to QR Network will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date.

This Paragraph does not apply where QR Network has requested consent to disclose the information to a Related Operator.

- h) If, during the process of administering an Access Agreement, QR Network seeks the consent of the Owner for the disclosure of Confidential Information pursuant to Paragraph 2.2(e) or (f), and the Owner fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, consent shall be deemed to have been given. This Clause does not apply where QR Network has requested consent to disclose the Confidential Information to a Related Operator.
- i) QR Network is permitted to disclose Confidential Information to the Ringfencing Compliance Officer, and QR employees in Internal Audit and Information Services Division, to the extent necessary for these employees to perform their duties, without obtaining the consent of the Owner.

- 2.3 For the purpose of this deed, a person who has been a consultant or contractor to either QR Network or the Owner for a continuous period of at least three months, who works at least an average of 30 hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.

### **3. General Obligations**

- 3.1. Each Recipient acknowledges and agrees that:

- a) the Confidential Information of the Owner is confidential to the Owner and is and remains at all times the valuable and exclusive property of the Owner;
- b) the Recipient is responsible for any use or disclosure of Confidential Information which is contrary to the provisions of this deed by persons to whom the Recipient discloses the Confidential Information, and shall take such steps as may be necessary to prevent any such improper use or disclosure (including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement pursuant to which the Recipient disclosed that Confidential Information);

- c) the Recipient shall not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Confidential Information furnished to it by or on behalf of another party to this deed or an Owner except to the extent necessary to carry out a Permitted Purpose;
- d) this deed shall not be construed as assigning any other rights to use Confidential Information, or as granting to the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the Owner;
- e) the Recipient shall secure and protect the Confidential Information received from another party to this deed from unauthorised disclosure, access or use;
- f) the QCA, the Discloser, and the relevant Owner may take legal proceedings against the Recipient and/or any third party if there is any actual, threatened or suspected breach of this deed or a breach by a Related Party of the Recipient of a confidentiality deed or confidentiality provisions contained in another arrangement with the Recipient pursuant to which the Confidential Information was disclosed to it; and
- g) damages may be inadequate compensation for breach of this deed and, subject to the court's discretion, the QCA, the Discloser and the Owner shall be entitled to specific performance of this deed and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this deed.

#### **4. Liquidated Damages**

- 4.1. Subject to Clause 5.1, where the QCA or the relevant Owner can establish that a Related Operator is in possession of the Owner's Confidential Information, QR Network will pay to the Owner an amount of \$10,000 by way of liquidated damages in full and final settlement of any claim that the Owner may have against QR Network in respect of the breach, UNLESS QR Network can establish that the Related Operator came into possession of the Confidential Information by means other than as a result of a breach by QR Network of Clause 2.2 or a breach by a Related Party of QR Network of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it.
- 4.2. Any Dispute between an Owner and QR Network arising in connection with this Clause may be referred to the QCA. The QCA's review will determine whether QR Network is liable to pay the complainant the liquidated damages specified in Clause 4.1.

#### **5. Compensation for loss in excess of \$50,000**

- 5.1 If an Owner or the QCA is able to establish that such Owner has suffered more than \$50,000 loss or damage as a result of a breach by QR Network of Clause 2.2 or a breach by a Related Party of QR Network of a confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it, this deed

shall not preclude the Owner from taking action to recover compensation from QR Network in any court of competent jurisdiction. In the event of the Owner recovering compensation in these circumstances the parties agree that QR Network shall not be liable to the Owner for the payment of liquidated damages in accordance with Clause 4.

## **6. General**

- 6.1. Nothing in this deed obliges QR Network or the Second Railway Manager to disclose any particular Confidential Information or enter into any further agreement with the other if it decides, in its absolute discretion, that it is not in its commercial interests to do so (although an Owner may have entered agreements with one or both parties that do impose such an obligation).
- 6.2. Unless otherwise terminated by mutual consent of all parties in writing, this deed will continue in force notwithstanding:
- a) any subsequent termination of any discussions or negotiations between any Owner of Confidential Information and either or both of QR Network and the Second Railway Manager; or
  - b) the return of all copies of Confidential Information held by both QR Network and the Second Railway Manager to the Owner.

The parties will review and discuss in good faith the appropriateness of this deed (including whether it should be terminated or amended) in connection with the submission of any draft access undertaking submitted by QR Network or the Second Railway Manager which, if approved by the QCA, would become an Applicable Undertaking.

- 6.3. This deed is personal to the parties and may not be assigned or otherwise transferred in whole or in part without the prior written consent of the other party.
- 6.4. The laws of Queensland will govern the construction and performance of this deed and the parties submit to the non-exclusive jurisdiction of the Supreme Court of Queensland. This deed constitutes the entire agreement between the parties in respect of the Confidential Information and supersedes all previous agreements and understandings in respect of the Confidential Information. Nothing in this deed derogates from any obligation of any party under any Applicable Undertaking with respect to the Confidential Information.
- 6.5. In this deed, references to Clauses are references to Clauses contained in this deed unless otherwise stated.

**EXECUTED as a DEED**

Executed by **QR NETWORK PTY LTD (ACN 132 181 116)** under Section 127(1) of the *Corporations Act 2001* in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name PLEASE PRINT

\_\_\_\_\_  
Name PLEASE PRINT

Executed by **or the Second Railway Manager** under Section 127(1) of the *Corporations Act 2001* in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name PLEASE PRINT

\_\_\_\_\_  
Name PLEASE PRINT

Executed by **Queensland Competition Authority** by its *Chief Executive Officer* in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name PLEASE PRINT

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Name PLEASE PRINT

## **SCHEDULE C**

### ***SUMMARY OF INFORMATION REQUIREMENTS AS PART OF ACCESS APPLICATION***

#### **1. ACCESS SEEKER**

- Access Seeker's name and contact details (if the Access Seeker is an unincorporated joint venture, all parties should be identified)
- Customer's name and contact details (if applicable)
- For a TOA Access Seeker:
  - each relevant EU Access Seeker or EU Access Holder; and
  - the number of Train Services of each EU Access Seeker or EU Access Holder for which the TOA Access Seeker has been or is proposed to be nominated as the operator;
  - certification that it is either currently engaged in negotiations with each relevant EU Access Seeker or EU Access Holder in respect of a potential haulage agreement reflecting the Access being sought or is party to an existing haulage agreement with each relevant EU Access Seeker or EU Access Holder which includes haulage reflecting the Access being sought.
- For a TOA Access Seeker or EU Access Seeker, confirmation that it is seeking Access Rights on the basis of being a TOA Access Seeker or EU Access Seeker (as applicable)

#### **2. COAL & FREIGHT TRAIN SERVICES**

##### *(a) Train Service Description*

- Route of operation (include diagram if necessary)
- Required term of Access Agreement
- Method of transporting freight (e.g. containers, louvered wagons, bulk wagons)
- Description of freight
- Net tonnes of product per annum each year of operation, represented on a monthly basis (where monthly railings are not even)

##### *(b) Timetable Requirements*

- Whether new service or variation to existing service for the Access Seeker
- Whether new service or variation to existing service on the rail network
- Required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the agreement term

- Preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant
- Requirements for shunting or Dwell times enroute, separately for forward and return journeys

*(c) Rollingstock Details*

For all Access Seekers other than EU Access Seekers:

- Proposed number of locomotives per Train
- Proposed number of wagons per Train
- Type and class of locomotive
- Mass of each locomotive (includes full sand and fuel load)
- Type and class of wagons
- Nominal gross mass of wagon
- Tare mass of each wagon
- Tare mass per container
- Average number of containers per wagon
- Average proposed load (of product) per wagon
- Maximum proposed gross tonnes per wagon
- Maximum axle load
- Gross tonnes per Train Service, separately for forward and return journeys
- Total length of train (including locomotives)

*(d) Infrastructure Requirements*

- Details of any Infrastructure Enhancements that may be necessary for operation of service, where known

### **3. PASSENGER TRAIN SERVICES**

*(a) Train Service Description*

- Route of operation (include diagram if necessary)
- Required term of Access Agreement
- Type of passenger traffic (e.g. long distance, commuter, tourist)

*(b) Timetable Requirements*

- Whether new service or variation to existing service for the Access Seeker
- Whether new service or variation to existing service for the rail network
- Required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the agreement term
- Preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys

- Requirements for shunting or Dwell times enroute, separately for forward and return journeys

*(c) Rollingstock Details*

- Total number of locomotives per Train
- Total number of carriages per Train
- Total number of passenger multiple units (PMU) per Train
- Type and class of locomotive
- Mass of each locomotive (including full sand and fuel load)
- Type and class of carriage
- Nominal gross mass of each carriage
- Type and class of PMU
- Average gross mass of PMU
- Maximum number of vehicles
- Maximum axle load
- Total length of Train (including locomotives)
- Gross tonnes per Train Service, separately for forward and return journeys
- Maximum operation speed separately for loaded and empty Trains

*(d) Infrastructure Requirements*

- Details of any Infrastructure Enhancements that may be necessary for operation of service, where known

## SCHEDULE D

### **PRELIMINARY AND ADDITIONAL INFORMATION**

#### **PART A.PRELIMINARY INFORMATION**

##### **1.Information Pack**

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



<ul style="list-style-type: none"> <li>Sectional running times (calculated based on the projected average sectional running times for the Predominant Train Service)</li> <li>Maximum Train lengths</li> <li>Incident recovery times</li> </ul> (l) Description of Systems <ul style="list-style-type: none"> <li>Operational</li> <li>Safeworking</li> </ul>		
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# This information is not available from QR Network's website.

## 2. QR Network Rollingstock Interface Standards

Content	Cost
QR Network Rollingstock Interface Standards * #	\$1,000.00 per set (exclusive of GST)

\* QR Network Rollingstock Interface Standards are provided subject to the following caveats:

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

# This information is not available from QR Network's website.

## 3. Commercial Information

Content	Cost
Reference Tariffs	Blackwater System Goonyella System Moura System Newlands System
Applicable QR Network Standard Access Agreement	Nil
Worked example of Relinquishment Fee	Nil
Sample IRMP	Nil
Capacity Information <ul style="list-style-type: none"> <li>MTP * #</li> </ul>	Nil
System Rules (if available)	Nil

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

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

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

# This information is not available from QR Network's website.

## **PART B.ADDITIONAL INFORMATION**

### **1. Capacity Information**

- a) The relevant current DTP, assessed in accordance with Clause 1(b) below, for the relevant part of the Rail Infrastructure subject to the following caveats:
- (i) the identity of other Access Holders will not be detailed on the information provided;
  - (ii) the terms and conditions of other Access Holders' Train Service Entitlements will not be detailed; and
  - (iii) the DTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact upon the Existing Capacity of the Rail Infrastructure detailed, but QR Network will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Existing Capacity of the Rail Infrastructure detailed.
- b) The relevant current DTP will be assessed as:
- (i) for an Access Application in respect of a Timetabled Traffic, the current DTP for the relevant day (or days) of the week; or
  - (ii) for an Access Application in respect of a Cyclic Traffic, the current DTPs for a week, unless QR Network reasonably believes that provision of DTPs for a longer period of time is required in order that the DTPs show a use of Existing Capacity that is representative of current utilisation.
- c) Access to Train Control diagrams, indicating actual running of Train Services against the relevant DTP, for those days for which the DTP has been provided in accordance with Clause 1(a) above.

### **2. Access to Rail Corridor**

If QR Network does not have authority to authorise Access Seekers to access land upon which Rail Infrastructure on a route nominated by the Access Seeker is situated, then the following information in relation to access to that land:

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

### **3. Information for EIRMR**

Other than for EU Access Seekers, all relevant information reasonably available to QR Network that is required for the purpose of the Access Seeker's EIRMR, in accordance with Clause 8.2.1(b) of the Undertaking.

### **4. Information for Interface Risk Assessment**

Other than for EU Access Seekers, all relevant information reasonably available to QR Network that is required for the purpose of the Interface Risk Assessment, in accordance with Clause 8.1.1(c) of the Undertaking.

### **5. Other Information**

Other information as follows:

- (i) information required in accordance with section 101(2) of the Act, to the extent that this information has not already been provided; and
- (ii) other information that is reasonably required by the Access Seeker in accordance with section 101(1) of the Act, provided such information is reasonably able to be provided by QR Network and cannot be reasonably obtained from a source other than QR Network.

## **SCHEDULE E**

### ***PRINCIPLES FOR INCLUSION IN STANDARD ACCESS AGREEMENT***

#### **1. Access Rights**

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

#### **2. Access Charges**

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

- An Access Holder paying a cash security deposit should be credited with interest on the security at a market-based rate for as long as it is held by QR Network.

### **3. Train Service Entitlements**

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

### **4. Day-to-Day Train Movements**

- QR Network is to have responsibility for Train Control and shall exercise Train Control having regard to the safe conduct of rail operations on the nominated network.
- QR Network and the Access Holder shall ensure that the operation of Train Services is in accordance with entry and exit times in the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles or varied in the circumstances specified in the Access Agreement (which normally include safety considerations, force majeure, incidents or emergencies, track possessions in accordance with the Access Agreement or as otherwise agreed between the parties, such agreement not to be unreasonably withheld).
- The Network Management Principles establish the procedures QR Network must follow in varying the Daily Train Plan.
- The Access Holder is required to comply with all QR Network Train Control directions and ensure all Trains and Rollingstock are equipped with appropriate communication systems to comply with the agreed Rollingstock Interface Standards.

## 5. Train Operations

- The Access Agreement will specify all reasonable operational, communication and procedural requirements for Train Services.
- QR Network and the Access Holder are to comply with all laws, Safeworking Procedures and Safety Standards and all other train operations requirements in the Access Agreement. Safeworking Procedures and Safety Standards will as far as practicable be consistent for all Railway Operators on the nominated network.
- The Access Holder must obtain certification from an appropriately qualified person whom both parties accept as being competent to provide certification for the Access Holder's Rollingstock and Rollingstock Configurations. QR Network has a right to view a certificate of compliance and associated test results from an Access Holder in order to satisfy itself that the Rollingstock and Rollingstock Configurations are as agreed by the two parties in the IRMP and, if QR Network is so satisfied the Rollingstock and Rollingstock Configurations so certified will be included in the Rollingstock specification as being authorised to operate on the nominated network subject to continuing compliance with the IRMP and the Rollingstock specification.
- The Access Agreement will specify relevant Rollingstock Interface Standards. QR Network may vary the agreed Rollingstock Interface Standards, the Safeworking Procedures and Safety Standards and other System-wide Requirements in respect to the management of the Rail Infrastructure in the following circumstances:
  - on safety grounds, acting reasonably, at any time following consultation with the Access Holder and the provision of reasonable notice to the Access Holder. In such circumstances, each party is responsible for its own costs (including the costs of additional or modified equipment) in complying with the system wide change;
  - in any other circumstance requiring a system wide change, QR Network may, acting reasonably, negotiate such changes with the Access Holder and the Access Holder must not unreasonably withhold its consent to the change. Each party is responsible for costs in complying with the system wide change (including the cost of additional or modified equipment or modification of either party's Rollingstock) as agreed between them or, failing agreement, as determined by an expert.
- The parties should agree specific performance levels and measurement criteria as a basis for creating effective performance management and incentives. This may involve financially based incentives and sanctions. The performance levels may also be reviewed periodically.
- The Access Holder is responsible for the safe operation of its Rollingstock on the nominated network and must ensure that at all times its Rollingstock and Rollingstock Configurations comply with all applicable laws, the Rollingstock specification and the Rollingstock Interface Standards specified in the Access Agreement.

- QR Network may suspend the operation of Rollingstock and Trains for actual non-compliance or (acting reasonably) anticipated non-compliance with all applicable laws, the Rollingstock specification and the Rollingstock Interface Standards specified in the Access Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property. QR Network may also suspend the operation of the affected Rollingstock and Trains for actual non-compliance where such non-compliance does not create a risk to the safety of any person or a material risk to property and the Access Holder has failed to rectify the non-compliance within a reasonable period of time. Where QR Network suspends Rollingstock and/or Trains in these circumstances, the suspension will only apply until the non-compliance is rectified or in the event of anticipated non-compliance, the Access Holder has demonstrated that it is in compliance.
- Where QR Network suspends an Access Holder's Rollingstock and/or Trains, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.
- The Access Holder must ensure all loadings of Rollingstock are secure.

## **6. Infrastructure Management**

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



at-grade crossings. QR Network will not be liable for claims in relation to, or arising out of, the standard of the infrastructure except where QR Network fails to maintain the infrastructure such that, subject to any agreed criteria (including those specified in the Network Management Principles), it is consistent with the agreed Rollingstock Interface Standards and the Access Holder can operate Train Services in accordance with its Train Service Entitlements.

## **7. Incident Management**

- Prior to the commencement of Train Services the Access Holder is required to develop an emergency response plan containing procedures for dealing with incidents which must be compatible with QR Network's emergency procedures.
- In the event of an incident, QR Network is responsible for the overall coordination and management of incident responses and may, subject to using reasonable efforts to consult with the Access Holder, take any action it considers reasonably necessary to recommence services as soon as possible. The Access Holder is responsible for recovery of its Rollingstock in accordance with its emergency response plan.
- The Access Holder must cooperate and assist with the restoration of the network in accordance with directions from Train Controllers seeking to coordinate the clearance of network blockages. Any Access Holder so directed should be adequately compensated for doing so and is entitled to expect that all rail operators will be subject to the same obligation. QR Network has the right to pass through the cost of clearing the blockage to the party that has caused the damage.
- Investigations into incidents are to be commenced as soon as practicable after an incident and carried out in accordance with the process specified in the Access Agreement. The parties must cooperate in any investigation and consult in good faith in relation to the implementation of any recommendations.

## **8. Environmental Protection and Other Issues**

- All Environmental Laws, regulations and relevant guidelines must be complied with.
- Environmental management must be approached on a risk identification and risk management basis with respect to operations on the nominated network. Auditing requirements should be linked to the environmental risks posed by an Access Holder's Train Services and be established in that Access Holder's Environmental Investigation and Risk Management Report (EIRMR) which should be amended as necessary from time to time to address ongoing risk and compliance issues.
- The Access Holder is required to inform QR Network of non-compliance with its Environmental Investigation and Risk Management Report (EIRMR) and

provide details of how it intends to address the non-compliance. The Access Holder is required to rectify the non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of QR Network and any action required by the EPA.

- The Access Holder should comply with its obligations under the EP Act including any notices or directions it receives from the EPA. The Access Holder is required to inform QR Network of non-compliance with the Access Holder's obligations under the EP Act. Failure to comply with such an obligation, where that failure causes or threatens Serious Environmental Harm, establishes grounds for a material event of default.
- QR Network reserves the right to suspend the right of an Access Holder to operate on the nominated network if, in QR Network's reasonable opinion, the Access Holder's Train Services cause or threaten Material Environmental Harm or Serious Environmental Harm. A suspension will only apply until the Access Holder demonstrates to QR Network that the circumstances that gave rise to QR Network's right to suspend have ceased to exist.
- Where QR Network suspends an Access Holder's Train Services on environmental grounds, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.

## **9. Accreditation**

- QR Network must have and maintain Accreditation as a Railway Manager under the TIA to the extent required to perform its obligations under the Access Agreement.
- An operator Accredited as a Railway Operator under the TIA must operate Train Services and the operator must maintain such Accreditation to the extent required to perform its obligations under the Access Agreement.

## **10. Access Holder's Staff**

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

## **11. Safety Risk Management**

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

## **12. Inspection and Audit Rights**

- Rights of inspection and audit in relation to each party's compliance with the Access Agreement and inspection of Trains and Rollingstock shall be included in the Access Agreement.
- The Access Agreement will specify the terms and conditions on which the parties can carry out such inspections and audits.
- Each party will, in carrying out any inspection or audit, give the other party reasonable notice and use reasonable endeavours to minimise disruption to the other party's operations.

## **13. Insurance**

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

## **14. Indemnities and Liabilities**

- Each party is liable for, and is required to release and indemnify each other for, all claims in respect of personal injury, death or property damage caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of that party or its staff.
- The Access Holder is solely liable for and is required to release and indemnify QR Network for any damage to property or personal injury or death of any person being transported on Train Services except to the extent that the damage or harm is caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of QR Network or its staff. Unless otherwise agreed, the Access Holder shall extend to QR Network any exclusion or limitation of liability afforded by the Access Holder's conditions of carriage with its customers.

## **15. Limitation of Liability**

- The liabilities of the parties for default shall be limited as agreed in the Access Agreement.
- Except as otherwise provided in the Access Agreement, neither party has any liability for Consequential Loss or loss of profits in any circumstances.
- Unless otherwise agreed in the Access Agreement, where a party:

- (whether QR Network or the Access Holder), requires the conduct of an audit or inspection under Clause 8.1.7(e) or (f) of the Undertaking (as applicable); or
- (being QR Network), suspends an Access Holder's Rollingstock, Trains and/or Train Services,

that party (referred to as the "First Party") will be liable to the other party in respect of loss or damage (including damages for Consequential Loss) arising from the conduct of the audit or inspection or the suspension (as applicable) if, and only if, no reasonable person in the position of the First Party could have formed the view that the stated grounds for such an audit, inspection or suspension existed, provided that the other party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the audit or inspection or the suspension. The First Party shall bear the burden of establishing that a reasonable person in its position could have formed that view.

