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PART 1. PREAMBLE

- (a) Queensland Rail (“QR”) has developed this Undertaking to provide a framework to manage negotiations with Third Party Operators for Access to Rail Infrastructure for the purpose of operating Train Services.
- (b) This Undertaking is a voluntary Undertaking as provided for in Section 136 of the *Queensland Competition Authority Act 1997*. The intent of the Undertaking is to:
 - (i) ensure that Access negotiations are conducted expeditiously on a commercial basis between QR and Third Party Operators;
 - (ii) provide a mechanism for the exchange of information between QR and Third Party Operators necessary to facilitate the negotiation process;
 - (iii) establish pricing principles to be employed by QR in negotiating Access and which provide guidance in the resolution of a pricing dispute;
 - (iv) ensure that Access is negotiated in a competitively neutral environment;
 - (v) outline the interface considerations to be addressed for Third Party Operators to obtain and maintain Access;
 - (vi) outline the principles to be incorporated in an Access Agreement; and
 - (vii) provide for a binding dispute resolution process to apply during negotiations for Access.
- (c) This Undertaking will be consistently applied to Access Applications where those applications are within the scope of this Undertaking as set out in Part 2.
- (d) For the purpose of assisting in the interpretation of this Undertaking, an Explanatory Guide is provided. The Explanatory Guide should not be relied upon as a complete and legally binding summary of the provisions of the Undertaking but should be referred to where the intent of a relevant provision of the Undertaking is not clear on its face. To the extent that there is any inconsistency between the Undertaking and the Explanatory Guide, the provisions of the Undertaking will prevail.
- (e) For further information on the negotiation of Access in accordance with the provisions of this Undertaking, contact:

Manager Business Development
Network Access
Queensland Rail
21st Floor, 127 Creek Street
Brisbane Qld 4000

Phone: (07) 3235 3144
Fax: (07) 3235 3930

PART 2. SCOPE AND ADMINISTRATION OF UNDERTAKING

2.1 SCOPE

- (a) This Undertaking provides for the negotiation of Access required for the operation of Train Services by Third Party Operators over the Track, with details of the specified Train Services and the sections of Track defined during the Access negotiations. Access will include, in addition to access to the Track, the benefit of other Rail Infrastructure services essential to the use of the Track such as signalling, train control and associated communications and, if the Train Services require electric energy for traction, the provision of such electric energy. Paragraph 4.1.1(b) sets out the exception to this and identifies when negotiations for access to certain Rail Infrastructure is not subject to this Undertaking.
- (b) This Undertaking does not cover the provision of Above Rail Services. Third Party Operators shall be responsible for the provision of any such Above Rail Services required for the operation of their Train Services.
- (c) This Undertaking is not applicable to the negotiation of Access to Rail Infrastructure for the purpose of operating Train Services that are used for transportation between Queensland and another state and that utilise Standard Gauge Track and Standard Gauge Rollingstock ("Interstate Train Services"). Third Party Operators may negotiate Access for the operation of Interstate Train Services in accordance with the relevant access regime.
- (d) Where the land upon which the Rail Infrastructure is situated is not owned by QR or subleased by QR from Queensland Transport and QR does not, through its arrangements with the owners of the land or pursuant to the *Transport Infrastructure Act 1994*, have the authority to authorise Third Party Operators to access that land, it is the responsibility of the Third Party Operator to obtain the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated. QR will provide reasonable assistance in identifying the relevant land owners.

2.2 DURATION OF UNDERTAKING

- (a) This Undertaking will take effect on the date that it is approved by the QCA in accordance with Section 149 of the Act (herein referred to as the "Commencing Date").
- (b) This Undertaking will apply for a period of three (3) years from the Commencing Date unless withdrawn as provided for in the Act.

2.3 REVIEW OF UNDERTAKING

QR and the QCA will meet approximately twelve (12) months after the Commencing Date to review the operation of the Undertaking. This review will identify those provisions (if any) of the Undertaking that are not operating to the satisfaction of either QR or the QCA. If this review identifies that amendments are required to the Undertaking, QR will submit a Draft Amending Undertaking following this process.

2.4 CONTRACTUAL ARRANGEMENTS

This Undertaking applies only to the negotiation of new Access Agreements or the negotiation of Access Rights in addition to those already the subject of an Access Agreement. Nothing in this Undertaking can require a party to an existing Access Agreement to vary a term or provision of that agreement. In addition, nothing in this Undertaking can require a party to an existing rail haulage agreement to vary a term or provision of that agreement.