- The Access Agreement will specify the circumstances in which the Access Holder has a claim against QR Network for the non-provision of Access or the cancellation of a Train Service caused by breach of the Access Agreement or negligence by QR Network.
- The Access Agreement will specify the circumstances in which each party has a claim against the other party for delays to Train movements caused by breach of the Access Agreement or negligence by the other party.
- Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim.

## **16. Material Change**

- Access Charges will be adjusted to reflect the net impact of any material change where such material change results in a variation to the net cost to QR Network of performing its obligations under the Access Agreement.
- A material change shall be limited to changes in taxes, laws or funding from QR Network's Transport Service Payments. The effects of material changes should be assessed on a case-by-case basis and in consultation with the Access Holder.
- An independent expert will determine any Dispute regarding the impact on Access Charges as a result of a material change.

## **17. Disputes**

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

## **18. Default, Suspension and Termination**

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

## **19. 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 the Access Agreement. The Access Agreement will provide for relief in respect of the payment of Access Charges to the extent that QR Network is unable to provide Access Rights because of a Force Majeure Event affecting QR Network.
- If infrastructure on specified lightly trafficked corridors of the nominated network is damaged by a Force Majeure Event and in QR Network's reasonable opinion the cost of repairing the damage is not economic, QR Network may elect not to proceed with repairs or replacement unless the parties agree as to the funding of the cost of that work.
- The Access Agreement will provide for a process that might result in termination of the Access Agreement if circumstances of a prolonged Force Majeure Event prevent the performance by a party of its obligations.

## **20. Assignment**

- The Access Holder may assign the whole of its rights and obligations under the Access Agreement to a related body corporate, provided that the assignor remains liable for the performance of obligations under the Access Agreement or to a non-related body corporate, with the prior written consent of QR Network (such consent not to be unreasonably withheld).
- A change in control of an Access Holder not a publicly listed corporation will be deemed to be an assignment of the Access Agreement.

## **21. QR Network's Access Undertaking**

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

## **SCHEDULE F**

### ***REFERENCE TARIFF SCHEDULES***

#### **INTRODUCTION**

This Schedule specifies:

- (a) the Reference Tariffs applicable to nominated coal carrying Reference Train Services; and
- (b) the methodology that will be used for determining a new Reference Tariff for a new coal carrying Reference Train Service where required in accordance with the Undertaking.

This Schedule is comprised of the following Parts:

- (a) Part A, which applies to all coal carrying Reference Train Services;
- (b) Part B, which applies to coal carrying Reference Train Services on the Central Queensland Coal Region.

In this Schedule:

- (a) Part B must be read in conjunction with and subject to Part A; and
- (b) Clauses 5 to 8 of Part B must each be read in conjunction with Clauses 1 to 4 of Part B.

The provisions of this Schedule will be the basis for Access Charges negotiated for new Access Agreements for relevant Train Services or for rate review provisions in Access Agreements that specifically refer to the Reference Tariff for the nominated Reference Train Service.

## **PART A. - GENERAL PROVISIONS**

### **1. Reference Train Service Description**

#### **1.1 Commodity Type**

The Reference Train Service carries bulk coal. In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

#### **1.2 Geographic Scope**

1.2.1 The Reference Train Service operates on the rail corridor directly connecting specified Nominated Loading Facility/ies and specified Nominated Unloading Facility/ies.

1.2.2 A new coal loading facility may only be added to the existing Nominated Loading Facilities for a Reference Train Service if it satisfies the requirements in relation to additional loading facilities that are set out in Part B or Part C for the relevant Reference Train Service.

1.2.3 Diagrams showing the location of the Nominated Loading Facilities and the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Information Pack for the relevant system.

#### **1.3 Characteristics**

1.3.1 Each Reference Train Service:

- (a) has a maximum length (including the locomotive/s) as specified in Part B or Part C for that Reference Train Service;
- (b) has a maximum axle load as specified in Part B or Part C for that Reference Train Service with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table;
- (c) complies with the maximum speeds permitted on the Nominated Infrastructure as specified in the relevant Information Pack;
- (d) complies with QR Network's Rollingstock Interface Standards applicable to the Nominated Infrastructure;
- (e) is otherwise compatible with the Nominated Infrastructure described in the relevant Information Pack and requires no additional expenditure by QR Network to implement varied Below Rail controls identified in the IRMP or EIRMR;
- (f) operates in accordance with nominated sectional running times specified in the relevant Information Pack;
- (g) does not exceed the Loading Times specified in Part B or Part C for that Reference Train Service;

- (h) does not exceed the Unloading Times specified in Part B or Part C for that Reference Train Service;
- (i) operates as an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
- (j) has the ability to operate on the configuration of the Nominated Infrastructure existing at 1 July 2009 without limiting the ability of existing Train Services to operate in accordance with their Train Service Entitlements;
- (k) utilises bottom dump wagons with the “KWIK DROP” door operating mechanism;
- (l) utilises measures to minimise coal spillage and/or leakage en route that are reasonable, having regard to the practices existing at 1 July 2009; and
- (m) has any other characteristics specified for that Reference Train Service set out in Part B or Part C.

#### 1.3.2 A Reference Train Service:

- (a) assumes Below Rail Services comprised in Access are provided in accordance with this Undertaking; and
- (b) does not include any Above Rail Services such as the carrying out of any provisioning, inspection, testing and maintenance of Rollingstock, or storage, marshalling, shunting or other relocation of Rollingstock.

### 1.4 Conditions of Access

#### 1.4.1 The Reference Train Service will:

- (a) operate in accordance with the terms and conditions of a Standard Access Agreement for coal carrying Train Services; and
- (b) have its Train Service Entitlement specified as described in Part B or Part C.

1.4.2 Under the Access Agreement, QR Network will commit to operate the Rail Infrastructure such that, on average over a Year, the Below Rail Transit Time specified in Part B can be achieved for the relevant Reference Train Service.

## 2. Access Charge

### 2.1 Reference Tariff

The applicable Reference Tariff for a nominated Reference Train Service shall be assessed in accordance with the methodologies established in Clause 2 of Part B and Clause 3 of Part C (as applicable).

### 2.2 Variation of Reference Tariffs

#### 2.2.1 QR Network:



- (a) may submit a variation of a Reference Tariff to the QCA, where QR Network considers that the variation will promote efficient investment by either QR Network or another person in the coal transport supply chain; or
- (b) will submit a variation of a Reference Tariff to the QCA, subject to Subclause 2.2.3:
  - (i) within sixty (60) days of:
    - (A) QR Network becoming aware that an Endorsed Variation Event has occurred or a Review Event has occurred or will occur; or
    - (B) a written notice being given to QR Network by the QCA in accordance with Subclause 2.2.2; or
  - (ii) by 28 February prior to each Year of the Term, in accordance with Subclause 3.1.1 of Part B (if applicable).

2.2.2 The QCA may give QR Network a written notice requiring QR Network to submit a variation of a Reference Tariff if:

- (a) the QCA does not approve a variation of a Reference Tariff submitted by QR Network; or
- (b) QR Network fails to submit a variation of a Reference Tariff:
  - (i) within sixty (60) days of the QCA determining that an Endorsed Variation Event has occurred; or
  - (ii) that it is required to submit under Subparagraph 2.2.1(b)(ii).

2.2.3 The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a variation of a Reference Tariff if:

- (a) QR Network provides a written request to the QCA for an extension of time which includes the reasons why QR Network requires the extension of time; and
- (b) the extension of time is reasonable or necessary.

If the QCA grants QR Network an extension of time under this Subclause 2.2.3, QR Network must submit or resubmit the variation of a Reference Tariff within the time specified by the QCA.

2.2.4 The QCA may develop a variation of a Reference Tariff that is consistent with the requirements specified in this Clause 2.2 for the variation of a Reference Tariff:

- (a) if QR Network does not comply with a written notice given by the QCA under Subclause 2.2.2 or Paragraph 2.2.10(b) for it to submit, or resubmit, a variation of a Reference Tariff; or
- (b) if the QCA refuses to approve a variation of a Reference Tariff resubmitted by QR Network in accordance with a notice given by the QCA under Paragraph 2.2.10(b).

2.2.5 Where QR Network submits a variation of a Reference Tariff in accordance with Paragraph 2.2.1(a):

- (a) the variation must:
  - (i) nominate the Reference Tariff to be varied;
  - (ii) include details of the methodology, data and assumptions used to vary the Reference Tariff;
  - (iii) include information on the matters set out in Clause 6.2 of the Undertaking; and
  - (iv) include information on why QR Network considers that the variation of the Reference Tariff will promote efficient investment by either QR Network or another person in the coal transport supply chain;
- (b) the QCA will publish details of QR Network's proposed variation of the relevant Reference Tariff and invite and consider comments from stakeholders regarding the proposed variation; and
- (c) the QCA may approve the proposed variation of the relevant Reference Tariff if the QCA is satisfied that the variation of the relevant Reference Tariff is consistent with the Undertaking.

2.2.6 If QR Network submits a variation of a Reference Tariff in accordance with Subparagraph 2.2.1(b)(i) where an Endorsed Variation Event has occurred:

- (a) the variation must:
  - (i) nominate the Reference Tariff to be varied;
  - (ii) include evidence that the Endorsed Variation Event has occurred; and
  - (iii) include details of the methodology, data and assumptions used to vary the Reference Tariff;
- (b) if the QCA considers it appropriate, the QCA may publish details of QR Network's proposed variation of the relevant Reference Tariff and invite and consider comments from stakeholders regarding the proposed variation; and
- (c) the QCA may approve the proposed variation of the relevant Reference Tariff if the QCA is satisfied that:
  - (i) the Endorsed Variation Event has occurred; and
  - (ii) the variation of the Reference Tariff:
    - (A) is consistent with the change in the forecast cost resulting from the Endorsed Variation Event (including incremental maintenance and incremental capital costs), calculated as if all other assumptions originally used for the determination of Reference Tariffs are held constant; and
    - (B) has been calculated as if all other Reference Tariffs were also being recalculated due to the occurrence causing the Endorsed Variation Event.

2.2.7 If QR Network submits a variation of a Reference Tariff in accordance with Subparagraph 2.2.1(b)(i) in relation to a Review Event:

- (a) the variation must:
  - (i) nominate the Reference Tariff to be varied;

- (ii) include evidence that the Review Event has occurred or will occur; and
- (iii) include details of the methodology, data and assumptions used to vary the Reference Tariff;
- (b) the QCA will publish details of QR Network's proposed variation of the relevant Reference Tariff and invite and consider comments from stakeholders regarding the proposed variation; and
- (c) the QCA may approve the proposed variation of the relevant Reference Tariff if the QCA is satisfied that:
  - (i) the Review Event has occurred or will occur; and
  - (ii) the variation of the relevant Reference Tariff:
    - (A) is consistent with the change in the cost resulting from or that will result from the Review Event; and
    - (B) reflects the impact of the relevant Review Event on the financial position of QR Network (including the impact of incremental maintenance and incremental capital costs); and
  - (iii) has been calculated as if all other Reference Tariffs were also being recalculated due to the occurrence causing or that will cause the Review Event.

2.2.8 Where QR Network submits a variation of a Reference Tariff in accordance with Subparagraph 2.2.1(b)(i)(B) or Subparagraph 2.2.1(b)(ii):

- (a) the variation must:
  - (i) nominate the Reference Tariff to be varied; and
  - (ii) include details of the methodology, data and assumptions used to vary the Reference Tariff in accordance with Clause 3 of Part B;
- (b) if the QCA considers it appropriate, the QCA may publish details of QR Network's proposed variation of the relevant Reference Tariff and invite and consider comments from stakeholders regarding the proposed variation, provided that, to the extent that stakeholders provide comments, QR Network must be given a reasonable period in which to provide a response to those comments to the QCA; and
- (c) the QCA will approve the proposed variation of the Reference Tariff if the QCA is satisfied that the variation of the Reference Tariff is in accordance with Clause 3 of Part B.

2.2.9 If the QCA approves a variation to a Reference Tariff:

- (a) the QCA will give QR Network a notice in writing stating the reasons for the QCA's decision;
- (b) the variation to the Reference Tariff will apply:
  - (i) if the variation arose as a result of an Endorsed Variation Event:
    - (A) from the first day of the month immediately following the date of the occurrence of the Endorsed Variation Event; or
    - (B) where the date of the occurrence of the Endorsed Variation Event is the first day of a month, from that date; or

- (ii) if the variation arose as a result of an adjustment of Reference Tariffs under Clause 3.1 of Part B, from 1 July of the Year following the Year in which the variation was submitted; and
- (c) QR Network must:
  - (i) publish details of the variation to the Reference Tariff on its website; and
  - (ii) advise Access Holders and Access Seekers, in respect of the relevant Reference Train Service, of the variation to the Reference Tariff.

2.2.10 If the QCA refuses to approve a variation to a Reference Tariff, the QCA will give QR Network a notice in writing:

- (a) stating the reasons for its refusal and the way in which the QCA considers that the variation should be amended; and
- (b) if that variation was required to be submitted by QR Network in accordance with Paragraph 2.2.1(b), requiring QR Network to vary the Reference Tariff in the way the QCA considers it appropriate and resubmit the variation to the QCA within thirty (30) days of QR Network receiving the notice.

2.2.11 QR Network must comply with a notice given under Subclause 2.2.10.

2.2.12 The QCA may approve a resubmitted variation to a Reference Tariff or a variation to a Reference Tariff developed by the QCA under Subclause 2.2.4, if the QCA is satisfied that the variation of the Reference Tariff:

- (a) is consistent with the matters specified under Paragraph 2.2.5(c), 2.2.6(c), 2.2.7(c) or 2.2.8(c) (as applicable); and
- (b) has been amended or developed in accordance with the QCA's decision.

2.2.13 For the purposes of this Clause 2.2:

- (a) a variation of a Reference Tariff submitted by QR Network or developed by the QCA in accordance with this Clause 2.2 must include a review of System Allowable Revenue and System Forecast to the extent applicable to that variation; and
- (b) the QCA in approving a variation of a Reference Tariff must also approve the corresponding variation of the applicable System Allowable Revenue and System Forecast.

## **2.3 Adjustment Charges**

2.3.1 (a) If:

- (i) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; or

- (ii) the QCA approves a variation of a Reference Tariff in accordance with Clause 2.2 and that variation applies from or takes effect on a date prior to the date on which the QCA approves the variation; or

- (b) after the Year ending 30 June 2014 (“FY2013-14”),

QR Network is entitled to recover from or will reimburse to (as applicable) each relevant Access Holder, being:

- (c) where Access Rights are held via an EU Access Agreement and only the EU Access Holder pays Access Charges, the relevant EU Access Holder;
- (d) where Access Rights are held via an EU Access Agreement and the EU Access Holder and one of more of the relevant TOA Access Holder(s) pay a component of the Access Charges, the relevant EU Access Holder and TOA Access Holder(s) who pay a component of the Access Charges; or
- (e) for all Access Agreements other than EU Access Agreements and TOA Access Agreements, the Access Holder,

the amount (“Adjustment Amount”) which:

- (f) where Paragraph 2.3.1(a) applies, is the sum of:
  - (i) the aggregate of the differences, for each relevant Access Holder for each calendar month (or part thereof) since the date on which the Reference Tariff or the variation of the Reference Tariff was to apply or take effect (“Effective Date”) until the date on which that Reference Tariff was approved by the QCA or the date on which the variation of the Reference Tariff was approved by the QCA, as applicable, between:
    - (A) the Access Charges paid or payable by that Access Holder in respect of the Train Services operated by or for that Access Holder during that calendar month (or part thereof); and
    - (B) the Access Charges that would have been paid or payable by that Access Holder in respect of those Train Services if the Access Charges were calculated in accordance with the Reference Tariffs or the variation of Reference Tariffs referred to in Paragraph 2.3.1(a)(i) or 2.3.1(a)(ii) on and from the Effective Date; and
  - (ii) the aggregate of the interest calculated in accordance with Subclause 2.3.2 in respect of the amount of each difference comprising the amount calculated in accordance with Paragraph 2.3.1(f)(i); or
- (g) where Paragraph 2.3.1(b) applies, is the sum of:
  - (i) the difference between:
    - (A) the  $AT_{2-4}$  paid or payable by all Access Holders in respect of Train Services operated (or entitled to be operated) by or for those Access Holders during FY2013-14 including any Take or Pay amounts together with Relinquishment Fees (or equivalent types of payments under a relevant Access Agreement paid or payable to QR Network); and
    - (B) the System Allowable Revenue for  $AT_{2-4}$  for FY2013-14,

prorated based on the proportion of the amount calculated under Subparagraph 2.3.1(g)(i)(A) paid or payable by the relevant Access Holder – these calculations must be applied separately in relation to each Individual Coal System<sup>1</sup>;

- (ii) the difference between:
  - (A) the sum of:the aggregate of the AT<sub>5</sub> component of Access Charges paid or payable by all Access Holders in respect of Train Services operated (or entitled to be operated) by or for those Access Holders during FY2013-14; and
  - (B) the System Allowable Revenue for the AT<sub>5</sub> component of Access Charges for FY2013-14,  
prorated based on the proportion of the amount calculated under Subparagraph 2.3.1(g)(ii)(A) paid or payable by the relevant Access Holder (which, for example, may be zero if the relevant Access Holder was not entitled, and did not operate, Train Services using electric traction); and
- (iii) the interest calculated in accordance with Subclause 2.3.2 in respect of the aggregate of differences under Subparagraphs 2.3.1(g)(i) and (ii) (for clarity, in relation to the relevant Access Holder),

by making adjustments to the Access Charges (“Adjustment Charge”) payable by each relevant Access Holder so as to recover or reimburse (as applicable), the Adjustment Amount (subject to the provisions of this Undertaking).

2.3.2 The interest referred to in Subparagraphs 2.3.1(f)(ii) and (g)(iii) must be calculated:

- (a) in respect of, as applicable:
  - (i) the amount of each difference comprising the amount calculated in accordance with Subparagraph 2.3.1(f)(i); or
  - (ii) the aggregate of the differences calculated in accordance with Paragraph 2.3.1(g);
- (b) on the basis that the interest:
  - (i) accrues and is charged from day to day; and
  - (ii) is capitalised at the end of each month and will thereafter itself bear interest;
- (c) at the rate equal to, for interest accruing in a month:
  - (i) the mid-point of the one month Bank Bill Swap Rate as published by the Australian Financial Markets Association (or its successor) for the Business Day immediately prior to the 21<sup>st</sup> day of the previous month; or

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<sup>1</sup> This provision and related amendments refer to Individual Coal System – which is a defined term under the Undertaking. For clarity, references to “Individual Coal System Infrastructure” elsewhere in the Undertaking (including this Schedule F) are references to Individual Coal System.

- (ii) if that rate is no longer published, the rate will be an appropriate equivalent rate determined by QR Network, acting reasonably; and
- (d) where the interest is being calculated for the purpose of:
  - (i) Subparagraph 2.3.1(f)(ii), for the period commencing on the date when the Access Charges paid or payable by the relevant Access Holder used to calculate the applicable difference in accordance with Subparagraph 2.3.1(f)(i) were due and payable and ending on the date when the Adjustment Charge is to be due and payable; or
  - (ii) Subparagraph 2.3.1(g)(iii), on the basis of the following principles:
    - (A) as if the Adjustment Charge was payable as 12 payments – one in relation to each calendar month of FY2013/14 (“FY2013/14 Month”);
    - (B) with the amount of each of the 12 payments being calculated by prorating the Adjustment Charge on the basis of the proportion of the relevant Access Charges (and other amounts paid or payable by the Access Holder referred to in Subparagraph 2.3.1(g)(i)(A)(1) or Subparagraph 2.3.1(g)(ii)(A)(1)) (as applicable) for FY2013/14 actually paid or payable by the Access Holder in relation to each relevant FY2013/14 Month;
    - (C) the interest being calculated in respect of each payment for the period commencing on the date when the Access Charges paid or payable by the relevant Access Holder for the relevant FY2013/14 Month were due and payable and ending on the date when the Adjustment Charge is to be due and payable; and
    - (D) where QR Network considers that calculations strictly in accordance with paragraphs (A) to (C) are not practical or are materially inappropriate in the circumstances, on such other basis as is approved by the QCA.

### 2.3.3 QR Network:

- (a) may, if it submits a variation of a Reference Tariff in accordance with Clause 2.2 and that variation is proposed to apply or take effect on a date prior to the date on which the QCA will approve the variation; or
- (b) must, if:
  - (i) the QCA approves a variation of a Reference Tariff in accordance with Clause 2.2 and that variation applies or takes effect on a date prior to the date on which the QCA approves the variation (and subject to Paragraph 2.3.3(a)); or
  - (ii) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; or
- (c) where Paragraph 2.3.1(b) applies, must prior to 1 September 2014, submit to the QCA proposed Adjustment Charges.

- 2.3.4 Where QR Network submits proposed Adjustment Charges to the QCA in accordance with Subclause 2.3.3:
- (a) QR Network's submission must, without limitation:
    - (i) identify, subject to Subclause 2.3.9, the Access Holders in respect of whom the proposed Adjustment Charges are to be applied;
    - (ii) set out the proposed Adjustment Charges for each Access Holder including details of how those proposed Adjustment Charges were calculated;
    - (iii) indicate the billing period(s) in respect of which the proposed Adjustment Charges are to be applied; and
    - (iv) if applicable, how the proposed Adjustment Charges are to be allocated for the purposes of calculations in accordance with Clause 3.2 of Part B;
  - (b) if the QCA considers it appropriate, the QCA may publish details of QR Network's submission of proposed Adjustment Charges and invite and consider comments from stakeholders regarding the proposed Adjustment Charges; and
  - (c) the QCA must approve:
    - (i) the Access Holders in respect of whom the Adjustment Charges are to apply;
    - (ii) the Adjustment Charges that are to apply to each Access Holder;
    - (iii) the billing period(s) in respect of which the Adjustment Charges will be applied; and
    - (iv) if applicable, how the Adjustment Charges must be allocated for the purposes of calculations in accordance with Clause 3.2 of Part B,

if the proposed Adjustment Charges submitted by QR Network (excluding any interest component) constitute no more of a recovery or no less of a reimbursement:

    - (v) where Paragraph 2.3.3(a) or (b) applies, of any under or over recovery of Access Charges by QR Network that relate to each Access Holder; or
    - (vi) where Paragraph 2.3.3(c) applies, consistent with the relevant calculations under Subclause 2.3.1,

and any interest component was calculated in accordance with Subclause 2.3.2.

2.3.5 QR Network must comply with an approval of the QCA given in accordance with Subparagraph 2.3.4(c) or Subclause 2.3.8 including in applying the Adjustment Charge approved for each Access Holder to the calculation of Access Charges payable by that Access Holder.

2.3.6 If the QCA refuses to approve QR Network's submission for an Adjustment Charge, the QCA must give QR Network a notice in writing:

- (a) stating the reasons for its refusal and the way in which the QCA considers the proposed Adjustment Charge should be amended so as to constitute (excluding any interest component) no more of a recovery



or no less of a reimbursement of any under or over recovery of Access Charges by QR Network that relate to each Access Holder; and

- (b) requiring QR Network to vary the proposed Adjustment Charge in the way the QCA considers it appropriate and resubmit the amended proposal to the QCA within thirty (30) days of QR Network receiving the notice.

2.3.7 QR Network must comply with a notice given under Subclause 2.3.6.

2.3.8 The QCA must approve a resubmitted proposal for Adjustment Charges, if the resubmitted proposal has been amended or developed in accordance with the QCA's notice given under Subclause 2.3.6 and the QCA is satisfied that the proposed Adjustment Charges resubmitted by QR Network (excluding any interest component) constitute no more of a recovery or no less of a reimbursement:

- (a) where Paragraph 2.3.3(a) or (b) applies, of any under or over recovery of Access Charges by QR Network that relate to each Access Holder; or
- (b) where Paragraph 2.3.3(c) applies, consistent with the relevant calculations under Subclause 2.3.1.

2.3.9 For the purposes of Subparagraph 2.3.4(a)(i):

- (a) an Adjustment Charge may only apply to an Access Holder that is a Railway Operator ("New Access Holder") that did not run the Train Services to which that Adjustment Charge relates ("Past Train Services") if:
  - (i) the Access Holder who ran the Past Train Services no longer has (or, at the time when the Adjustment Charges are to be applied, will have ceased to have) a rail haulage agreement with the Customer for the Past Train Services in respect of Train Services with the same origin and destination as the Past Train Services;
  - (ii) the New Access Holder has a rail haulage agreement with the Customer referred to in Subparagraph 2.3.9(a)(i) (including that Customer's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services or the New Access Holder was that Customer (or is that Customer's successor or assign); and
  - (iii) the New Access Holder has been granted Access Rights with the same origin and destination as the Past Train Services in accordance with the process in Paragraphs 7.3.7(a) to (e) of the Undertaking; and
- (b) no Adjustment Charge will apply to an Access Holder who ran the Past Train Services if that Access Holder has, at the time when the Adjustment Charges are to be applied, ceased to have a rail haulage agreement with the Customer for the Past Train Services (including that person's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services provided that with the cessation of that rail haulage agreement, the applicable Access Rights were either relinquished or expired.

2.3.10 The calculation of Access Charges under an Access Agreement must be reviewed and varied to provide for the payment of Adjustment Charges approved by the QCA in accordance with Paragraphs 2.3.4(c) or 2.3.8 by the relevant Access Holder including:

- (a) that the Access Charges payable by the Access Holder must include any applicable Adjustment Charge approved by the QCA from time to time in relation to or in connection with any variation of a Reference Tariff approved by the QCA to apply or take effect on a date prior to the date on which the QCA approves the variation or any Reference Tariff that the Undertaking states is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; and
- (b) that an Adjustment Charge so determined by the QCA must be applied to the calculation of the amount of the invoice for charges payable by the Access Holder under the Access Agreement for the relevant billing period.

### **3. Variations to Reference Train Service**

3.1 A varied Access Charge shall be applicable to Train Services that vary from the Reference Train Service characteristics specified in Clause 1.3 or operate under terms and conditions with agreed variations from the requirements of Clause 1.4, but otherwise satisfy the nominated Reference Train Service description, whereby the varied Access Charge varies from the applicable Reference Tariff due to differences in cost or risk to QR Network of providing Access for that Train Service compared to the Reference Train Service.

3.2 Where a Train Service differs from the Reference Train Service due to it not complying with Paragraph 1.3.1(f), then QR Network will, unless otherwise agreed with the QCA, quote an Access Charge that varies from the Reference Tariff by applying the following principles:

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

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

where:

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

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

provided that if:

- (i) the maximum number of proposed Train Services at full utilisation exceeds the maximum number of Reference Train Services at full utilisation; and
- (ii) the scheduled section running times of the proposed Train Service are the same as the nominated section running times for the Reference Train Service,

then rtp is deemed to be one (1);

- (b) the maximum number of train paths available for a Reference Train Service and for the proposed Train Service will be determined using a readily available simulation package; and
- (c) in accordance with Subparagraph 4.3(a)(v) or 4.5.2(a)(v) of the Undertaking (as applicable), QR Network will advise the Access Seeker how it has determined the value of rtp.

3.3 Nothing in this Schedule will preclude QR Network from seeking Access Conditions, pursuant to Subclause 6.5.2 of the Undertaking.

## **PART B. - PROVISIONS SPECIFIC TO REFERENCE TRAIN SERVICES IN THE CENTRAL QUEENSLAND COAL REGION**

### **1. Reference Train Service Characteristics**

- 1.1 Further to Subclause 1.3.1 of Part A, the Reference Train Service:
- (a) has a Dwell period for each Train Service no greater than that specified in Clauses 5 to 9 of this Part B for that Reference Train Service; and
  - (b) in respect of Train examinations, does not exceed a ratio of 1 return journey in 7.
- 1.2 Further to Subclause 1.4.1 of Part A, an Access Seeker for a Reference Train Service will have its Train Service Entitlement:
- (a) based on its Trains being available for operation 24 hours per day and 360 days per year; and
  - (b) specified in terms of a Cyclic Traffic which will operate evenly throughout each yearly, monthly and weekly period, and which will comply with the applicable coal corridor scheduling procedures as set out in the Network Management Principles.

### **2. Access Charge**

#### **2.1 Reference Tariff**

- 2.1.1 The applicable Reference Tariff for a nominated Reference Train Service shall be assessed as:

$$\left( AT_1 \times \frac{gtk}{1000} \right) + (AT_2 \times rtp) + \left( AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt) + \left( AT_5 \times \frac{egtk}{1000} \right) + \left( EC \times \frac{egtk}{1000} \right) + (QCALevy \times nt)$$

where:

- $AT_1$  is the incremental maintenance tariff specified as  $AT_1$  for the nominated Reference Train Service in Clauses 5 to 9 of this Part B;
- $AT_2$  is the incremental capacity tariff specified as  $AT_2$  for the nominated Reference Train Service in Clauses 5 to 9 of this Part B;
- $AT_3$  is the allocative part of the Reference Tariff that is levied on a net tonne kilometre basis specified as  $AT_3$  and adjusted by way of the addition or subtraction, where applicable, of the specified System Premium or System Discount, for the nominated Reference Train Service in Clauses 5 to 9 of this Part B;
- $AT_4$  is the allocative part of the Reference Tariff that is levied on a net tonne basis specified as  $AT_4$  for the nominated Reference Train Service in Clauses 5 to 9 of this Part B; and
- $AT_5$  is the electric access tariff that is levied on an egtk basis specified as  $AT_5$  for the nominated Reference Train Service in Clauses 5 to 9 of this Part B,

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

2.1.2 The amounts of AT<sub>1</sub>, AT<sub>2</sub>, AT<sub>3</sub>, AT<sub>4</sub>, AT<sub>5</sub>, EC, the QCA Levy, the System Premiums and the System Discounts specified in Clauses 5 to 9 of this Part B and any Adjustment Charge are GST exclusive. An amount for GST will be added to the total calculated Access Charge, in accordance with the provisions of the applicable Access Agreement, when an Access Holder is invoiced.

2.1.3 For the purposes of this Part B, a Train Service is a one way Train Service, that is, the journey from the Nominated Loading Facility to the Nominated Unloading Facility is one Train Service, and the return journey from the Nominated Unloading Facility to the Nominated Loading Facility is a second Train Service.

2.1.4 For the purposes of this Clause 2.1, the measures gtk, rtp, ntk, nt and egtk shall be assessed for the relevant Train Service over the billing period for which the Reference Tariff is being calculated.

## **2.2 Take or Pay**

2.2.1 QR Network will be entitled to earn Take or Pay revenue in accordance with the provisions of this Clause 2.2. To the extent Access Rights are held via an EU Access Agreement:

- (a) QR Network will earn Take or Pay revenue under the EU Access Agreement (including in relation to the non-operation of Train Services under a relevant TOA Access Agreement) and will not earn Take or Pay revenue under any TOA Access Agreement; and
- (b) references to Access Agreements in the balance of this Clause 2.2 only include the EU Access Agreement and not any TOA Access Agreements and references to Access Holders in this Clause 2.2 only include the relevant EU Access Holder and not any TOA Access Holder.

2.2.2 For Train Services:

- (a) for which Access Agreements are executed or renewed on or after the date on which the Reference Tariffs for the 2009/10 Year and 2010/11 Year in this Schedule F were approved the QCA ("Approval Date") (other than New Access Agreements executed as part of transferring Access Rights from Access Agreements in place on the day immediately prior to the Approval Date), the Take or Pay arrangements will be as specified in Subclause 2.2.3; or
- (b) which are included in Access Agreements in place on the day immediately prior to the Approval Date (and not subsequently renewed after the Approval Date) or in respect of which New Access Agreements have been executed, the Take or Pay arrangements will be those set out in, if the Access Agreement or, for a New Access Agreement, the relevant Old Access Agreement were executed or renewed during the term of:
  - (i) the 2001 Undertaking, Clause 3.2, Part A, Schedule F of the 2001 Undertaking; or
  - (ii) the 2005 Undertaking, Clause 2.2, Part B, Schedule F of the 2005 Undertaking.

- 2.2.3 Take or Pay revenue from a particular Reference Train Service will be determined for each Year, and invoiced following completion of that Year, as, subject to Subclause 2.2.4, the amount which is one hundred percentage points (100%) of the amount calculated by multiplying:
- (a)  $AT_2$ ,  $AT_3$  and  $AT_4$  (at the rate applicable in the Year); by
  - (b) the rtp, nt and ntk (as applicable) calculated by:
    - (i) the rtp, nt and ntk (as applicable) that would have been achieved for the subject Year had the full contracted entitlement been railed for the relevant Train Service; less
    - (ii) the rtp, nt and ntk (as applicable) not railed for the subject Year due to the non operation of Train Services for a QR Network Cause; less
    - (iii) the rtp, nt and ntk (as applicable) railed for the subject Year,
 provided always that the amount of Take or Pay for the Year shall not be less than zero.
- 2.2.4 Notwithstanding Subclause 2.2.3, Take or Pay shall not be payable for a Year where the System GtK exceeds 100% of the System Forecast identified for the nominated Reference Train Service, less the gtk not achieved due to the non operation of Train Services for a QR Network Cause.
- 2.2.5 Notwithstanding Subclause 2.2.3:
- (a) where Train Services operated in relation to an origin to destination in respect of a person (“End User”) who is either the Customer for those Train Services or the Access Holder for those Train Services (but who has no Customer) under an individual Access Agreement (including an EU Access Agreement but excluding a TOA Access Agreement) exceed the Train Service Entitlement in that individual Access Agreement, the Train Services in excess of the Train Service Entitlement will be recognised as the performance of a Train Service Entitlement under any other individual Access Agreement with Train Service Entitlements for that same origin to destination and same End User to the extent that the Train Services Entitlement in the other individual Access Agreement has not been exceeded; or
  - (b) where the aggregate of Train Services operated in relation to an origin to destination in respect of an End User is greater than or equal to the aggregate Train Service Entitlements for Access Agreements for that origin to destination and End User, no Take or Pay is payable under an Access Agreement in relation to Train Services not operated in accordance with the relevant Train Service Entitlement for that origin to destination in respect of that End User.
- 2.2.6 Notwithstanding Subclause 2.2.3 and subject to Subclause 2.2.5, where the Total Actual Revenue for  $AT_{2-4}$  for an Individual Coal System Infrastructure less the aggregate amount of Take or Pay that QR Network is entitled to earn from all Access Agreements in relation to that Individual Coal System Infrastructure executed or renewed on or after 30 June 2006 (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to 30 June 2006 pursuant to Paragraph 7.4.4(f) of the Undertaking) (“Total Revenue”) is:
- (a) greater than or equal to the System Allowable Revenue for  $AT_{2-4}$  in relation to that Individual Coal System Infrastructure, Take or Pay shall not be payable for that Year under Access Agreements in relation to that Individual Coal System Infrastructure executed or

renewed on or after 30 June 2006 (other than New Access Agreements entered as part of transferring Access Rights from Access Agreements in place on the day immediately prior to 30 June 2006 pursuant to Paragraph 7.4.4(f) of the Undertaking) (“Full Take or Pay Agreements”);

- (b) less than the System Allowable Revenue for AT<sub>2-4</sub> in relation to that Individual Coal System Infrastructure:
- (i) QR Network will calculate the aggregate amount of Take or Pay that QR Network is entitled to earn from all Full Take or Pay Agreements (“Total Actual Take or Pay”); and
  - (ii) if the Total Actual Take or Pay exceeds the amount by which the System Allowable Revenue for AT<sub>2-4</sub> exceeds the Total Revenue for that Individual Coal System Infrastructure (“Maximum Take or Pay Amount”), then:
    - (A) QR Network will calculate for each relevant Access Holder, the proportion that the Access Holder’s Take or Pay amount bears to the Total Actual Take or Pay (“Proportion”); and
    - (B) each relevant Access Holder’s Take or Pay amount will be reduced to equal that Access Holder’s Proportion of the Maximum Take or Pay Amount.

In determining what QR Network would be entitled to earn for the purposes of this Subclause 2.2.6, QR Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement, except for:

- those Access Agreements which have been altered from that form in accordance with the terms of the relevant Applicable Undertaking, for which QR Network’s entitlement will be calculated in accordance with the terms of such Access Agreements; and
- a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under or prior to the 2001 Undertaking, pursuant to Paragraph 7.4.4(f) of the Undertaking, which has not been renewed after 30 June 2006, for which QR Network’s entitlement to Take or Pay amounts will be calculated on the basis that QR Network has contracted on the terms of:
  - (A) for an Old Access Agreement executed under the 2001 Undertaking, the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement; or
  - (B) for an Old Access Agreement executed prior to the 2001 Undertaking, the terms of the Old Access Agreement; and
- for the avoidance of doubt, an Access Agreement executed prior to the 2001 Undertaking, for which QR Network’s entitlement will be calculated in accordance with the terms of that Access Agreement.

2.2.7 In order to calculate nt, ntk and gtk for the purposes of Subparagraphs 2.2.3(b)(i) and (ii), QR Network will:

- (a) identify from the Access Agreement the number of train paths that would have been utilised had the full contracted entitlement been attained; and

- (b) determine the number of train paths that were not utilised due to a QR Network Cause,  
and convert this to nt, ntk and gtk by using a nominal payload per loaded Train Service as reasonably determined by QR Network.
- 2.2.8 QR Network shall provide to the Access Holder information on how it has determined the amount of the Take or Pay at the same time as it is invoiced.

### **3. Annual Review of Reference Tariffs**

#### **3.1 Requirement for Annual Review of Reference Tariffs**

- 3.1.1 Prior to the beginning of each Year during the Term (except for the first Year) Reference Tariffs set out in this Part B will be adjusted to reflect:
- (a) a variation to the applicable System Allowable Revenue for the relevant Year due to an adjustment to 2<sup>nd</sup> Year System Allowable Revenue in accordance with Clause 3.4; and
  - (b) a variation to the applicable System Allowable Revenue for the relevant Year and each subsequent Year during the Term in accordance with Subclause 3.1.2.
- 3.1.2 QR Network will submit to the QCA by 28 February of each Year during the Term:
- (a) a revised System Forecast for each Individual Coal System Infrastructure for the next Year;
  - (b) details of the methodology, data and assumptions used to estimate the revised System Forecast; and
  - (c) the proposed adjustments, for each Individual Coal System Infrastructure, arising from any difference between the relevant revised System Forecast and the System Forecast used for the purpose of determining the System Allowable Revenue for that Individual Coal System Infrastructure, to:
    - (i) the System Allowable Revenue for the Individual Coal System Infrastructure for each subsequent Year during the Term; and
    - (ii) the Reference Tariffs for the Individual Coal System Infrastructure for the next Year.

The QCA will approve the revised System Forecast, System Allowable Revenues and Reference Tariffs for each Individual Coal System Infrastructure if it considers that the revised System Forecast is reasonable and the consequential adjustments to System Allowable Revenues and Reference Tariffs are calculated properly. If QR Network does not submit an amendment by 28 February or, if QR Network has done so, the QCA does not approve a revised System Forecast for an Individual Coal System Infrastructure by the next 4 July, then no adjustments to the System Forecast, System Allowable Revenues or Reference Tariffs for the relevant Individual Coal System Infrastructure(s) will be made in accordance with this Subclause 3.1.2.

- 3.1.3 Upon the finalisation of the balance of the Capital Expenditure Carryover Account at 1 June 2009, the System Allowable Revenues for the Term will be adjusted by the QCA for the difference between the finalised balance of the Capital Expenditure Carryover Account at 1 June 2009 and the forecast used



for determining the Reference Tariffs, including any adjustments necessary to reflect the difference between the assumed opening asset value (and lives) and those accepted by the QCA as part of the first roll-forward of the Regulatory Asset Base.

### 3.2 Calculation of Revenue Adjustment Amounts

3.2.1 After the end of each Year, QR Network will calculate:

- (a) the following Revenue Adjustment Amounts:
  - (i) an “AT<sub>2-4</sub> Revenue Adjustment Amount”, for each relevant Individual Coal System Infrastructure, by subtracting:
    - (A) the Adjusted System Allowable Revenue for AT<sub>2-4</sub>, determined in accordance with Subclause 3.2.2; from
    - (B) the Total Actual Revenue for AT<sub>2-4</sub>, determined in accordance with Subclause 3.2.3,for the relevant Individual Coal System Infrastructure for that Year; and
  - (ii) an “AT<sub>5</sub> Revenue Adjustment Amount”, by subtracting the Adjusted System Allowable Revenue for the AT<sub>5</sub> component of Access Charges, determined in accordance with Subclause 3.2.2, for the Central Queensland Coal Region from the Total Actual Revenue for AT<sub>5</sub>, determined in accordance with Subclause 3.2.5, for the Central Queensland Coal Region, for that Year; and
- (b) a performance increment. (“Increment”) for each relevant Individual Coal System Infrastructure as calculated in accordance with Clause 3.3.

For the avoidance of doubt, a Revenue Adjustment Amount or an Increment calculated under this Subclause 3.2.1 may be a negative or a positive number.