PART 3. RINGFENCING ARRANGEMENTS

3.1 INTRODUCTION

QR is an integrated provider of rail services and as such manages the Rail Infrastructure as a Railway Manager as well as operating Train Services as a Railway Operator. This Part outlines the processes and policies that ensure that Access can be negotiated in a competitively neutral environment. These processes and policies are intended to assist QR in meeting its obligations under section 104 of the Act.

3.2 ORGANISATIONAL STRUCTURE

- (a) QR has established its organisational structure to facilitate the separation of the management of Rail Infrastructure from the operation of Train Services. Paragraphs (b) to (d) of this Clause set out the organisational structure of QR at the Commencing Date which was developed in accordance with this objective. In the event that QR varies its organisational structure during the term of the Undertaking and such variation impacts upon the contents of this Clause 3.2, this Clause will be varied to reflect the implications of the restructure having regard to the objectives of this Part 3, through the submission to the QCA of a Draft Amending Undertaking prior to the restructure being implemented.
- (b) Network Access has been established as a business group of QR, separate from those business groups within QR that operate Train Services. In addition, there are service groups whose purpose is to provide support activities for both Network Access and the business groups operating Train Services.
- (c) The Group General Manager of Network Access reports directly to the Chief Executive. The function of Network Access is to manage the provision of Below Rail Services, with the exception of services associated with stations, platforms and selected marshalling yards. In performing this function, the responsibilities of Network Access will include:
 - (i) negotiation and management of Access Agreements with Railway Operators;
 - (ii) development and management of agreements with Queensland Transport regarding the provision of Rail Infrastructure that is supported by Infrastructure Payments;
 - (iii) provision and/or procurement of 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's obligations to Railway Operators;
 - (iv) assessment and management of Capacity and Available Capacity;
 - (v) procurement of appropriate train control, including specifying Scheduling and Train Control Protocols, and monitoring the provision of train scheduling and control to ensure that it is provided in accordance with the Scheduling and Train Control Protocols; and
 - (vi) procurement of traction power on electrified sections of the Track, including the management of power supply from other parties.

- (d) Operation of Train Services is undertaken by business groups within QR that are separate from Network Access. The managers of these operational business groups report directly to the Chief Executive. The responsibilities of these operational business groups include:
 - (i) operation of Train Services and other Above Rail Services;
 - (ii) provision and/or procurement of appropriate levels of maintenance of and investment for Above Rail Services;
 - (iii) the management of stations, platforms and selected marshalling yards;
 - (iv) provision or procurement of appropriate levels of maintenance and investment for stations, platforms and selected marshalling yards; and
 - (v) provision of train scheduling, train control and associated incident management services on behalf of Network Access and in accordance with the Scheduling and Train Control Protocols specified by Network Access.
- (e) Within three (3) months of the Commencing Date, QR will develop Scheduling and Train Control Protocols which will specify:
 - (i) the practice for determining train priority;
 - (ii) the practice for management of out-of-course running;
 - (iii) incident management practices;
 - (iv) Train operation information and communications practices; and
 - (v) the practice for train scheduling.

These Scheduling and Train Control Protocols, once developed, will be made available to the QCA for review if the QCA so requires.

3.3 ACCOUNTING ARRANGEMENTS

- (a) QR will establish and maintain a separate set of financial accounts in respect of those Below Rail Services provided by Network Access, as identified in Paragraph 3.2(c), separately identifying in respect of those services a profit and loss statement and a balance sheet. Where possible, these financial accounts will be based on costs, revenues and assets uniquely associated with Below Rail Services provided by Network Access. Otherwise, these financial accounts will be based on an allocation of costs associated with staff and assets which provide functions jointly for Below Rail Services provided by Network Access and for any other services.
- (b) QR will allocate any costs associated with staff or assets that provide functions jointly for both Below Rail Services provided by Network Access and for any other services in accordance with the methodology set out in the Cost Allocation Manual referred to in Clause 5.5.

- (c) QR will publish, in its annual report, the profit and loss statement and balance sheet for Below Rail Services provided by Network Access developed in accordance with Paragraph (a) of this Clause.