3.2.2 The Adjusted System Allowable Revenue for AT<sub>2-4</sub> or the AT<sub>5</sub> component of Access Charges is the sum of the following components of relevant System Allowable Revenue:

- (a) the component relating to the recovery of QR Network’s maintenance costs, adjusted to reflect:
  - (i) for the maintenance costs of maintaining branchlines for new loading facilities (that became operational after 1 July 2009), \$15,000.00 per kilometre of new Track comprised in those branchlines; and
  - (ii) for maintenance costs to which Subparagraph 3.2.2(a)(i) does not apply, the difference between:
    - (A) the actual MCI value less the approved X-Factor for the relevant Year; and
    - (B) the forecast MCI value less the approved X-Factor that was used for the purpose of determining the Reference Tariffs for the relevant Year;

- (b) the components relating to the recovery of QR Network's:
  - (i) cost of electric energy for traction; and
  - (ii) costs associated with the connection of QR Network's electrical traction system to an electricity transmission or distribution network,
 adjusted to reflect the difference between:
  - (iii) the actual costs for the relevant Year; and
  - (iv) the forecast costs used for the purpose of determining the Reference Tariffs for the relevant Year;
- (c) the component relating to the recovery of QR Network's operating costs, excluding those costs referred to in Paragraph 3.2.2(a), adjusted to reflect the difference between:
  - (i) the actual CPI value less the approved X-Factor for the relevant Year; and
  - (ii) the forecast CPI value less the approved X-Factor that was used for the purpose of determining the Reference Tariffs for the relevant Year; and
- (d) all components excluding those costs referred to in Paragraph 3.2.2(a), (b) or (c).

3.2.3 The Total Actual Revenue for  $AT_{2-4}$  is the sum of:

- (a) total revenue from  $AT_{2-4}$  for coal carrying Train Services that operated on the Individual Coal System Infrastructure in the Year (excluding any revenue from  $AT_{2-4}$  for coal carrying Train Services which terminate at Wiggins Island Coal Terminal), calculated using:
  - (i) for a Train Service that is a Reference Train Service and is not a Cross System Train Service, the  $AT_2$ ,  $AT_3$  and  $AT_4$  components of the relevant Reference Tariff; or
  - (ii) for a Train Service to which Clause 4.2 applies, that part of the  $AT_2$ ,  $AT_3$  and  $AT_4$  components of the relevant Reference Tariff relating to that Individual Coal System Infrastructure allocated in accordance with the method used in the calculation of the relevant System Allowable Revenue as set out in Paragraph 4.2(g);
  - (iii) for a Train Service that varies from the Reference Train Service due to it not complying with:
    - (A) Paragraph 1.3.1(f) of Part A, the  $AT_2$  component of the Access Charge (where the Access Charge varies from the Reference Tariff in accordance with Clause 3.2 of Part A) and the  $AT_3$  and  $AT_4$  components of the relevant Reference Tariff; or
    - (B) any other part of Clause 1.3 or 1.4 of Part A, other than Paragraph 1.3.1(f) of Part A (with which it complies), the  $AT_2$ ,  $AT_3$  and  $AT_4$  components of the relevant Reference Tariff; and

- (iv) for a Train Service for which Clause 4.3 applies, the amount of the AT<sub>2</sub>, AT<sub>3</sub> and AT<sub>4</sub> components of the relevant Access Charge,

that QR Network has actually earned over the relevant Year (whether or not actually collected by QR Network);

- (b) subject to Subclause 3.2.4, the amount of any Take or Pay amounts and Relinquishment Fees (including equivalent amounts payable under a relevant Access Agreement (“Equivalent Amounts”)) which QR Network is entitled to be paid in relation to Access Agreements for coal carrying Train Services on the Individual Coal System Infrastructure (excluding Train Services which terminate at Wiggins Island Coal Terminal) calculated on the basis that QR Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement except for:
  - (i) those Access Agreements which have been altered from the relevant Standard Access Agreement in accordance with the relevant Applicable Undertaking, for which QR Network’s entitlement to Take or Pay amounts, Relinquishment Fees or Equivalent Amounts will be calculated in accordance with the terms of those Access Agreements;
  - (ii) a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under or prior to the 2001 Undertaking, pursuant to Paragraph 7.4.4(f) of the Undertaking, which has not been renewed after the Commencing Date (as defined under the 2005 Undertaking), for which QR Network’s entitlement to Take or Pay amounts, Relinquishment Fees and Equivalent Amounts will be calculated on the basis that QR Network has contracted on the terms of:
    - (A) for an Old Access Agreement executed under the 2001 Undertaking, the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement; or
    - (B) for an Old Access Agreement executed prior to the 2001 Undertaking, the terms of that Old Access Agreement; and
  - (iii) for the avoidance of doubt, an Access Agreement executed prior to the 2001 Undertaking, for which QR Network’s entitlement will be calculated in accordance with the terms of that Access Agreement;
- (c) the System Allowable Revenue for AT<sub>2-4</sub> in relation to the applicable Individual Coal System Infrastructure which is attributable to assets under an agreement described by Subparagraph 6.5.2(f)(i) of the Undertaking for the payment of a rebate less any rebate which is paid under that agreement; and
- (d) any revenue from AT<sub>2-4</sub> (excluding revenue from Train Services which terminate at Wiggins Island Coal Terminal) that QR Network would have been entitled to earn under an Access Agreement in relation to the

applicable Individual Coal System Infrastructure during the relevant Year but for QR Network's breach of that Access Agreement or negligence in the provision of Below Rail Services to the extent that such events of breach or negligence resulted in the non-provision of 10% or more of the total number of Train Services for any single origin-destination pair during the relevant Year (provided that, where Access Rights are held via an EU Access Agreement, the 10% threshold is measured across the number of Train Services for each single origin-destination pair under the EU Access Agreement, not any relevant TOA Access Agreement),

and, if Adjustment Charges are approved by the QCA in relation to FY2013/14 where clause 2.3.1(b), Part A of this Schedule applies, adjusted upwards or downwards (as applicable) by the aggregate of those Adjustment Charges to the extent relating to the AT<sub>2-4</sub> in relation to the applicable Individual Coal System payable to QR Network or reimbursable by QR Network (as applicable).

- 3.2.4 Subject to the QCA's approval, QR Network may reduce the amount of any Relinquishment Fee (or applicable Equivalent Amount) used to calculate Total Actual Revenue for a Year if its inclusion will have a material effect on the AT<sub>2-4</sub> Revenue Adjustment Amount. If QR Network reduces the amount of any Relinquishment Fee (or applicable Equivalent Amount) in accordance with this Subclause 3.2.4, then the amount of the reduction must be carried forward to a following Year, including a return on capital amount, calculated by reference to the Discount Rate over the period starting on the first day of the Year in which the Relinquishment Fee (or applicable Equivalent Amount) is received and ending on the first day of the Year in which the Relinquishment Fee (or applicable Equivalent Amount) is included in the calculation of Total Actual Revenue.
- 3.2.5 The Total Actual Revenue for the AT<sub>5</sub> component of Access Charges is the sum of:
- (a) total revenue from the AT<sub>5</sub> component of Access Charges arising from all Access Agreements in relation to coal carrying Train Services for the Central Queensland Coal Region (excluding Train Services which originate at Rolleston or which terminate at Wiggins Island Coal Terminal) that QR Network has actually earned over the relevant Year (whether or not actually collected by QR Network), calculated using:
    - (i) for a Train Service for which Clause 4.3 applies, the amount of the AT<sub>5</sub> components of the relevant Access Charges; or
    - (ii) if paragraph (i) does not apply, the AT<sub>5</sub> component of the relevant Reference Tariff;
  - (b) the System Allowable Revenue for AT<sub>5</sub> in relation to Central Queensland Coal Region which is attributable to assets under an agreement described by Subparagraph 6.5.2(f)(i) of the Undertaking for the payment of a rebate less any rebate which is paid under that agreement; and

- (c) any revenue from AT<sub>5</sub> (excluding any revenue from AT<sub>5</sub> for Train Services which originate at Rolleston or which terminate at Wiggins Island Coal Terminal) that QR Network would have been entitled to earn under an Access Agreement in relation to the Central Queensland Coal Region during the relevant Year but for QR Network's breach of that Access Agreement or negligence in the provision of Below Rail Services to the extent that such events of breach or negligence resulted in the non-provision of 10% or more of the total number of Train Services for any single origin-destination pair during the relevant Year (provided that, where Access Rights are held via an EU Access Agreement, the 10% threshold is measured across the number of Train Services for each single origin-destination pair under the EU Access Agreement, not any relevant TOA Access Agreement),

and, if the relevant Year is FY2013/14 and Adjustment Charges are approved by the QCA in relation to FY2013/14 where clause 2.3.1(b), Part A of this Schedule applies, adjusted upwards or downwards (as applicable) by the aggregate of those Adjustment Charges to the extent relating to the AT<sub>5</sub> component of Access Charges in relation to the Central Queensland Coal Region payable to QR Network or reimbursable by QR Network (as applicable).

3.2.6 QR Network will submit to the QCA by 30 September after the end of each Year of the Term details of the methodology, data and assumptions used to calculate the Revenue Adjustment Amounts and Increments for that Year in accordance with this Clause 3.2 provided that if, in that September:

- (a) the QCA approves Adjustment Charges relating to the relevant Year; or  
(b) the process for obtaining that approval is underway but has not been concluded,

then QR Network is only required to submit the relevant information within 30 days after the QCA's approval of the Adjustment Charges relating to the relevant Year.

3.2.7 The QCA may give QR Network a written notice requiring QR Network to submit the Revenue Adjustment Amounts and Increments, if QR Network fails to do so in accordance with Subclause 3.2.6.

3.2.8 The QCA may grant QR Network an extension of the time for submitting, or resubmitting, the Revenue Adjustment Amounts and Increments if:

- (a) QR Network provides a written request to the QCA for an extension of time which includes the reasons why QR Network requires the extension of time; and  
(b) the extension of time is reasonable or necessary.

If the QCA grants QR Network an extension of time under this Subclause 3.2.8, QR Network must submit the Revenue Adjustment Amounts and Increments within the time specified by the QCA.

3.2.9 The QCA may determine Revenue Adjustment Amounts and Increments that are consistent with the requirements specified in this Clause 3.2:

- (a) if QR Network does not comply with a written notice given by the QCA under Subclause 3.2.7 or Paragraph 3.2.12(b) for it to submit, or resubmit, the Revenue Adjustment Amounts and Increments; or
- (b) if the QCA refuses to approve the Revenue Adjustment Amounts and Increments resubmitted by QR Network in accordance with Paragraph 3.2.12(b).

3.2.10 Where QR Network submits the Revenue Adjustment Amounts and Increments in accordance with Subclause 3.2.6, the QCA may, to the extent it considers it appropriate to do so:

- (a) publish details of the Revenue Adjustment Amounts and Increments; and
- (b) invite and consider comments from stakeholders regarding the Revenue Adjustment Amounts and Increments.

To the extent that stakeholders provide comments, QR Network must be given a reasonable period in which to provide a response to those comments to the QCA.

3.2.11 The QCA will approve:

- (a) the Revenue Adjustment Amounts, if the QCA is reasonably satisfied that the calculation of the Revenue Adjustment Amounts is in accordance with this Clause 3.2; and
- (b) the Increments, if the QCA is reasonably satisfied that the calculation of the Increments is in accordance with Clause 3.3.

3.2.12 If the QCA:

- (a) approves the Revenue Adjustment Amounts and Increments, the QCA will give QR Network a notice in writing stating the reasons for the QCA's decision; or
- (b) refuses to approve the Revenue Adjustment Amounts and Increments, the QCA will give QR Network a notice in writing:
  - (i) stating the reasons for its refusal and the way in which the QCA considers that the Revenue Adjustment Amounts and Increments should be amended; and
  - (ii) requiring QR Network to vary the Revenue Adjustment Amounts and Increments in the way the QCA considers it appropriate and resubmit the Revenue Adjustment Amounts to the QCA within thirty (30) days after QR Network receives that notice.

3.2.13 QR Network must comply with a notice given under Paragraph 3.2.12(b).

3.2.14 The QCA may approve resubmitted Revenue Adjustment Amounts or Revenue Adjustment Amounts developed by the QCA under Subclause 3.2.9, if the QCA is satisfied that the Revenue Adjustment Amounts:

- (a) are consistent with the matters specified under Subclause 3.2.11; and

- (b) have been amended or developed in accordance with the QCA's decision.

3.2.15 Notwithstanding any other provision of this Undertaking, to the extent that:

- (a) the QCA has approved Adjustment Charges for a Year;
- (b) QR Network is entitled or obliged, in accordance with this Undertaking and the QCA's approval of the Adjustment Charges, to recover or reimburse those Adjustment Charges from or to Access Holders;
- (c) QR Network is obliged under this Undertaking to calculate Revenue Adjustment Amounts in respect of that Year; and
- (d) in recovering or reimbursing the Adjustment Charges, the Adjustment Charges are included in an invoice relating to a billing period in the Year in which the relevant Revenue Adjustment Amounts are required to be calculated,

then, the Total Actual Revenue for AT<sub>2-4</sub> or AT<sub>5</sub> for each relevant Individual Coal System Infrastructure for that Year and the Year in which the relevant Revenue Adjustment Amounts are required to be calculated must be adjusted to take account of the Adjustment Charges (but excluding the interest component of those Adjustment Charges) in accordance with the allocation approved by the QCA under Subparagraph 2.3.4(c)(iv) of Part A.

### **3.3 Calculation of Increment**

3.3.1 Subject to Subclause 3.3.2, where for an Individual Coal System Infrastructure:

- (a) the Total Actual Revenue for AT<sub>2-4</sub> is greater than the System Allowable Revenue for AT<sub>2-4</sub> for the relevant Individual Coal System Infrastructure;
- (b) QR Network is required by Subclause 3.4.3 to submit a variation of relevant Reference Tariffs to the QCA; and
- (c) the QCA, when considering that variation, is reasonably satisfied that the difference between the Total Actual Revenue for AT<sub>2-4</sub> and the System Allowable Revenue for AT<sub>2-4</sub> for the relevant Individual Coal System Infrastructure ("Difference") has, in whole or part, arisen as a direct result of whole of coal chain activities or initiatives of QR Network (or its contractors) which have increased the efficiency of the Below Rail network,

the Increment, for the relevant Individual Coal System Infrastructure, equals that part of the Difference, as determined by the QCA taking into account the extent to which the Difference has in whole or part arisen as a direct result of the whole of coal chain activities or initiatives of QR Network (or its contractors).

3.3.2 In no circumstance will an Increment for an Individual Coal System Infrastructure exceed an amount equal to two percentage points (2%) of the System Allowable Revenue for AT<sub>2-4</sub> for that Individual Coal System Infrastructure.

### **3.4 Revenue Adjustment**

3.4.1 Where a Revenue Adjustment Amount has been approved by the QCA in accordance with Clause 3.2:

- (a) the equivalent System Allowable Revenue to that used in the calculation of that Revenue Adjustment Amount for the relevant Individual Coal System Infrastructure for the Year after the Year in which that Revenue Adjustment Amount was calculated (“2<sup>nd</sup> Year System Allowable Revenue”) will be adjusted in accordance with this Clause 3.4; and
- (b) the System Allowable Revenue for all subsequent Years will also be adjusted to reflect the actual change in the MCI and CPI less the approved X-Factors as used in the calculation of the approved Revenue Adjustment Amount.

3.4.2 A 2<sup>nd</sup> Year System Allowable Revenue shall be adjusted as follows:

- (a) for an AT<sub>2-4</sub> Revenue Adjustment Amount, by subtracting from the relevant 2<sup>nd</sup> Year System Allowable Revenue:
  - (i) that AT<sub>2-4</sub> Revenue Adjustment Amount less the amount of the relevant Increment; and
  - (ii) a return on capital amount, calculated by reference to the Discount Rate as applied to the AT<sub>2-4</sub> Revenue Adjustment Amount over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year;
- (b) for an AT<sub>5</sub> Revenue Adjustment Amount, by subtracting from the relevant 2<sup>nd</sup> Year System Allowable Revenue:
  - (i) that AT<sub>5</sub> Revenue Adjustment Amount; and
  - (ii) a return on capital amount, calculated by reference to the Discount Rate as applied to the AT<sub>5</sub> Revenue Adjustment Amount over the period starting on the first day of the Year in which the Revenue Adjustment Amount is calculated and ending on the last day of the Year following that Year.

3.4.3 Where a 2<sup>nd</sup> Year System Allowable Revenue is adjusted under this Clause 3.4, QR Network shall submit a variation of the relevant Reference Tariffs to the QCA as part of the adjustment of the relevant Reference Tariff in accordance with Subclause 3.1.1.

#### **4. Coal Carrying Train Services for which Reference Tariffs do not apply**

##### **4.1 Reference Tariffs for New Coal Carrying Train Services**

4.1.1 Unless otherwise agreed with the QCA, where a coal carrying Train Service is operating within an existing Individual Coal System Infrastructure, or is utilising an existing or new branch line connecting to that Individual Coal System Infrastructure and is not a Cross System Train Service, it will be expected to make a minimum contribution towards QR Network’s Common Costs determined as the sum of the following components of the Reference Tariff that applies to that Individual Coal System Infrastructure:

- (a) AT<sub>2</sub> (adjusted for any variation that will be made pursuant to Clause 3 of Part A for that Train Service); and



- (b) fifty percentage points (50%) of  $AT_3$  for the distance that the Train Service will travel on the mainline of that Individual Coal System Infrastructure.

4.1.2 Unless otherwise agreed by QR Network and the QCA in order to reflect the requirements of Subclause 4.1.1, the Reference Tariff applicable for a new coal carrying Train Service will be the higher of (on a \$/ntk basis):

- (a) the Reference Tariff for the relevant Individual Coal System Infrastructure; or
- (b) the sum of the new coal carrying Train Service's Private Incremental Costs (if any), the Incremental Costs of using any Rail Infrastructure specifically related to the new coal carrying Train Service and the required minimum Common Cost contribution determined in accordance with Subclause 4.1.1,

provided that the Access Charge payable to QR Network for the operation of that new coal carrying Train Service is calculated as the applicable Reference Tariff less the Private Incremental Costs (if any).

4.1.3 Where a new coal carrying Train Service is a Cross System Train Service it will be expected to make a minimum contribution towards QR Network's Common Costs determined as the sum of the following components of the Reference Tariff:

- (a)  $AT_2$  (adjusted for any variation that will be made pursuant to Clause 3 of Part A for that Train Service) applicable to the Destination System;
- (b)  $AT_2$  (adjusted for any variation that will be made pursuant to Clause 3 of Part A for that Train Service) applicable to the Origin System but only if the Train Service operates on capacity constrained corridors of the Origin System as identified in Paragraph 4.2(g); and
- (c) fifty percentage points (50%) of  $AT_3$  applicable to the relevant Individual Coal System Infrastructure for the distance that the Train Service will travel on the mainline of that Individual Coal System Infrastructure.

4.1.4 In order to reflect the requirements of Subclause 4.1.3, the Reference Tariff applicable for a new coal carrying Train Service will be the higher of (on a \$/ntk basis):

- (a) the Access Charge for a Cross System Train Service calculated in accordance with Clause 4.2; or
- (b) the sum of the new coal carrying Train Service's Private Incremental Costs (if any), the Incremental Costs of using any Rail Infrastructure specifically related to the new coal carrying Train Service and the required minimum Common Cost contribution determined in accordance with Subclause 4.1.3,

provided that the Access Charge payable to QR Network for the operation of that new coal carrying Train Service is calculated as the applicable Reference Tariff less the Private Incremental Costs (if any).

4.1.5 Where a Reference Tariff for a new coal carrying Train Service is established in accordance with Paragraph 6.4.2(b) of the Undertaking:

- (a) if the new coal carrying Train Service is operating within an existing Individual Coal System Infrastructure, utilising an existing or new branch line connecting to that Individual Coal System Infrastructure and is not a Cross System Train Service:
  - (i) the loading facility for that new Train Service will be added as a Nominated Loading Facility into the existing Reference Train Service applicable for that Individual Coal System Infrastructure, irrespective of whether that loading facility is located adjacent to Private Infrastructure or Rail Infrastructure; and
  - (ii) where the amount calculated in accordance with Paragraph 4.1.2(b) is higher than the amount calculated in accordance with Paragraph 4.1.2(a), a System Premium will be included in that Reference Tariff for Train Services utilising that Nominated Loading Facility, where the System Premium will be calculated as the difference (in \$/ntk) between the amount calculated in accordance with Paragraph 4.1.2(b) and the amount calculated in accordance with Paragraph 4.1.2(a);
- (b) if the new coal carrying Train Service is a Cross System Train Service:
  - (i) the loading facility for that new Train Service will be added as a Nominated Loading Facility into the existing Reference Train Service applicable to the Origin System, irrespective of whether that loading facility is located adjacent to Private Infrastructure or Rail Infrastructure;
  - (ii) the capital costs of developing a rail spur which will be used (wholly or partly) for Cross System Train Services will be allocated to the Regulatory Asset Base as part of the Origin System; and
  - (iii) where the amount calculated in accordance with Paragraph 4.1.4(b) is higher than the amount calculated in accordance with Paragraph 4.1.4(a), a System Premium will be included in that Reference Tariff for Train Services utilising that Nominated Loading Facility, where the System Premium will be calculated as the difference (in \$/ntk) between the amount calculated in accordance with Paragraph 4.1.4(b) and the amount calculated in accordance with Paragraph 4.1.4(a); or
- (c) if the new coal carrying Train Service is operating otherwise than in accordance with Paragraph 4.1.5(a) or (b), a new Reference Tariff will be developed for a new Reference Train Service in accordance with Subclause 6.4.2 of the Undertaking.

4.1.6 Where QR Network enters into an Access Agreement with an Access Seeker in relation to Train Services carrying coal from a new mine prior to the authorisation of the applicable Reference Tariff, the Access Charge for that Train Service will be reviewed following authorisation of the Reference Tariff to ensure that it is consistent with the Reference Tariff.

## **4.2 Cross System Train Services**

Where a coal carrying Train Service in the Central Queensland Coal Region requires Access to more than one Individual Coal System Infrastructure (“Cross System Train Service”), (excluding services which operate solely within the Goonyella to Abbot Point System, to which the Reference Tariff in Clause 9 applies) the Access Charges

for the Cross System Train Service will be calculated as though a Reference Tariff applied, where the Reference Tariff will be determined in accordance with the following methodology:

- (a)  $AT_1$  determined as the  $AT_1$  component of the Reference Tariff for:
  - (i) the Origin System, for the gtk attributable to the Origin System; and
  - (ii) the Destination System, for the gtk attributable to the Destination System; and
- (b)  $AT_2$  determined as follows:
  - (i)  $AT_2$  component of the Reference Tariff in the Origin System shall be applicable to the Train Paths used in the Origin System, but only if the Train Service operates on capacity constrained corridors of the Origin System as identified in Paragraph 4.2(g); and
  - (ii) the  $AT_2$  component of the Reference Tariff in the Destination System shall be applicable in accordance with Clause 2.1 of Part B; and
- (c)  $AT_3$  determined as the higher of the  $AT_3$  component of the Reference Tariff for either the Origin System or the Destination System, applied to the aggregate of ntk for the Train Service;
- (d)  $AT_4$  determined as the higher of the  $AT_4$  component of the Reference Tariff for either the Origin System or the Destination System, applied to the nt for the Train Service; and
- (e)  $AT_5$  and EC determined as the  $AT_5$  and EC components of the Reference Tariff for:
  - (i) the Origin System, for the egtk attributable to the Origin System; and
  - (ii) the Destination System, for the egtk attributable to the Destination System;
- (f) the QCA Levy component of the Reference Tariff in the Destination System shall be applicable in accordance with Clause 2.1 of Part B, applied to the nt for the Train Service;
- (g) unless otherwise agreed with the QCA, for the purposes of calculating System Allowable Revenue in relation to the Origin System and the Destination System for a Cross System Train Service:
  - (i) for the System Allowable Revenue for  $AT_{2-4}$ :
    - (A) Access Charges which QR Network is entitled to earn in respect of the Cross System Train Service equal to the minimum contribution for the Destination System's common costs will be allocated to the System Allowable Revenue for the Destination System; and
    - (B) all other Access Charges attributable to  $AT_{2-4}$  which QR Network is entitled to earn in respect of the Cross System Train Service will be allocated to the System Allowable Revenue of the Origin System; and
  - (ii) for the System Allowable Revenue for  $AT_5$ :
    - (A) Access Charges attributable to  $AT_5$  and egtk in the Origin System will be allocated to the System Allowable Revenue for the Origin System; and

- (B) Access Charges attributable to AT<sub>5</sub> and egtk in the Destination System will be allocated to the System Allowable Revenue for the Destination System;
- (h) unless approved by the QCA, the following corridors shall be regarded as capacity constrained:
  - (i) the rail corridor between Coppabella and the ports at Hay Point and Dalrymple Bay;
  - (ii) the rail corridor between the junction to the German Creek mine and Coppabella; and
  - (iii) the rail corridor between Burngrove and the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone).

### **4.3 Access Charges where Reference Tariffs do not apply**

Unless approved by the QCA, QR Network must calculate the Access Charges for all coal carrying Train Service in the Central Queensland Coal Region which are:

- (a) not a Reference Train Service due to non-compliance with Clause 1.2 of Part A; or
- (b) a Cross System Train Service,

by reference to:

- (c) an incremental maintenance component that is levied on a gtk basis, referred to as AT<sub>1</sub>;
- (d) an incremental capacity component that is levied on a train path basis, referred to as AT<sub>2</sub>;
- (e) a component that is levied on a ntk basis, referred to as AT<sub>3</sub>;
- (f) a component that is levied on a nt basis, referred to as AT<sub>4</sub>;
- (g) an electric access tariff that is levied on an egtk basis (if appropriate) referred to as AT<sub>5</sub>;
- (h) an electric energy charge that is levied on an egtk basis (if appropriate) referred to as EC;
- (i) the QCA Levy levied on a nt basis; and
- (j) any other amount that may be included in an Access Charge in accordance with this Undertaking.

## 5. Blackwater System

### 5.1 Term

The term of this Reference Tariff is from 1 July 2009 to the Terminating Date.

### 5.2 Reference Train Service Description

5.2.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 1709<sup>2</sup> metres, except that Train Services operating from Minerva will have a maximum length (including the locomotive/s) of 1240 metres;
- (b) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>3</sup> loading, or otherwise generates a loading equivalent to M220, except that Train Services operating from Minerva will have a maximum axle load of 20 tonne; and
- (c) utilisation of either electric or diesel traction, except that Train Services operating from Rolleston or Minerva will only utilise diesel traction.

5.2.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of twenty-seven percentage points (27%). If a Train Service varies from these section running times, but is otherwise subject to this Schedule, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) plus (+) a factor of twenty-seven percentage points (27%).

#### 5.2.3 Loading Facilities

Nominated Loading Facilities	Loading Time (hours) per return trip
Boonal	4.6
Boorgoon	3.8
Curragh	3.3
Ensham	3.2
German Creek	3
Gregory	2.8

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

<sup>3</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

Kestrel (Gordonstone)	3.3
Kinrola	3.15
Koorilgah	5
Minerva	2.3
Oaky Creek	2.6
Rolleston	2.2
Yongala	4.2

#### 5.2.4 Unloading Facilities

Nominated Unloading Facilities	Unloading Time (hours) per return trip
Barney Point	5
Cement Australia	6
Comalco Refinery	4
Gladstone Power Station	3.3
Golding/RG Tanna Terminal	2.6
Queensland Alumina Ltd (QAL) <sup>4</sup>	8.9
Stanwell Power Station	2.3

#### 5.2.5 Dwell Period

	Dwell period (hours)per return trip
Inclusive of Train examination	9.2
Excluding Train examination	3.2

#### 5.3 System Forecast and System Allowable Revenues inclusive of the revenue cap adjustments for 2007/08, 2008/09, 2011/12, 2012/13 and 2013/14.

Year	System Gtk (,000 gtk)	System Allowable Revenue – AT <sub>2-4</sub> (\$)	System Allowable Revenue – AT <sub>5</sub> (\$)
2009/10	32,838,311	203,854,623	63,230,441 <sup>a</sup>
2010/11	35,421,425	212,955,752	84,449,940 <sup>b</sup>
2011/12	36,250,922	230,562,971	65,096,561

<sup>4</sup> The average Unloading Time for the QAL refinery represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

Year	System Gtk (,000 gtk)	System Allowable Revenue – AT <sub>2-4</sub> (\$)	System Allowable Revenue – AT <sub>5</sub> (\$)
2012/13	36,197,257	236,227,357	82,983,583
2013/14	33,156,845	215,153,796 <sup>c</sup>	72,572,784 <sup>c</sup>
2014/15	33,671,646	247,161,235 <sup>d</sup>	94,184,512 <sup>d</sup>
2015/16	39,565,428	323,554,140 <sup>e</sup>	105,807,627

<sup>a</sup> The 2009/10 SAR is inclusive of the 2007/08 revenue cap adjustment

<sup>b</sup> The 2010/11 SAR is inclusive of the 2008/09 revenue cap adjustment

<sup>c</sup> The 2013/14 SAR is inclusive of the 2011/12 revenue cap adjustment

<sup>d</sup> The 2014/15 SAR is inclusive of the 2012/13 revenue cap adjustment

<sup>e</sup> The 2015/16 SAR is inclusive of the 2013/14 revenue cap adjustment

### Monthly System Forecasts

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul 2009	2784104	Mar 2011	2964406	Nov 2012	2873757
Aug 2009	2845456	Apr 2011	3007011	Dec 2012	2964880
Sep 2009	2664174	May 2011	3150343	Jan 2013	3006411
Oct 2009	2735676	Jun 2011	3192537	Feb 2013	2610614
Nov 2009	2607085	Jul 2011	3073433	Mar 2013	3029335
Dec 2009	2689752	Aug 2011	3141160	Apr 2013	3072873
Jan 2010	2727429	Sep 2011	2941039	May 2013	3219345
Feb 2010	2368360	Oct 2011	3019972	Jun 2013	3262463
Mar 2010	2748226	Nov 2011	2878017	Jul 2013	2911339
Apr 2010	2787724	Dec 2011	2969276	Aug 2013	2942987
May 2010	2920604	Jan 2012	3010868	Sep 2013	2740288
Jun 2010	2959721	Feb 2012	2614484	Oct 2013	2885505
Jul 2010	3003106	Mar 2012	3033826	Nov 2013	2676230
Aug 2010	3069284	Apr 2012	3077429	Dec 2013	2592421
Sep 2010	2873742	May 2012	3224117	Jan 2014	2593251
Oct 2010	2950869	Jun 2012	3267300	Feb 2014	2340087
Nov 2010	2812162	Jul 2012	3068883	Mar 2014	2706720
Dec 2010	2901333	Aug 2012	3136510	Apr 2014	2776567
Jan 2011	2941973	Sep 2012	2936685	May 2014	2931585

Feb 2011	2554659	Oct 2012	3015501	Jun 2014	3059865
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Month	System GtK (,000 gtk)	Month	System GtK (,000 gtk)	Month	System GtK (,000 gtk)
Jul 2014	3211147	Mar 2015	2672615	Nov 2015	3,406,398
Aug 2014	3148885	Apr 2015	2876402	Dec 2015	3,111,432
Sep 2014	2910949	May 2015	2937124	Jan 2016	2,410,488
Oct 2014	3028684	Jun 2015	3207823	Feb 2016	2,443,709
Nov 2014	2898971	Jul 2015	3,773,216	Mar 2016	3,140,421
Dec 2014	2647944	Aug 2015	3,700,056	Apr 2016	3,379,878
Jan 2015	2051415	Sep 2015	3,420,473	May 2016	3,451,230
Feb 2015	2079687	Oct 2015	3,558,815	Jun 2016	3,769,311

#### 5.4 Reference Tariff

- (a) The Reference Tariff components inclusive of revenue cap adjustments for 2007/08, 2008/09 (as at July 2009), 2011/12 (as at July 2013), 2012/13 (as at July 2014) and 2013/14 (as at July 2015) are:

Reference Tariff Input	2009/10 (\$)	2010/11 (\$)	2011/12 (\$)	2012/13 (\$)	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)
AT <sub>1</sub>	0.78	0.80	0.82	0.84	0.86	0.88	0.99
AT <sub>2</sub>	1,829.45	1,875.18	1,922.06	1,970.11	2,019.37	2,069.85	2,147.95
AT <sub>3</sub>	4.22	3.96	4.22	4.33	4.36	4.84	6.08
AT <sub>4</sub>	1.43	1.33	1.42	1.46	1.52	1.60	2.00
AT <sub>5</sub>	4.65	5.46	4.42	4.53	3.49	4.04	3.28
EC	0.62	0.69	0.70	0.79	0.83	0.86	0.68
QCA Levy	0.007	0.007	0.007	0.007	0.029	0.03416	0.03143

- (b) The System Premium or System Discount for Train Services to or from Nominated Loading Facilities or Nominated Unloading Facilities are:

Nominated Loading Facilities	System Premium / (System Discount) (\$/ntk)						
	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Rolleston	2.95	3.02	3.10	3.17	2.34	2.30	--
Minerva	1.41	1.45	1.49	1.52	2.06	2.18	--



Nominated Unloading Facilities	System Premium / (System Discount) (\$/ntk)						
	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Stanwell Power Station	(1.41)	(1.44)	(1.48)	(1.52)	(1.46)	(1.48)	(2.06)

## 6. Goonyella System

### 6.1 Term

The term of this Reference Tariff is from 1 July 2009 to the Terminating Date.

### 6.2 Reference Train Service Description

6.2.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 2082<sup>5</sup> metres;
- (b) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>6</sup> loading, or otherwise generates a loading equivalent to M220; and
- (c) utilisation of either electric or diesel traction.

6.2.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of twenty-three percentage points (23%). If a Train Service varies from these section running times, but is otherwise subject to this Schedule, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) plus (+) a factor of twenty-three percentage points (23%).

#### 6.2.3 Loading Facilities

Nominated Loading Facilities	Loading Time (hours) per return trip
Blair Athol	3.1
Burton	3.8
Carborough Downs	3.5
German Creek	2.9
Goonyella	3.9
Hail Creek	4.1
Isaac Plains	3.9
Lake Vermont	3
Macarthur (Coppabella)	3.9

<sup>5</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock lengths) plus an allowance of 2% of this static train length for train handling accuracy and for slack movement in drawgear (includes free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

<sup>6</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

Millennium	3
Moorvale	3.9
Moranbah North	3.6
North Goonyella	4.3
Norwich Park	3.9
Oaky Creek	3.8
Peak Downs	4.2
Riverside	3
Saraji	4.4
South Walker Creek	3.8

#### 6.2.4 Unloading Facilities

Nominated Unloading Facilities	Unloading Time (hours) per return trip
Dalrymple Bay	Pit 1 – 2.5 Pit 2 – 2.5 Pit 3 – 2
Hay Point	2.8

#### 6.2.5 Dwell Period

	Dwell period (hours) per return trip
Inclusive of Train examination	8.8
Excluding Train examination	1.8

### 6.3 System Forecast and System Allowable Revenues inclusive of the revenue cap adjustments for 2007/08, 2008/09, 2011/12, 2012/13 and 2013/14.

Year	System Gtk (,000 gtk)	System Allowable Revenue – AT <sub>2-4</sub>	System Allowable Revenue – AT <sub>5</sub>
2009/10	33,926,216	215,331,743 <sup>a</sup>	71,005,058 <sup>a</sup>
2010/11	37,415,050	235,729,731 <sup>b</sup>	79,894,969 <sup>b</sup>
2011/12	41,355,768	260,005,767	78,560,923
2012/13	41,355,887	266,505,162	80,609,230
2013/14	33,123,213	229,808,441 <sup>c</sup>	92,246,430 <sup>c</sup>
2014/15	34,975,919	234,836,041 <sup>d</sup>	74,958,168 <sup>d</sup>
2015/16	36,465,232	266,893,184 <sup>e</sup>	79,874,139 <sup>e</sup>

- <sup>a</sup> The 2009/10 SAR is inclusive of the 2007/08 revenue cap adjustment
- <sup>b</sup> The 2010/11 SAR is inclusive of the 2008/09 revenue cap adjustment
- <sup>c</sup> The 2013/14 SAR is inclusive of the 2011/12 revenue cap adjustment
- <sup>d</sup> The 2014/15 SAR is inclusive of the 2012/13 revenue cap adjustment
- <sup>e</sup> The 2015/16 SAR is inclusive of the 2013/14 revenue cap adjustment

### Monthly System Forecasts

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul 2009	2958974	Mar 2011	2860399	Nov 2012	3426994
Aug 2009	2895103	Apr 2011	3238621	Dec 2012	3401380
Sep 2009	2822890	May 2011	3331945	Jan 2013	3464689
Oct 2009	2909258	Jun 2011	3270908	Feb 2013	2899544
Nov 2009	2811327	Jul 2011	3606964	Mar 2013	3161678
Dec 2009	2790315	Aug 2011	3529106	Apr 2013	3579737
Jan 2010	2842251	Sep 2011	3441079	May 2013	3682891
Feb 2010	2378635	Oct 2011	3546361	Jun 2013	3615425
Mar 2010	2593676	Nov 2011	3426984	Jul 2013	2920495
Apr 2010	2936630	Dec 2011	3401370	Aug 2013	2940653
May 2010	3021252	Jan 2012	3464679	Sep 2013	2951804
Jun 2010	2965906	Feb 2012	2899536	Oct 2013	2969033
Jul 2010	3263263	Mar 2012	3161669	Nov 2013	2813165
Aug 2010	3192823	Apr 2012	3579727	Dec 2013	2656181
Sep 2010	3113184	May 2012	3682880	Jan 2014	2643929
Oct 2010	3208434	Jun 2012	3615414	Feb 2014	2178661
Nov 2010	3100433	Jul 2012	3606974	Mar 2014	2395735
Dec 2010	3077260	Aug 2012	3529116	Apr 2014	2799930
Jan 2011	3134536	Sep 2012	3441089	May 2014	2953256
Feb 2011	2623244	Oct 2012	3546371	Jun 2014	2900370

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul 2014	2647231	Mar 2015	2483944	Nov 2015	3,305,390
Aug 2014	3148242	Apr 2015	2738775	Dec 2015	3,019,262

Sep 2014	3239975	May 2015	2934884	Jan 2016	3,061,141
Oct 2014	3192101	Jun 2015	3175199	Feb 2016	2,515,861
Nov 2014	3170391	Jul 2015	2,759,953	Mar 2016	2,589,713
Dec 2014	2895950	Aug 2015	3,282,298	Apr 2016	2,855,395
Jan 2015	2936118	Sep 2015	3,377,937	May 2016	3,059,854
Feb 2015	2413108	Oct 2015	3,328,024	Jun 2016	3,310,403

#### 6.4 Reference Tariff

- (a) The Reference Tariff components inclusive of revenue cap adjustments for 2007/08, 2008/09 (as at July 2009), 2011/12 (as at July 2013), 2012/13 (as at July 2014) and 2013/14 (as at July 2015) are:

Reference Tariff Input	2009/10 (\$)	2010/11 (\$)	2011/12 (\$)	2012/13 (\$)	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)
AT <sub>1</sub>	0.54	0.55	0.57	0.58	0.60	0.61	0.68
AT <sub>2</sub>	1,159.06	1,188.03	1,217.73	1,248.18	1,279.38	1,311.37	1,360.85
AT <sub>3</sub>	4.35	4.29	4.25	4.35	4.75	4.59	5.16
AT <sub>4</sub>	0.93	0.92	0.91	0.93	1.00	0.95	1.06
AT <sub>5</sub>	2.11	2.14	1.91	1.95	2.81	2.14	2.22
EC	0.62	0.69	0.70	0.79	0.83	0.86	0.68
QCA Levy	0.007	0.007	0.007	0.007	0.029	0.03416	0.03143

- (b) The System Premium for Train Services to or from Nominated Loading Facilities or Nominated Unloading Facilities are:

Nominated Loading Facilities	System Premium / (System Discount) (\$/ntk)						
	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Lake Vermont via Gladstone	1.63	1.68	1.72	1.76	0.19	0.51	0.91

## 7. Moura System

### 7.1 Term

The term of this Reference Tariff is from 1 July 2009 to the Terminating Date.

### 7.2 Reference Train Service Description

7.2.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 1000<sup>7</sup> metres;
- (b) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>8</sup> loading, or otherwise generates a loading equivalent to M220; and
- (c) utilisation of diesel traction.

7.2.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of thirty percentage points (30%). If a Train Service varies from these section running times, but is otherwise subject to this Schedule, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) plus (+) a factor of thirty percentage points (30%).

#### 7.2.3 Loading Facilities

Nominated Loading Facilities	Loading Time (hours) per return trip
Baralaba	4.9
Boundary Hill	3.4
Dunn Creek (Callide)	4.2
Moura	3.6

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<sup>7</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock lengths) plus an allowance of 2% of this static train length for train handling accuracy and for slack movement in drawgear (includes free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

<sup>8</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

## 7.2.4 Unloading Facilities

Nominated Unloading Facilities	Unloading Time (hours) per return trip
Barney Point	3.1
Cement Australia	4.3
Comalco Refinery	4
Gladstone Power Station	3.3
Golding/RG Tanna Terminal	1.5
Queensland Alumina Ltd (QAL) <sup>9</sup>	8.9

## 7.2.5 Dwell Period

	Dwell period (hours) per return trip
Inclusive of Train examination	6.2
Excluding Train examination	3.2

## 7.3 System Forecast and System Allowable Revenues inclusive of the revenue cap adjustments for 2007/08, 2008/09, 2011/12, 2012/13 and 2013/14.