3.4 INTERNAL ACCESS ARRANGEMENTS

3.4.1 Internal Access Agreements for Existing QR Train Services

- (a) QR will develop internal Access Agreements in respect of all existing QR Train Services. These Access Agreements will be between Network Access and the business group that is operating the relevant Train Services.
- (b) These internal Access Agreements will be developed according to the timetable set out in Schedule A.
- (c) These internal Access Agreements, once developed, will be made available to the QCA for review if the QCA so requires.

3.4.2 Internal Access Agreements for New or Renewed QR Train Services

- (a) Irrespective of the timetable identified in Schedule A, in the event that QR (as a Railway Operator) is developing new or renewed rail haulage arrangements, the following will apply in respect of the associated Access Rights:
 - (i) internal Access Agreements will be developed on a basis consistent with the principles outlined in the standard Access Agreement summary which is contained in Schedule E;
 - (ii) pricing principles will be applied to Access for QR Train Services in a manner consistent with Part 5;
 - (iii) interface standards will be applied to Access for QR Train Services in a manner consistent with Part 7; and
 - (iv) Capacity Entitlements will be developed for QR Train Services in a manner consistent with Part 6.
- (b) These internal Access Agreements will be made available to the QCA for review if the QCA so requires.

3.5 RINGFENCING GUIDELINES

- (b) In order to ensure that the processes and policies set out in Clauses 3.2, 3.3 and 3.4 are effective in assisting QR to meet its obligations under section 104 of the Act, QR will, within three (3) months of the Commencing Date, develop Ringfencing Guidelines. The Ringfencing Guidelines will reflect the principles and address the issues identified in Schedule B.

- (c) The Ringfencing Guidelines will be made available to the QCA for review if the QCA so requires. The QCA may require QR's performance in complying with the Ringfencing Guidelines to be audited on an annual basis.

PART 4. NEGOTIATION FRAMEWORK

4.1 FRAMEWORK

This Undertaking specifies the process which will be followed to enable a Third Party Operator to gain Access. The framework provides for:

- (i) preliminary meetings and an initial exchange of information;
- (ii) submission of an Access Application by the Third Party Operator;
- (iii) preparation of an Indicative Access Proposal by QR; and
- (iv) negotiations to develop an Access Agreement for execution.

4.1.1 Parties to Negotiation

- (a) Except as provided for in Paragraph (b) of this Subclause, negotiations for Access with Third Party Operators will be undertaken by Network Access. Where Access is required for Below Rail Services provided by a facility that is not managed by Network Access, Network Access will negotiate for Access to that facility by the Third Party Operator as agent for the business group that manages that facility.
- (b) Where a Third Party Operator is seeking Access to a station, platform or marshalling yard that is managed by a QR business group other than Network Access (referred to in this Paragraph as an "Operator Facility"), and the Third Party Operator's sole purpose of seeking Access to the Operator Facility is to utilise an above rail facility that is managed by the same QR business group, Access to that Operator Facility will be negotiated directly between the Third Party Operator and the QR business group.
- (c) Where in this Undertaking reference is made to the negotiation of Access Agreements with Railway Operators or Third Party Operators, the terms "Railway Operator" and "Third Party Operator" shall be deemed to include a party with the capacity to secure the services of an Accredited organisation to operate the proposed Train Services, provided that only a party who is, or will become Accredited in respect of those Train Services may enter into an Access Agreement with QR.

4.1.2 Conditions to Negotiation

- (a) QR reserves the right to only negotiate with Third Party Operators who comply with the relevant obligations and applicable processes set out in this Undertaking. If a Third Party Operator does not comply with the relevant obligations and processes, and QR considers that such non-compliance is material, QR will not be obliged to continue negotiations regarding the provision of access for that Third Party Operator.

- (b) At any time, before or during the negotiation process, QR may require the Third Party Operator to demonstrate to QR's reasonable satisfaction that it is able to meet the prudential requirements set out in Paragraph (c) of this Subclause. In the event that the Third Party Operator cannot meet these prudential requirements, QR may refuse to commence negotiations or may cease negotiations with that Third Party Operator.
- (c) For the purpose of Paragraph (b) of this Subclause, the Third Party Operator will be required to meet the following prudential requirements:
 - (i) the Third Party Operator must be Solvent; and
 - (ii) the Third Party Operator, or a Related Party of the Third Party Operator, must not currently be, or have been in the previous two (2) years, in Material Default of any agreement with QR, or any agreement in accordance with which access to rail infrastructure, not managed by QR, has been provided to the Railway Operator or a Related Party.