Year	System Gtk (,000 gtk)	System Allowable Revenue – AT <sub>2-4</sub>
2009/10	2,397,221	29,314,351 <sup>a</sup>
2010/11	3,217,568	42,820,094 <sup>b</sup>
2011/12	3,217,568	41,860,540
2012/13	3,425,545	43,128,939
2013/14	3,877,217	31,409,238 <sup>c</sup>
2014/15	3,501,180	37,780,485 <sup>d</sup>
2015/16	3,648,270	51,670,980 <sup>e</sup>

<sup>a</sup> The 2009/10 SAR is inclusive of the 2007/08 revenue cap adjustment

<sup>b</sup> The 2010/11 SAR is inclusive of the 2008/09 revenue cap adjustment

<sup>c</sup> The 2013/14 SAR is inclusive of the 2011/12 revenue cap adjustment

<sup>d</sup> The 2014/15 SAR is inclusive of the 2012/13 revenue cap adjustment

<sup>e</sup> The 2015/16 SAR is inclusive of the 2013/14 revenue cap adjustment

<sup>9</sup> The average Unloading Time for the QAL refinery represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

## Monthly System Forecasts

Month	System GtK (,000 gtk)	Month	System GtK (,000 gtk)	Month	System GtK (,000 gtk)
Jul 2009	208990	Mar 2011	286195	Nov 2012	272782
Aug 2009	196053	Apr 2011	280330	Dec 2012	256509
Sep 2009	194221	May 2011	283062	Jan 2013	281134
Oct 2009	197735	Jun 2011	276194	Feb 2013	277687
Nov 2009	190895	Jul 2011	280508	Mar 2013	304695
Dec 2009	179507	Aug 2011	263144	Apr 2013	298450
Jan 2010	196739	Sep 2011	260685	May 2013	301359
Feb 2010	194327	Oct 2011	265401	Jun 2013	294047
Mar 2010	213227	Nov 2011	256220	Jul 2013	337866
Apr 2010	208857	Dec 2011	240935	Aug 2013	324418
May 2010	210893	Jan 2012	264065	Sep 2013	307384
Jun 2010	205776	Feb 2012	260828	Oct 2013	319934
Jul 2010	280508	Mar 2012	286195	Nov 2013	323060
Aug 2010	263144	Apr 2012	280330	Dec 2013	302994
Sep 2010	260685	May 2012	283062	Jan 2014	322104
Oct 2010	265401	Jun 2012	276194	Feb 2014	307022
Nov 2010	256220	Jul 2012	298639	Mar 2014	325536
Dec 2010	240935	Aug 2012	280153	Apr 2014	327749
Jan 2011	264065	Sep 2012	277535	May 2014	343064
Feb 2011	260828	Oct 2012	282556	Jun 2014	336087

Month	System GtK (,000 gtk)	Month	System GtK (,000 gtk)	Month	System GtK (,000 gtk)
Jul 2014	354292	Mar 2015	178438	Nov 2015	364,684
Aug 2014	361978	Apr 2015	235555	Dec 2015	326,845
Sep 2014	318156	May 2015	277541	Jan 2016	277,913
Oct 2014	316148	Jun 2015	331845	Feb 2016	205,142
Nov 2014	349981	Jul 2015	369,176	Mar 2016	185,935
Dec 2014	313667	Aug 2015	377,185	Apr 2016	245,451
Jan 2015	266708	Sep 2015	331,523	May 2016	289,201
Feb 2015	196871	Oct 2015	329,429	Jun 2016	345,787



## 7.4 Reference Tariff

The Reference Tariff components inclusive of revenue cap adjustments for 2007/08, 2008/09 (as at July 2009), 2011/12 (as at July 2013), 2012/13 (as at July 2014) and 2013/14 (as at July 2015) are:

<b>Reference Tariff Input</b>	2009/10 (\$)	2010/11 (\$)	2011/12 (\$)	2012/13 (\$)	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)
AT <sub>1</sub>	1.45	1.49	1.52	1.56	1.60	1.64	1.84
AT <sub>2</sub>	547.99	561.69	575.73	590.12	604.88	620.00	643.39
AT <sub>3</sub>	8.89	9.60	9.34	9.57	6.12	8.24	10.91
AT <sub>4</sub>	1.11	1.20	1.16	1.19	1.03	1.35	1.79
QCA Levy	0.007	0.007	0.007	0.007	0.029	0.03416	0.03143

## 8. Newlands System

### 8.1 Term

The term of this Reference Tariff is from 1 July 2009 to the Terminating Date.

### 8.2 Reference Train Service Description

8.2.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 1402<sup>10</sup> metres;
- (b) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>11</sup> loading, or otherwise generates a loading equivalent to M220; and
- (c) utilisation of diesel traction.

8.2.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of sixty percentage points (60%). If a Train Service varies from these section running times, but is otherwise subject to this Schedule, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) plus (+) a factor of sixty percentage points (60%).

#### 8.2.3 Loading Facilities

Nominated Loading Facilities	Loading Time (hours) per return trip
McNaughton	2.5
Newlands	1.8
Sonoma	1.5

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<sup>10</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock lengths) plus an allowance of 2% of this static train length for train handling accuracy plus 125mm per vehicle for slack movement in drawgear (includes free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

<sup>11</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

### 8.2.4 Unloading Facilities

Nominated Unloading Facilities	Unloading Time (hours) per return trip
Abbot Point	1.6

### 8.2.5 Dwell Period

	Dwell period (hours) per return trip
Inclusive of Train examination	6.4
Excluding Train examination	2.4

### 8.3 System Forecast and System Allowable Revenues inclusive of the revenue cap adjustments for 2007/08, 2008/09, 2011/12, 2012/13 and 2013/14.

Year	System Gtk (,000 gtk)	System Allowable Revenue – AT <sub>2-4</sub>
2009/10	3,502,871	32,768,739 <sup>a</sup>
2010/11	3,798,544	32,264,795 <sup>b</sup>
2011/12	3,798,544	30,277,410
2012/13	3,531,532	34,928,065 <sup>c</sup>
2013/14	3,494,066	37,755,329 <sup>d</sup>
2014/15	3,135,791	35,433,700 <sup>e</sup>
2015/16	3,035,189	51,674,101 <sup>f</sup>

<sup>a</sup> The 2009/10 SAR is inclusive of the 2007/08 revenue cap adjustment

<sup>b</sup> The 2010/11 SAR is inclusive of the 2008/09 revenue cap adjustment

<sup>c</sup> The 2012/13 SAR is inclusive of the 2010/11 revenue cap adjustment

<sup>d</sup> The 2013/14 SAR is inclusive of the 2011/12 revenue cap adjustment

<sup>e</sup> The 2014/15 SAR is inclusive of the 2012/13 revenue cap adjustment

<sup>f</sup> The 2015/16 SAR is inclusive of the 2013/14 revenue cap adjustment

### Monthly System Forecasts

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul 2009	322487	Mar 2011	307063	Nov 2012	318,652
Aug 2009	318315	Apr 2011	335170	Dec 2012	280,027

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Sep 2009	302066	May 2011	357651	Jan 2013	302,929
Oct 2009	266286	Jun 2011	320577	Feb 2013	209,739
Nov 2009	289807	Jul 2011	349708	Mar 2013	276,348
Dec 2009	289180	Aug 2011	345184	Apr 2013	292,412
Jan 2010	288964	Sep 2011	327563	May 2013	311,968
Feb 2010	208087	Oct 2011	288763	Jun 2013	317,050
Mar 2010	283161	Nov 2011	314269	Jul 2013	312009
Apr 2010	309081	Dec 2011	313590	Aug 2013	321187
May 2010	329812	Jan 2012	313355	Sep 2013	306571
Jun 2010	295623	Feb 2012	225652	Oct 2013	269671
Jul 2010	349708	Mar 2012	307063	Nov 2013	315272
Aug 2010	345184	Apr 2012	335170	Dec 2013	277056
Sep 2010	327563	May 2012	357651	Jan 2014	299715
Oct 2010	288763	Jun 2012	320577	Feb 2014	207514
Nov 2010	314269	Jul 2012	315,355	Mar 2014	273417
Dec 2010	313590	Aug 2012	324,634	Apr 2014	289310
Jan 2011	313355	Sep 2012	309,858	May 2014	308658
Feb 2011	225652	Oct 2012	272,562	Jun 2014	313686

Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)	Month	System Gtk (,000 gtk)
Jul 2014	293896	Mar 2015	224060	Nov 2015	278,623
Aug 2014	289411	Apr 2015	201249	Dec 2015	245,670
Sep 2014	290358	May 2015	254984	Jan 2016	276,306
Oct 2014	277782	Jun 2015	235208	Feb 2016	233,954
Nov 2014	287858	Jul 2015	284,467	Mar 2016	216,872
Dec 2014	253813	Aug 2015	280,126	Apr 2016	194,792
Jan 2015	285465	Sep 2015	281,043	May 2016	246,803
Feb 2015	241709	Oct 2015	268,870	Jun 2016	227,662

#### 8.4 Reference Tariff

The Reference Tariff components inclusive of revenue cap adjustments for 2007/08, 2008/09 (as at July 2009), 2011/12 (as at July 2013), 2012/13 (as at July 2014) and 2013/14 (as at July 2015) are:

<b>Reference Tariff Input</b>	2009/10 (\$)	2010/11 (\$)	2011/12 (\$)	2012/13 (\$)	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)
AT <sub>1</sub>	1.51	1.55	1.59	1.63	1.67	1.71	1.92
AT <sub>2</sub>	245.01	251.14	257.42	263.85	270.45	277.21	287.67
AT <sub>3</sub>	7.08	6.29	5.87	6.01	8.20	8.68	13.33
AT <sub>4</sub>	1.01	0.89	0.83	0.85	1.14	1.24	1.82
QCA Levy	0.007	0.007	0.007	0.007	0.029	0.03416	0.03143

## 9. Goonyella to Abbot Point

### 9.1 Term

The term of this Reference Tariff is from 1 January 2012 to the Terminating Date.

### 9.2 Reference Train Service Description

9.2.1 The Reference Train Service has the following characteristics:

- (a) a maximum length (including the locomotive/s) of 1402<sup>12</sup> metres;
- (b) a maximum axle load of 26.5 tonne for a wheel configuration consistent with M220<sup>13</sup> loading, or otherwise generates a loading equivalent to M220; and
- (c) utilisation of diesel traction.

9.2.2 The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) plus (+) a factor of sixty percentage points (60%).

If a Train Service varies from these section running times, but is otherwise subject to this Schedule, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) plus (+) a factor of sixty percentage points (60%).

### 9.2.3 Loading Facilities

Nominated Loading Facilities	Loading Time (hours) per return trip
Riverside	3
Peak Downs	3
Byerwen	2.04
Caval Ridge	1.85
Lake Vermont	2.04
Middlemount	2.04
Blair Athol (Clermont)	2.04
Drake	2.04

<sup>12</sup> This train length comprises the following: static train length (which is the straight addition of individual rollingstock lengths) plus an allowance of 2% of this static train length for train handling accuracy plus 125mm per vehicle for slack movement in drawgear (includes free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

<sup>13</sup> As specified in the ANZRC Railway Bridge Design Manual 1974.

#### 9.2.4 Unloading Facilities

Nominated Unloading Facilities	Unloading Time (hours) per return trip
Abbot Point	2.05

#### 9.2.5 Dwell Period

	Dwell period (hours) per return trip
Inclusive of Train examination	6.9
Excluding Train examination	1.9

### 9.3 System Forecast and System Allowable Revenue inclusive of the revenue cap adjustments for 2012/13, 2013/14 and 2014/15.

Year	System Gtk (,000 gtk)	System Allowable Revenue – AT <sub>2-4</sub>
2011/12	1,294,098	17,473,977
2012/13	6,288,019	91,686,243
2013/14	11,042,620	124,194,917
2014/15	12,488,296	114,622,918 <sup>a</sup>
2015/16	10,465,782	108,504,692 <sup>b</sup>

<sup>a</sup> The 2014/15 SAR is inclusive of the 2012/13 revenue cap adjustments

<sup>b</sup> The 2014/15 SAR is inclusive of the 2012/13 revenue cap adjustments

#### 9.4 Reference Tariff

The Reference Tariff components (as at January 2012) inclusive of revenue cap adjustments for 2012/13 (as at July 2014) and 2013/14 (as at July 2015) are:

Reference Tariff Input	2011/12 (\$)	2012/13 (\$)	2013/14 (\$)	2014/15 (\$)	2015/16 (\$)
AT <sub>1</sub>	1.29	1.33	1.36	1.39	1.54
AT <sub>2</sub>	11,949.82	12,248.57	12,554.78	12,868.65	13,354.23
AT <sub>3</sub>	1.71	1.75	1.80	1.51	0.58
AT <sub>4</sub>	4.45	4.56	1.80	1.17	2.09
QCA Levy	0.007	0.007	0.029	0.03416	0.03143

## **SCHEDULE G**

### ***NETWORK MANAGEMENT PRINCIPLES***

#### **Part A. Scheduling Principles**

##### **1. Train Service Entitlements**

- (a) Access Holders operating the same types of traffics will have their Train Service Entitlements defined using consistent terminology.<sup>1</sup>
- (b) Train Service Entitlements will be expressed in terms that can be interpreted for the development of a Master Train Plan (MTP), an Intermediate Train Plan (ITP), where necessary, and a Daily Train Plan (DTP).
- (c) For the avoidance of doubt, where Access Rights are held under an EU Access Agreement, the Access Holder for the purposes of these Network Management Principles is the relevant TOA Access Holder(s), not the EU Access Holder.

##### **2. Master Train Plan Principles**

- (a) The MTP will detail the Existing Capacity required for the provision of Train Service Entitlements and periods of time allocated for the purposes of providing Planned Possessions, in a form that indicates the time/distance (location) relationship of the Train Services and other activities on the Rail Infrastructure in question. The MTP will separately identify where applicable:
  - (i) for Timetabled Traffics, the particular Train Paths allocated in accordance with the Train Service Entitlements;
  - (ii) for Cyclic Traffics:
    - (A) in an Individual Coal System, the System Paths that are available for scheduling Cyclic Traffics from a specified location within that Individual Coal System to the Nominated Unloading Facilities, where those System Paths have been declared in the relevant System Rules; and
    - (B) the Train Paths (including System Paths) allocated to Cyclic Traffics, where such Train Paths reflect the Existing Capacity required for the maximum level of operation for such Train Service Entitlements, but may not necessarily reflect the particular Train Paths that those Train Services will operate on; and
  - (iii) time allocated for Planned Possessions.

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<sup>1</sup> 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 paths per specified period of time.



- (b) Unless otherwise expressly provided in an Access Holder's Access Agreement (where Access Rights are held via an EU Access Agreement, unless otherwise expressly provided in a relevant TOA Access Agreement), the MTP may be modified, as specified in Clauses 2(c), (d), (e) and (f) of these MTP Principles, where:
- (i) an Access Holder (where Access Rights are held via an EU Access Agreement, a relevant TOA Access Holder) notifies QR Network that it wishes to make a long-term change to the **times** at which its Train Service/s, as scheduled in the MTP, operate, provided that change is within the scope of its Train Service Entitlement, and does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;
  - (ii) QR Network receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) QR Network notifies all affected parties that a new or additional Train Service Entitlement has been created, through the signing of an Access Agreement, or the negotiation of a variation to an Access Holder's Train Service Entitlement, provided that the new or additional Train Service Entitlement does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;
  - (v) QR Network notifies all affected parties that it wishes to make a long-term change to the **times**<sup>2</sup> at which one or more scheduled Train Service/s operate, provided that change is within the scope of the relevant Access Holders' Train Service Entitlement/s and is intended to accommodate:
    - the creation of a new or additional Train Service Entitlement, through the signing of an Access Agreement, or the negotiation of a variation to an Access Holder's Train Service Entitlement, where that new or additional Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
    - the creation of new Planned Possessions or the modification of existing Planned Possessions; or
    - any other Operational Constraint affecting the MTP;
  - (vi) QR Network notifies all affected parties that it wishes to make a long-term change to the **times**<sup>3</sup> at which one or more scheduled Train Service/s operate, whether or not within the scope of the affected Access Holders' Train Service Entitlement/s, provided that change is intended to accommodate:
    - the creation of new Planned Possessions or the modification of existing Planned Possessions;

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<sup>2</sup> Importantly, this provision only covers a change to the **TIME or TIMES** at which Train Service/s run, and not the other conditions under which a party has an entitlement to run Train Service/s, for instance, the Rollingstock or Rollingstock Configuration that the party may run under their Access Agreement, and the Nominated Network on which it may operate.

<sup>3</sup> See footnote 2 above.

- the creation of an additional Train Service Entitlement, through either the signing of an Access Agreement or the variation of an existing Access Agreement; or
- any other Operational Constraint affecting the MTP,

provided that where the change to the **times** at which scheduled Train Service/s operate results in any existing Access Holder's Train Service Entitlement not being met, such change is only made with the agreement of such Access Holder/s, such agreement not to be unreasonably withheld;

- (vii) QR Network notifies all affected parties, within the time period specified in the affected parties' Train Service Entitlements, of a long-term change to the times<sup>4</sup> at which one or more scheduled Train Service/s operate, whether or not within the scope of the affected Access Holders' Train Service Entitlements, for the purpose of carrying out Major Periodic Maintenance provided that, where such change is not within the scope of the affected Access Holders' Train Service Entitlements, QR Network has made reasonable efforts to mitigate the impact on that Access Holder. Any limitations upon QR Network's ability to exercise this right will be specified in individual Access Agreements;
  - (viii) an Access Holder's Access Agreement allows QR Network to alter the Access Holder's Train Service Entitlement, for instance (other than in the case of TOA Access Agreements) by resuming Access Rights through the capacity resumption process outlined in Part 7 of this Undertaking; and
  - (ix) QR Network, Infrastructure Service Providers, and all affected Access Holders (where Access Rights are held via an EU Access Agreement, each affected TOA Access Holder), otherwise agree.
- (c) QR Network may make modifications to the MTP, within the scope of any of Clauses 2(b)(i) to (iv) of these MTP Principles, on a case-by-case basis without the need for consultation.
- (d) QR Network may make modifications to the MTP, within the scope of any of Clauses 2(b)(v) to (vii) of these MTP Principles, on a case-by-case basis after consulting with any Access Holders whose Train Service/s or Train Service Entitlements are affected by the proposed modification to the MTP (where Access Rights are held via an EU Access Agreement, each affected TOA Access Holder), and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
- (e) Where a change is being sought to the MTP that falls within the scope of Clause 2(b)(ix) of these MTP Principles, QR Network will invite Infrastructure Service Providers and all Access Holders whose Train Service Entitlements are affected by the proposed modification to the MTP (where Access Rights are held via an EU Access Agreement, each affected TOA Access Holder) to consider the modification in an appropriate forum.<sup>5</sup> Each party will be provided with a copy of the proposed changes seven (7) days prior to the scheduled consideration of the modification.

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<sup>4</sup> See footnote 2 above.

<sup>5</sup> This could include a face-to-face meeting, a telephone conference or any other forum that provides the affected parties with the best opportunity to participate.

- (f) QR Network must notify any modifications to the MTP to all parties whose activities are affected by the modification at least thirty (30) days prior to the commencement of the modification.
- (g) As a result of QR Network's obligations in accordance with Clause 2(f), where reference is made in Clause 2(b) of these MTP Principles to an Access Holder notifying QR Network that it wishes to vary its Train Service Entitlement or Train Service/s, a reasonable notice period should be provided having regard to the necessary process and factors to be considered.
- (h) The cancellation of a Train Service or Train Services in accordance with the above MTP Principles, does not necessarily excuse either QR Network or an Access Holder from other Access Agreement obligations relating to the conduct in question.
- (i) The MTP will be in a form that is readily convertible to a DTP, which is the principal reference document for Train Controllers in carrying out their duties.

### **3. Intermediate Train Plan Principles**

- (a) In parts of QR Network's network where Cyclic Traffics operate (for instance the Central Queensland Coal Region) there will be a sequence of intermediate scheduling steps involved in progressing from the MTP to the DTP. An ITP will be scheduled utilising Planned Possessions, the Train Paths detailed in the MTP for Timetabled Traffics, and for Cyclic Traffics, the System Paths (if applicable) detailed in the MTP, each Access Holder's Train Service Entitlement and Train Orders for the particular period in question.
- (b) In the Central Queensland Coal Region, Train Orders for the intermediate planning horizon must, unless otherwise advised by QR Network, be submitted to QR Network:
  - (i) in the manner and timeframe specified within the relevant System Rules; or
  - (ii) if there are no relevant System Rules, before 1200 hours on Wednesday.
- (c) Where System Rules have been developed in accordance with Appendix 1, QR Network will schedule Cyclic Traffics in the ITP in accordance with the processes identified in the relevant System Rules. The process of scheduling Cyclic Traffics in the ITP may involve the allocation of a Contested Train Path, and as a result, may require a meeting of all affected Access Holders (where Access Rights are held via an EU Access Agreement, each affected TOA Access Holder), and Infrastructure Service Providers, and the use of a decision-making process to finalise the ITP. This decision-making process applies only for the allocation of a Contested Train Path between Access Holders for Cyclic Traffics, and cannot be used to alter the scheduling of a Timetabled Traffic. This decision making process is detailed in Appendix 2.
- (d) QR Network will advise Access Holders (where Access Rights are held via an EU Access Agreement, each TOA Access Holder), of the ITP once it is developed in accordance with the above steps.

### **4. Daily Train Plan Principles**

- (a) The DTP will indicate all scheduled Train Services and Planned Possessions, for the particular day in question, in a form that indicates the time/distance (location) relationship of all activities on the Rail Infrastructure.
- (b) In scheduling Cyclic Traffics on the DTP, QR Network may first schedule an ITP as discussed in the ITP Principles and then schedule the DTP from the ITP.
- (c) QR Network will schedule the DTP at least one (1) Business Day prior to the actual day of running, and provide all relevant Access Holders (where Access Rights are held via an EU Access Agreement, each relevant TOA Access Holder) and Infrastructure Service Providers with a copy of the DTP within the same timeframe.
- (d) The DTP may be scheduled in variation to the MTP, or ITP, whichever is applicable in accordance with the processes specified in the System Rules, if applicable, or otherwise, as specified in Clauses 4(e), (f) and (g) of these DTP Principles, where at least two (2) Business Days prior to the actual day of running:
- (i) an Access Holder (where Access Rights are held via an EU Access Agreement, a relevant TOA Access Holder), notifies QR Network that it wishes to make a short-term change to the **times**<sup>6</sup> at which its Train Service/s, as scheduled in the MTP, operate, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Access Holder's scheduled Train Service/s not being met or a Planned Possession not being met;
  - (ii) QR Network receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;
  - (iii) a Planned Possession is cancelled;
  - (iv) QR Network notifies all affected parties that it wishes to make a short-term change to the **times**<sup>7</sup> at which one or more scheduled Train Service/s operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlement, provided the change is intended to accommodate:
    - the modification of an existing Planned Possession;
    - the creation of an Urgent Possession; or
    - any other Operational Constraint affecting the DTP,provided that where the change to scheduled Train Service/s results in any existing Access Holder's Train Service Entitlement not being met, such change is only made with the agreement of such Access Holder/s (where Access Rights are held via an EU Access Agreement, each affected TOA Access Holder), such agreement not to be unreasonably withheld;
  - (v) QR Network requests a short-term change to the times at which one or more scheduled Train Service/s operate, whether or not within the

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<sup>6</sup> See footnote 2 above.

<sup>7</sup> See footnote 2 above.

scope of the applicable Access Holders' Train Service Entitlement, for the purpose of accommodating an Emergency Possession; or

- (vi) QR Network, Infrastructure Service Providers, and all affected Access Holders (where Access Rights are held via an EU Access Agreement, each affected TOA Access Holder), otherwise agree.
- (e) QR Network may make modifications from the MTP or ITP (where applicable), within the scope of any of Clauses 4(d)(i) to (iii) of these DTP Principles, on a case-by-case basis without the need for consultation.
- (f) QR Network may make modifications from the MTP or ITP (where applicable), within the scope of Clauses 4(d)(iv) or (v) of these DTP Principles, on a case-by-case basis after consulting with any Access Holders whose Train Service/s are affected by the proposed modification (where Access Rights are held via an EU Access Agreement, each affected TOA Access Holder), and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.
- (g) Where a change is being sought from the MTP or ITP that falls within the scope of Clause 4(d)(vi) of these DTP Principles, QR Network will invite Infrastructure Service Providers and all Access Holders whose scheduled Train Service/s are affected by the change (where Access Rights are held via an EU Access Agreement, each affected TOA Access Holder) to consider the modification in an appropriate forum<sup>8</sup>, at least 36 hours prior to the actual day of operation. Each affected party will be provided with a copy of the proposed changes from the existing MTP or ITP 12 hours prior to the scheduled consideration.
- (h) Other than as detailed in Clause 4(i) of these DTP Principles, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP.
- (i) Once the DTP is scheduled, variations to the DTP may only be made where:
  - (i) before the day of operation, QR Network receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Possession (whether Planned, Emergency or Urgent) not being met;
  - (ii) before the commencement of the relevant Train Service/s, an Access Holder (where Access Rights are held via an EU Access Agreement, each affected TOA Access Holder) notifies QR Network that it wishes to make a change to the **times**<sup>9</sup> at which its Train Service/s operate, provided that change is within the scope of the Access Holder's Train Service Entitlement, and does not result in any other Access Holder's scheduled Train Service/s not being met or a Possession (whether Planned, Emergency or Urgent) not being met; and/or

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<sup>8</sup> This could include a face-to-face meeting, a telephone conference or any other forum that provides the affected parties with the best opportunity to participate.

<sup>9</sup> See Footnote 2 above.

- (iii) before the commencement of the relevant Train Service/s, QR Network notifies an Access Holder that an Emergency Possession is required.
- (j) QR Network may make modifications to the DTP within the scope of any of Clauses 4(i)(i) to (iii) of these DTP principles on a case by case basis without the need for consultation.
- (k) The cancellation of a Train Service or Train Services in accordance with the above DTP Principles, does not necessarily excuse either QR Network or an Access Holder from other Access Agreement obligations relating to the conduct in question.
- (l) The DTP will represent the expected train operation performance target over its period.
- (m) Deviations to the DTP may occur on the day of operation in the event of Out-Of-Course Running. Those deviations will occur according to the Train Control principles.

## Part B. Train Control Principles

- (a) The fundamental objective of Train Control will be to facilitate the safe running of Train Services, and the commencement and completion of Planned, Emergency and Urgent Possessions, as scheduled in the DTP.
- (b) The ability of QR Network and/or an Access Holder (where Access Rights are held via an EU Access Agreement, a TOA Access Holder) to deviate from the DTP on the actual day of running, as specified below, does not necessarily excuse either party from any other contractual obligations relating to the conduct in question.
- (c) The following general principles apply to Access Holders (other than EU Access Holders) and Train Controllers:
  - (i) all parties will ensure that operational safety is maintained through compliance with the Safeworking Procedures, the Safety Standards, Rollingstock Interface Standards, applicable IRMPs and EIRMRs;
  - (ii) Access Holders will ensure that Above Rail issues, including Train crewing, locomotive and wagon availability and loading and unloading requirements, are appropriately managed to ensure that such issues do not prevent the DTP from being met; and
  - (iii) QR Network will manage the Rail Infrastructure based on agreed entry/exit times as specified in the DTP with the objectives of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible.
- (d) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Access Holder over another, and as a result, the identity of an Access Holder will not of itself be a legitimate reason for Train Controllers to alter a scheduled Train Service.
- (e) The traffic management decision making matrix, at Appendix 3, will be provided to assist Train Controllers in the resolution of disputes in accordance with the above principles.
- (f) QR Network will provide Access Holders (where Access Rights are held via an EU Access Agreement, TOA Access Holders) with:
  - (i) real time Train Control information that indicates actual running of that Access Holder's Train Services against the relevant DTP;
  - (ii) subject to reasonable terms and conditions, access to Train Control diagrams that indicates actual running of that Access Holder's Train Services against the relevant DTP; and
  - (iii) information about the type of Train Services<sup>10</sup> operated by other Access Holders' on the same network to assist Access Holders to determine whether the Train Controller is applying the principles in this Schedule G in a consistent manner between Access Holders.

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<sup>10</sup> For instance, freight Train Services, passenger Train Services or coal Train Services.

## **Appendix 1 System Rules**

- (a) QR Network may make rules (i.e. System Rules) for the purpose of specifying in greater detail the way in which it will plan, schedule and control the operation of Train Services on a single or combination of Individual Coal Systems. The System Rules may include:
  - (i) the declaration of System Paths for an Individual Coal System;
  - (ii) the procedures for Access Holders to submit Train Orders and for QR Network to schedule Train Services in the ITP;
  - (iii) the procedures for QR Network to schedule the DTP from the ITP, provided that these procedures must be consistent with the matters referred to in Clauses 4(d)(i) to (vi) of Part A;
  - (iv) the relevant critical objectives for Train Services operating in an Individual Coal System or a combination of Individual Coal Systems to assist decision-making for Train Control in accordance with Part B;
  - (v) methodology for defining path availability/use for the purpose of calculating take-or-pay charges; and
  - (vi) the identification of any circumstances where a full Initial Capacity Assessment or Capacity Analysis are not required for the purposes Clauses 4.3(c)(iii) and 4.5.2(a)(vi) of the Undertaking.
- (b) The initial System Rules for each Individual Coal System are to be prepared and approved in accordance with Clauses 7.1(b) to (f) of this Undertaking.
- (c) QR Network and Access Holders must comply with the System Rules in force from time to time.
- (d) In making amendments to the System Rules, QR Network must:
  - (i) notify:
    - (1) Access Holders and Access Seekers whose Train Services will be affected by the amendments and their Customers (together “Affected Persons”);
    - (2) affected infrastructure providers for infrastructure forming part of the relevant supply chain (including, for example, the operator of a port that is the destination of Train Services operating in the relevant Individual Coal System);
    - (3) affected Infrastructure Services Providers;
    - (4) Railway Operators; and
    - (5) the QCA,of QR Network’s intention to amend the System Rules and provide a copy of the amendments proposed to be made by QR Network (“Proposed Amendments”) to those persons;
  - (ii) consult with the persons notified in accordance with paragraph (d)(i)(1) to (4) of this Appendix 1; and
  - (iii) have regard to the equitable operation of the System Rules across Access Holders and Access Seekers (should they become Access Holders) and their Customers and the terms of Access Agreements.



- (e) If an Affected Person considers that the Proposed Amendments:
  - (i) would not, as a whole, operate equitably amongst Access Holders and Access Seekers (should they become Access Holders) and their Customers; or
  - (ii) are materially inconsistent with the terms of an access agreement;then the Affected Person should provide a written submission to QR Network, within thirty (30) days after being given a notice in accordance with paragraph (d) of this Appendix 1, identifying why the Affected Person considers the making of the Proposed Amendments would have any of the effects referred to in subparagraphs (e)(i) or (ii) of this Appendix 1.
- (f) After considering each submission provided to QR Network in accordance with paragraph (e) of this Appendix 1, QR Network will notify each person making a submission in accordance with paragraph (e) of this Appendix 1 whether it intends to vary the Proposed Amendments. If QR Network varies the Proposed Amendments from those provided to persons in accordance with paragraph (d) of this Appendix 1, then QR Network will notify the persons referred to in paragraph (d) of this Appendix 1 of the variation and the reasons for the variation.
- (g) If, within fifteen (15) Business Days after QR Network has given the notices required under paragraph (f) of this Appendix 1, an Affected Person considers that the Proposed Amendments (including any variations) would have any of the effects referred to in paragraphs (e)(i) or (ii) of this Appendix 1, then that person may refer the matter to the QCA for determination as a Dispute in accordance with Clause 10.1.4 of the Undertaking.
- (h) For the purposes of this Appendix 1:
  - (i) the amending of System Rules includes replacing or removing System Rules; and
  - (ii) Proposed Amendments includes a proposed replacement of System Rules or a proposal to remove System Rules.

## **Appendix 2**

### **Contested Train Path Decision-making Process**

Where Access Rights are held via an EU Access Agreement, all references to an 'Access Holder' in this Appendix will be to the TOA Access Holder which the EU Access Holder has nominated as the operator for the Train Service Entitlement relevant to the Contested Train Path.

QR Network will determine who is allocated a Contested Train Path, by:

- (a) firstly, eliminating from consideration any Access Holder whose request for the Contested Train Path is outside the scope of its Train Service Entitlement. Where this step eliminates all of the parties seeking the Contested Train Path, but QR Network still has spare Existing Capacity available, QR Network may determine which of the parties seeking the Contested Train Path is allocated that path by considering the following three (3) matters. In addition, where this step does not eliminate all of the parties seeking the Contested Train Path, but there is still more than one party seeking the Contested Train Path, QR Network may determine which of the parties is allocated the path by considering the following three (3) matters;
- (b) next, considering whether the parties contesting the Contested Train Path agree amongst themselves who should be allocated the relevant path. Where this is the case, the Contested Train Path will be allocated as agreed by the parties, and QR Network will document the parties' agreement and keep a record of such;
- (c) then, considering the number of Train Services per week that each Access Holder has a contractual entitlement to in accordance with their Train Service Entitlement ("Nominated Weekly Entitlement"), subject to Existing Capacity availability, QR Network will prioritise allocation based on:
  - (i) any requirement for giving priority to certain Train Services or certain Unloading Facilities identified within the System Rules;
  - (ii) if:
    - an Access Holder submits Train Orders for less than its Nominated Weekly Entitlement for one Train Service Entitlement ("First Entitlement") and the path is not allocated in accordance with paragraph (i); and
    - that Access Holder also submits Train Orders for a different Train Service Entitlement in excess of its Nominated Weekly Entitlement, then the path will be allocated to those other Train Orders in the manner requested by the Access Holder and that allocation will be documented and is deemed to be performance of the First Entitlement by QR Network for the purposes of scheduling the Access Holder's future Train Orders;
  - (iii) priority will then be given to allocating the path to an Access Holder for whom QR Network is most behind (in the contract year to date) in providing its contracted Train Services due to a QR Network Cause (when assessed in terms of Train Services not provided due to a QR Network Cause as a percentage of contracted Train Services); and
  - (iv) priority will then be given to allocating the path to the Access Holder for whom QR Network is most behind (in the contract year to date) in providing with its contracted Train Services (when assessed in terms of

the percentage of aggregated Train Services as a percentage of aggregated contracted Train Services); and

- (d) finally, where the above considerations do not assist QR Network in making a decision regarding which requested Train Service is scheduled, QR Network will unilaterally determine which Train Service/s is scheduled, and will keep a record of that decision and the reasoning behind that decision. QR Network will ensure that, over time, no Access Holder is favoured over another and, where possible, if one Access Holder is favoured this time, taking into account the Train Service Entitlement held by an Access Holder, next time they are not favoured. In other words, if one Access Holder has an entitlement to 10 services per week, and another Access Holder has an entitlement to 20 services per week, then it could not be said that favouritism was shown to the second Access Holder if they received priority over the first Access Holder on two out of three consecutive occasions.

## **Appendix 3**

### **Traffic Management Decision Making Matrix**

Where Access Rights are held via an EU Access Agreement, all references to an 'Access Holder' in this Appendix will be to the relevant TOA Access Holder.

#### **Notes for the application of the Traffic Management Decision Making Matrix**

As a generic principle for the performance of Train Control, QR Network recognises (as noted in paragraph a) of Part B of these Network Management Principles) that the objective will be to run to the scheduled DTP. However, it is worth noting that this simple objective assumes that all traffic types have the principal objective of 'on time running', and accordingly, running to the DTP will always result in the most efficient use of the Rail Infrastructure and provide those parties using the Rail Infrastructure with the best possible rail service. For Cyclic Traffics this may not be a correct assumption. In the Central Queensland Coal Region, for example, coal Train Services focus primarily on achieving a specified transit time over and above running to a scheduled DTP. For this reason, QR Network considers it necessary to permit Train Controllers sufficient discretion to take into account the varying objectives (as specified in the relevant Train Service Entitlements) of different traffic types, in assessing priority both between Trains of different traffic types and Trains of the same traffic type. Rules 5 to 8 have been included for this purpose.

- Rule 5 recognises the general rule that passenger and livestock Trains may be given priority over other Trains due to the nature of their contents and/or a Passenger Priority Obligation.
- Rule 6 recognises a broader rule concerning a Train Controller's ability to manage an entire system for the most efficient outcome, taking into account the objectives of Train Services, as expressed in their Train Service Entitlements.
- Rule 7 recognises that an Access Holder may need to prioritise its own Trains in the event of delay to efficiently manage above rail resources or to minimise variations to planned DTPs relating to connecting services.
- Rule 8 has been included for application in the Central Queensland Coal Region to allow Train Controllers to resolve conflicts that may arise in maximising coal supply chain throughput subject to meeting predefined and agreed objectives.

In the context of the Traffic Management Decision Making Matrix the meaning of "On Time", "Ahead" and "Late" are determined by the scheduling of paths in the DTP. For example, if a Train is travelling in accordance with the DTP path allocated to it, it is running "On Time".

		Train A – Current Status			
		Train A	Train Running “On Time”	Train Running “Ahead”	Train Running “Late”
Train B		Objective	On Time Exit	On Time Exit	1. Lose no more time 2. Make up time 3. Hold the gain
Train B – Current Status	Train Running “On Time”	On Time Exit	Scheduled Cross	A or B Rule 2	B Rule 3
	Train Running “Ahead”	On Time Exit	A or B Rule 2	A or B Rule 2	B Rule 3
	Train Running “Late”	1. Lose no more time 2. Make up time 3. Hold the gain	A Rule 1	A Rule 1	A or B Rule 4

### Rules for the application of the Traffic Management Decision Making Matrix

- Rule 1. Train B may be given priority on condition Train A will still meet its “On Time” objective, or as permitted by rules 5, 6, 7 and 8.
- Rule 2. Both Trains must meet their “On Time” objective.
- Rule 3. Train A may be given priority on condition Train B will still meet its “On Time” objective, or as permitted by rules 5, 6, 7 and 8.
- Rule 4. Priority may be given to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain, or as permitted by rules 5, 6, 7 and 8.
- Rule 5. Passenger and livestock Trains may be given priority over other Trains if the Train Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service Entitlement/s for those Trains and/or the requirements of a Passenger Priority Obligation.
- Rule 6. Where a Train is running “Late” due to a Below Rail Delay, it may be given preference over other Trains if the Train Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.
- Rule 7. Where a Train Controller has to decide which of two Trains to give priority to, and both of those Trains are operated by the same Access Holder, the Train Controller may ask the Access Holder how it would prefer the Trains to be directed and, provided that taking the Access Holder’s preferred course of action does not adversely affect the Train Services of any other Access Holder, the Train Controller will follow the Access Holder’s request.
- Rule 8. For Trains operating in the Central Queensland Coal Region, where a Train Controller has to decide which of two Trains to give priority to, and those Trains are operated by different Access Holders, one may be given preference over the other if the Train Controller reasonably believes that this is consistent with meeting the coal supply objective(s) detailed in the System Rules.

# **SCHEDULE H**

## **ISSUES FOR EIRMR**

This list is to be taken as the minimum environmental issues to be addressed in the EIRMR, and the EIRMR should not be restricted only to the issues included in this list.

Where Access Rights are, or are to be, held via an EU Access Agreement, the relevant Access Seeker for the purposes of this Schedule H will be the relevant TOA Access Seeker or TOA Access Holder and not the relevant EU Access Seeker or EU Access Holder.

### **1. Water Quality Management**

The Access Seeker must consider the impact of its proposed operations on storm water systems and natural waterways. In doing so, all relevant water quality standards and regulations must be met.

In the EIRMR the Access Seeker 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 Access Seeker 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 Queensland government provides a water quality monitoring and information dissemination service on its website:

<http://www.nrm.qld.gov.au/water/monitoring/index.html>.

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 EIRMR.

### **2. Air Pollution Management**

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

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

- (a) any form of dwelling/home;
- (b) a library, childcare centre, kindergarten, school, college, university or educational institution; and
- (c) 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.

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

### **3. Contaminated Land Management**

The Access Seeker must consider the impact of its proposed operations on land contamination. In doing so, all practicable control measures to prevent the contamination of land must be undertaken.

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.

### **4. Nature Conservation**

The Access Seeker must consider the impact of its proposed operations on the flora and fauna.

The Access Seeker must review existing Queensland government 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.ehp.qld.gov.au/ecosystems/biodiversity/regional-ecosystems/maps/index.php>

The EIRMR must include an assessment of the risk associated with wildfires being caused by exhaust/sparks from the Access Seeker's Rollingstock.

### **5. Management of Hazardous Substances and Dangerous Goods**

The Access Seeker must consider the environmental impacts associated with the management of hazardous substances and dangerous goods by the Access Seeker. In particular, the Access Seeker must ensure that QR Network's requirements for the management of hazardous substances and dangerous goods are complied with.

### **6. Waste Management**

The Access Seeker must consider the impact of any waste produced by its proposed operations. 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.

### **7.Environmental Noise Management**

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

### **8.Environmental Monitoring**

The Access Seeker must address the requirements of environmental monitoring to ensure that the environmental standards are met.

### **9.Education, Awareness and Training**

The Access Seeker must consider the impact of the level of employee training with particular emphasis on the implementation of the EIRMR (including any applicable EMS).

### **10.Complaint Handling**

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



# **SCHEDULE I**

## ***OPERATING PLAN***

### **1. Area of Operation**

- Origin
- Destination
- Cycle description (including nominated stops enroute)
- Entry and exit points onto Rail Infrastructure
- Details regarding repositioning of Rollingstock (prior to, during and after operation of the service)

### **2. Business Plan**

- Tonnage profile (five year forecast)
- Passenger loading and unloading profile
- Anticipated project service life
- Seasonality of haulage/variability of services (peaks and troughs)

### **3. Operation**

- Type of service (passenger, freight)
- Commodity
- Rollingstock and Rollingstock Configuration details (number of wagons/locomotives/carriages/self-propelled units)
- Special operating parameters (eg. key arrival and departure windows)
- Dangerous goods details
- Overload management system
- Timing of scheduled servicing/provisioning activities

### **4. Service Levels**

- Train service levels, nominated weekly, monthly and annually
- Maximum number of one way Train Services per year – contracted Train Paths
- Dwell times at loading facility (minimum and maximum)
- Dwell times at unloading facility (minimum and maximum)
- Dwell times enroute and operational requirements
- Rollingstock operational speed
- Indicative timetable requirements (sectional run times)
- Any connecting services
- Any critical timings at specified locations
- Authority from Private Infrastructure manager to enter/exit a facility (loading/unloading/en route)

### **5. Train Service Planning**

- Train Service planning/requesting preference
- Train Service cancelling preference

### **6. Train Information**

- Type
- Class and number of locomotives per Train
- Maximum and average gross tonnage of loaded Train (including locomotives)
- Tare of empty Train

- Method of operation (push/pull)
- Traction type
- Safety systems
- Communication system
- Train length

#### **7. Crewing Plan**

- Train Service crew requirements
- Location of crew depots
- Crew change points
- Dwell times at change points (minimum and maximum)

#### **8. Recovery Methods**

- Recovery of marked off Rollingstock at loading/unloading locations/enroute
- Recovery of derailments
- Recovery of failed locomotives

## **SCHEDULE J**

### **INVESTMENT FRAMEWORK PRINCIPLES**

#### **Foundation premises**

1. QR Network cannot be forced to fund an Extension other than in accordance with an approved access undertaking or the provisions of the Act regarding determination of access disputes.
2. To the extent that QR Network does invest in rail transport infrastructure used in the provision of declared services<sup>1</sup>, including Significant Investments, the QCA can determine the rate of return that is commensurate with the risk of the investment.
3. QR Network should not be able to exploit its monopoly power.
4. Users should have the right to fund Extensions (other than replacement capital expenditure) at their option.

#### **Undertaking coverage**

5. All Extensions in respect of rail transport infrastructure used to provide the Declared Service must take place under the auspices of an access undertaking approved under the Act to ensure even-handed dealing with all parties.
  6. QCA will have the following roles in addition to those already in the previous undertaking:
    - (a) determining whether proposed capital expenditure forms part of a Significant Investment or not;
    - (b) approving Access Conditions sought in respect of Significant Investments;
    - (c) approving a Standard User Funding Agreement; and
    - (d) making binding arbitration determinations in relation to:
      - (i) Users' claims that they are unable to fund their shares of a Significant Investment via debt financing on reasonable terms obtained from a reputable financial institution; and
      - (ii) the terms of a proposed or existing User Funding Agreements including: (A) security requirements, and (B) any variations from a Standard User Funding Agreement approved by the QCA.
- (i) Network investment

#### **Network Extensions**

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<sup>1</sup> The declaration regarding provision of access to the QR Network rail infrastructure will not cover access to railway lines to new coal basins. Access seekers will have to seek declaration of these services via the QCA Act which has been amended to allow access to privately owned railway lines which meet the QCA Act's access criteria.

7. Subject to paragraph 8, Extensions should accommodate the needs of all Users who are seeking Access Rights which require additional Capacity and who are willing to commit to the approved terms and conditions of investment in the Extension during the Extension Process, whether or not these Users agreed to provide funding for the Extension.
8. However, where there is a Funding Shortfall in respect of a Significant Investment, only Funding Users are guaranteed to have their Capacity requirements accommodated in the relevant Extension.
9. If a User Funded Extension or Extension funded solely by QR Network produces Available Capacity, that Available Capacity and any pre-existing Available Capacity will be treated equally in future allocations of Available Capacity between Access Seekers.
10. All Available Capacity, whether funded by QR Network or Users, will be allocated in accordance with the Undertaking's capacity allocation rules.

### **Funding**

11. Users may opt to fund Extensions (other than replacement capital expenditure) and other system investments<sup>2</sup>, even in circumstances where QR Network is willing to do so. Users need not provide the funding themselves directly but may involve other parties (e.g. Users may seek debt financing).
12. If Users intend to fund an Extension, all potential Users for the Capacity to be created by an Extension must be given the opportunity to participate in the funding of the Extension in proportion to the Capacity the Access Rights they are seeking would utilise.
13. If Users fund an Extension, they will be compensated for their investment by receiving an amount equal to the return on and of the capital component of Access Charges from any Users (and relevant TOA Access Holders) of the Capacity created by their investment who did not participate in the user funding (with QR Network being entitled to receive an amount equal to the components of Access Charges based on operation and maintenance costs).
14. QR Network must fully fund:
  - (a) replacement capital expenditure;
  - (b) Expansions which are valued at less than \$300 million and are required to produce Available Capacity needed for provision of Access Rights sought by Access Seekers; and
  - (c) capital expenditure valued at less than \$300 million needed to respond to a Capacity shortfall resulting from either a change in System Operating Assumptions or an incorrect forecast of capacity delivered by Infrastructure Enhancements.

The Regulated WACC will apply to any such investments and Access Conditions cannot be sought in respect of access which is dependent on such investments

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<sup>2</sup> Investments that are not strictly 'Extensions', such as 'robustness' projects proposed in previous QR Network Master Plans.

other than in accordance with Clause 6.5.2 of the Undertaking. An Extension may include a number of related projects on different parts of the network. There may also be more than one such Extension over the Term. In the case of a dispute, the QCA will determine whether capital expenditure forms part of a Significant Investment or comes within this provision.

15. QR Network has no obligation to fully fund Significant Investments or Customer Specific Branch Lines. However, it is anticipated that QR Network will want to fund all or part of Significant Investments and Customer Specific Branch Lines where it considers it is in its commercial interests to do so, unless:
  - (a) it is unable to raise finance or in doing so would prejudice its capital management; or
  - (b) Users propose to fund all or part of such an Extension.

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

If QR Network indicates that it is unwilling to fund all or part of an Expansion, the board of directors of QR Network must, or where the unwillingness to fund is based on a decision of its holding company, QR Network must procure that the board of its ultimate holding company, provide the QCA with a statement setting out the reasons for this, for publication on the QCA's website.

(A) Smaller users and difficulties in providing user-funding

16. QR Network must fund up to 30% of a partially User Funded Significant Investment, if requested to do so by Users that are unable to raise their own share of the funds by debt funding on reasonable terms from reputable financial institutions. QR Network can seek approval from the QCA for special terms and conditions for that funding to the extent justified by special risks and costs being borne by QR Network.
17. The obligation to partially fund Significant Investments in accordance with paragraph 16 is subject to QR Network having a maximum commitment of \$300 million in respect of such funding for the Term.
18. If QR Network disputes that a User is unable to fund its share of the costs of a Significant Investment (by debt funding on reasonable terms from reputable financial institutions) and is unwilling to fund the User's share, the QCA will arbitrate. The onus of proof will rest with the User claiming they are unable to raise debt funding on reasonable terms from reputable financial institutions. If the QCA concludes that the User could have raised its share of the funds by debt funding on reasonable terms from reputable financial institutions, the User will not be eligible for QR Network funding under this provision.
19. While QR Network will not be otherwise obliged to provide funding for a Significant Investment, QR Network will have the right to participate in a User Funded Extension up to the level of the Capacity that is created in excess of that needed by the Funding Users.

***Consequences of insufficient funding for Significant Investments***

20. Where the aggregate of the development costs:

- (a) QR Network has voluntarily decided to fund;
- (b) Funding Users have decided to fund; and
- (c) QR Network has been obliged to fund in accordance with paragraph 16 above,

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

- (d) more than QR Network's estimate of the cost of building the smallest efficient Extension, then:
  - (i) QR Network will design the level of Planned Capacity to be created by the Extension to reflect the Committed Funding; and
  - (ii) the Capacity created by the Extension will be first allocated to all of the Funding Users (in the proportions their funding bore to the total development cost) and any remaining Available Capacity will be allocated among the other Users who put forward an expression of interest in accordance with paragraph 50 but did not provide User Funding based on the formation of a queue in accordance with the principles in the approved access undertaking;
- (e) is less than QR Network's estimate of the cost of building the smallest efficient Extension (with the difference being the Funding Shortfall):
  - (i) QR Network will advise the Funding User of the Funding Shortfall and the Funding Users will be given a reasonable opportunity to elect to fund the Funding Shortfall (in which case they will be given the first right of refusal of Planned Capacity proportionate to the additional funding provided);
  - (ii) if the Funding Users in aggregate fail to provide sufficient additional funding to rectify the Funding Shortfall, then QR Network is not obliged to develop the Extension (but may do so if it wishes to itself fund the Funding Shortfall); and
  - (iii) if the Funding Shortfall is rectified, the Extension will be developed to reflect the smallest efficient Extension with Capacity created by the Extension being first allocated to all of the Funding Users (in the proportions their funding bore to the total development cost except to the extent a Funding User providing funding but did not exercise their right of first refusal) and any remaining Available Capacity will be allocated among the other Users who put forward an expression of interest in accordance with paragraph 50 but did not provide User Funding based on the formation of a queue in accordance with the principles in the approved access undertaking.

If QR Network is unwilling to fully fund a Significant Investment and some Users who are seeking additional Capacity are unable or unwilling to raise

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

### **Ownership**

21. QR Network will own and operate the rail transport infrastructure utilised to provide the declared service, including Extensions other than Customer Specific Branch Lines which are wholly funded by Users. Access to parts of the rail network created by Extensions to other coal basins will not automatically be declared and QR Network may or may not be the owner or operator for such Extensions.
22. Users will have the right to own and operate Customer Specific Branch Lines while QR Network must facilitate their connection to the existing network and ongoing operation.

### **Security**

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

### **Construction**

24. QR Network must construct all Expansions because of operational/safety concerns with multiple parties accessing an operating railway with multiple Users, subject only to the step-in rights described in paragraph 26.
25. Prudent cost overruns on construction will be incorporated into the Regulatory Asset Base and passed on to Access Holders via Access Charges, unless special Access Conditions are approved by the QCA which provide differently. QR Network will absorb all other cost overruns (as is the case now).
26. QR Network must expeditiously construct Extensions, including Extensions funded by Users. QR Network must, prior to developing an Extension, provide Users with an indicative timetable for the construction of the Extension. If QR Network unnecessarily delays the construction of an approved User Funded Extension, including an Extension that QR Network has agreed to fund, Users may undertake the construction at Users' expense. If there is a dispute regarding whether QR Network has unnecessarily delayed construction the QCA will arbitrate (having regard to QR Network's indicative timetable and any circumstances QR Network claims have delayed the construction). In the event of such a step-in right being exercised QR Network must use its best endeavours to facilitate Users' undertaking the construction of the Extension including, to the extent it can do so, by:
  - (a) providing access to land and electricity required for the development of the Extension;

- (b) providing the Users with details of the required standards and specifications for the Rail Infrastructure;
  - (c) providing the Users with details of the current status of the work on the Extension;
  - (d) keeping all relevant Users informed regarding operations of the Rail Infrastructure which may impact on the development of the Extension;
  - (e) providing the funds it has received through User Funding that it has not spent in the development of the Extension to the Users undertaking the development of the Extension;
  - (f) assigning or novating contracts required for the development of the Extension or, where assignment or novation is not practicable, entering into back-to-back arrangements where QR Network on-supplies goods or services to the Users on the same terms as they are supplied to QR Network by third party suppliers; and
  - (g) assisting the Users undertaking the development to obtain all necessary licences and approvals for the development (by assignment from QR Network or otherwise).
27. Users will be permitted to construct Customer Specific Branch Lines to their own specifications, with interface standards approved by QR Network. QR Network must facilitate Users developing their own Customer Specific Branch Line including by providing access to land which QR Network has the power to provide and entering into a Rail Connection Agreement in respect of the Connecting Infrastructure.

**WACC/Rate of Return/Access Conditions**

28. The Regulated WACC provides an appropriate return on capital for normal monopoly infrastructure risks that are systematic.
29. The WACC that applies will be the same whether infrastructure investment is undertaken by QR Network or Users, reflecting the same infrastructure investment risk. Coal-company WACCs are not appropriate to User investment in coal rail transport infrastructure as they relate to the risks associated with coal-mine ownership (e.g. production, sales, prices etc) and not coal rail transport infrastructure risks.
30. All investments in Rail Infrastructure (by QR Network or Users) will earn the Regulated WACC, unless they incur risks in addition to those that are compensated for in the Regulated WACC. Such risks might include demand risk, asset stranding risk and construction risk.
31. If QR Network intends to impose Access Conditions in respect of the provision of access which is dependent on a Significant Investment it must seek approval from the QCA for such Access Conditions. The QCA may approve special Access Conditions including additional returns to address any additional risks associated with Significant Investment. Special Access Conditions may relate to matters such as: the depreciation period and/or profile, take or pay arrangements or the term of contracts. To the extent that QR Network seeks additional returns to compensate it for additional risks, the risks should be accounted for in the cash flows to which



the Regulated WACC rate is applied, with the cash flows being determined considering the possible outcomes and the probabilities of the outcomes as a consequence of the additional risks.

32. If QR Network considers that its cost of funds for a Significant Investment is inconsistent with the Regulated WACC, then QR Network may ask the Authority to approve an uplift on the Regulated WACC (the Varied WACC). The circumstances in which the QCA will approve a Varied WACC will be limited to changes in the risk free rate and debt margin in respect of the Significant Investment unless QR Network can show that, as a result of funding the Significant Investment, it has a materially different gearing ratio or credit rating. Users will have the option to accept a Varied WACC approved by the QCA, or to pursue User funding instead.
33. QR Network must obtain the QCA's approval for any proposed Access Conditions or other risk adjustments. However, parties will first have the opportunity to commercially negotiate the terms of access.

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

- (a) it is not in the public interest, including the public interest in having competition in markets;
  - (b) it may disadvantage the interests of parties who are not parties to the agreement;
  - (c) QR Network has failed to provide the required information to Users regarding risk and return (see below); or
  - (d) it would contravene a provision of the Act or the Undertaking.
34. As part of the process for negotiating the proposed Access Conditions, QR Network must provide upfront a detailed analysis to both the QCA and the Users of the additional risks faced by QR Network and the Access Conditions (including additional returns) it considers are required to mitigate or to compensate for those risks. Failure to provide this analysis will be grounds for the QCA to refuse to approve Access Conditions.
  35. If parties are unable to agree terms within 60 days of the detailed analysis being provided by QR Network, or such further period of time approved by the QCA, the QCA will arbitrate the matter. The QCA will not grant extensions that take the total negotiation period to more than 120 days, unless a majority by number of the Users ask for such an extension. All periods referred to in this paragraph commence on the date that the QCA considers the price negotiations to have effectively commenced. Unless particular circumstances indicate otherwise, the QCA would consider the negotiation period to begin on the date when QR Network issues its detailed analysis of the additional risks and Access Conditions for an Extension. If the QCA has reason to believe that QR Network has commenced negotiating with Users regarding Access Conditions in respect of an Extension, it may require QR Network to provide the detailed analysis required by this Investment Framework to all relevant Users within 10 Business Days and cease negotiating the content of Access Conditions until that analysis has been provided.

36. Users may at any time decide to refer the matter to the QCA for arbitration or to fund the Extension themselves. In considering the appropriateness of the proposed Access Conditions, the QCA will consult with stakeholders. The QCA may decline to arbitrate during the process, where it considers the referral is vexatious or the referring party has not negotiated Access Conditions in good faith.
37. Whether or not QR Network accepts the Access Conditions that the QCA considers to be reasonable, the QCA will publish its decision, which will indicate the Access Conditions the QCA considers reasonable.
38. QR Network may not seek to impose, and the QCA will not approve, any Access Condition that:
  - (a) restricts Access Seekers or their Customers from raising disputes with the QCA or disclosing proposed Access Conditions or other contract terms to the QCA;
  - (b) requires Access Seekers, Access Holders, or their Customers to disclose information that is confidential to one or more of them, to any other Access Holder, Access Seeker, or their Customer in circumstances other than those permitted by this Undertaking; or
  - (c) results in QR Network earning Access Charges based on a Varied WACC or otherwise earning above the return provided by Reference Tariffs based on the Approved WACC, other than as approved by the QCA.

### **Pricing**

39. Access Charges in respect of Access which is able to be provided by virtue of Extensions should be determined in accordance with the pricing principles incorporated in the undertaking, (i.e. a uniform tariff that sits between incremental and stand-alone costs), unless the QCA considers, on application from QR Network, that an alternative approach is appropriate in the circumstances.
40. The QCA will revise Reference Tariffs when a Significant Investment occurs, based initially on forecast costs and subsequently on actual costs.
41. Where a User Funded Extension is deemed by the Authority to have created Available Capacity in excess of that needed for an efficient expansion of the network (e.g. a User may want to construct a facility with excess Capacity), the cost of the excess Capacity may not be incorporated in the Regulatory Asset Base for the purposes of calculating current Access Charges and may instead be carried forward (at the Regulated or Varied WACC, as applicable to Access Charges for train services which utilise the Extension) for inclusion in Access Charges at a later date.
42. User funding will cover the capital costs of the Extension, with ongoing maintenance and operating costs included in the Reference Tariff in the usual way.
43. The Funding Users will have their capital investment (including any amounts of a relevant feasibility study) refunded to them in accordance with the depreciation profile associated with the capital expenditure,

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

44. If a shortfall (or surplus) in Reference Tariff revenue occurs in respect of Capacity funded by QR Network or Users, the shortfall (or surplus) will be met by (or refunded to) all Access Holders in the relevant Individual Coal System through the existing revenue cap adjustment process. A shortfall (or surplus) caused solely by a Funding User will be to the account of that Funding User.
45. No additional fees or on-costs may be charged by QR Network in respect of User Funded Extensions, unless there are additional costs or risks assumed.

#### **Extension Process**

46. The investment decision process (deciding on the reasonableness of/need for the investment in the Extension) should be independent of who funds the investment – QR Network, Users or a combination of the two.
47. QR Network will initiate an Extension Process where it:
  - (a) believes an Extension is required to meet demand within the coal supply chain; or
  - (b) is requested to do so by the owner or operator of an expanding or new unloading facility that services users of the Rail Infrastructure; or
  - (c) is requested to do so by a coal supply chain group such as the DBCT Coal Chain Coordinator, the Gladstone Coal Export Executive and the BMA Hay Point Coal Chain;
  - (d) has received access requests which would utilise in excess of 70% of the Planned Capacity to be developed by the smallest efficient Extension of the Rail Infrastructure; or
  - (e) has received access requests for less than 70% of the Planned Capacity to be developed by the smallest efficient an Extension, but those Users are willing to meet 70% of the costs associated with development of the Extension.
48. The Extension Process must include timetables, deadlines and information requirements.
49. Where a need for further Infrastructure Enhancements can be reasonably anticipated, QR Network must undertake the necessary scoping and planning studies (including pre-feasibility and feasibility studies). Access Seekers seeking Access that is dependent on such Infrastructure

Enhancements can be requested to underwrite the studies and all prudent costs of the studies will be:

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

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

- 50. A mechanism must be in place to inform all Users who would reasonably be expected to have an interest in gaining Access Rights which might be generated by a potential Extension of the network (including those listed on the Committed Capacity Register or in a queue for Available Capacity), and invite all Users to put forward an expression of interest in respect of the Access Rights they are seeking.
- 51. Funding Users must be given the opportunity to collaborate with QR Network in relation to all key matters affecting the cost and timing of the Extension, including, but not limited to project scope, cost, procurement strategy, construction and timing.

#### **Dispute Resolution**

- 52. Disputes arising between potential or existing Funding Users and QR Network in respect of:
  - (a) proposed user funding terms, or
  - (b) existing User Funding Agreements;can be referred to the QCA for determination, or to commercial arbitration if the QCA does not hold the power to hear the matter

#### **Finalisation of the Investment Framework**

- 53. QR Network will be required to submit:
  - (a) a Standard User Funding Agreement; and
  - (b) a draft amending access undertaking which incorporates the principles set out in this Investment Framework into the approved access undertaking,

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

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

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

56. Definitions

For the purposes of this Schedule the following terms have the meanings given below:

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

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

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

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

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

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

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

**Infrastructure Enhancement** means new Rail Infrastructure or a modification to existing Rail Infrastructure.

**Investment Framework** means the principles set out in this Schedule.

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

**Regulated WACC** means 9.96% per annum.

**Significant Investment:** means investment applying to a Major Expansion estimated to cost in excess of \$300 million.

**Standard User Funding Agreement** means a pro forma User Funding Agreement

**Users** means Access Seekers (other than TOA Access Seekers) and/or their Customers.

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

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

**Varied WACC** means a weighted average cost of capital different to that of the Regulated WACC.

Where a term has not been specifically defined in this Schedule, the definitions in Part 12 of the Undertaking apply.