(d) Where a Third Party Operator is:

- (i) seeking Access which will utilise Committed Capacity; and/or
- (ii) seeking Access that is required for Train Services carrying bulk consignments of commodities, where QR is of the reasonable belief that those bulk consignments will be otherwise carried by Train Services under an existing Access Agreement;

QR will only negotiate with that Third Party Operator with respect to that request for Access in the following manner:

- (iii) QR will prepare an Indicative Access Proposal as provided in Clauses 4.4 and 4.5; but
 - (iv) QR will not be obligated to enter into further negotiations for the Access Rights unless and until it is apparent that there is a process or arrangement in place (for example, as anticipated by Paragraph 6.4(d)) to make the Committed Capacity available, or to ensure that QR only has one Access Agreement for Train Services carrying the relevant bulk consignments; and
 - (v) QR will give priority to the preparation of Indicative Access Proposals for other Access Applications that relate to Available Capacity, and in doing so the preparation of the Indicative Access Proposal may exceed the time limits specified in Clauses 4.4 and 4.5.
- (e) If QR refuses to negotiate Access with a Third Party Operator in accordance with this Subclause, it shall provide written reasons to the Third Party Operator for its refusal.
 - (f) If the Third Party Operator considers that QR has unreasonably refused to commence or subsequently unreasonably ceased negotiations in accordance with this Subclause, then the Third Party Operator may refer the matter to the QCA in accordance with Subclause 4.9.4. If the QCA determines that QR has unreasonably refused to commence or subsequently unreasonably ceased negotiations, QR will recommence negotiations immediately.

- (g) If at any time QR is of the view that the Third Party Operator's request for Access is frivolous in nature then QR may refer the request to the QCA in accordance with Subclause 4.9.4 for a determination. If the QCA determines that the request is in fact frivolous then QR will be entitled to cease negotiations and will not be obliged to comply with this Undertaking in respect of the request.

4.2 CONFIDENTIALITY

- (a) QR and the Third Party Operator will, at all times, keep confidential and not disclose to any other person, any Confidential Information exchanged as part of the negotiation for Access under this Undertaking, without the approval of the party who provided it, except where disclosure is in accordance with Paragraph (c) of this Clause. If required by either party, the parties shall enter into appropriate confidentiality arrangements to reflect this obligation.
- (b) Both QR and the Third Party Operator will ensure that all Confidential Information provided by the other party is used only for the purposes for which the information was provided. The Ringfencing Guidelines will assist QR in meeting its obligations under this Paragraph.
- (c) Paragraphs (a) and (b) of this Clause shall not apply to disclosure of Confidential Information by the party receiving the Confidential Information in any of the following circumstances:
- (i) any disclosure required by law, the listing requirements of a stock exchange or the lawful requirements of any Authority;
 - (ii) disclosure to the recipient's solicitors, barristers or accountants under a duty of confidentiality;
 - (iii) disclosure 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 undertaking in favour of the party who originally disclosed the Confidential Information (the "Information Provider"); and
 - (iv) any disclosure of Confidential Information to the recipient's consultant or independent adviser, other than of the type referred to in Subparagraphs (ii) or (iii) of this Paragraph, where such disclosure is approved in writing by the Information Provider, provided that such approval shall not be unreasonably withheld in the case of disclosure to a reputable consultant or independent adviser who has executed a legally enforceable confidentiality undertaking in favour of the Information Provider.

4.3 ACCESS APPLICATION

- (a) Requests for Access are to be submitted to QR in the form of an Access Application.
- (b) In order for QR to assess requests for Access, certain information will be required to be provided by the Third Party Operator as part of the Access Application. Details of the required information are set out in Schedule C. Prior to submitting the Access

Application, the Third Party Operator may seek initial meetings with QR to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and in particular the information requirements set out in Schedule C.

- (c) If requested by the Third Party Operator, QR will provide to the Third Party Operator information relative to the corridor of interest to assist in the formulation of the Access Application. The information provided to the Third Party Operator will be in the form of Preliminary Information and will include the information outlined in Part 1 of Schedule D, or such items of the information outlined in Part 1 of Schedule D as required by the Third Party Operator.
- (d) QR will use reasonable efforts to make the Preliminary Information available to the Third Party Operator within fourteen (14) days of QR receiving the Third Party Operator's request if the information contained in the Preliminary Information has been previously compiled, otherwise within thirty (30) days of QR receiving the request.
- (e) QR will use reasonable efforts to ensure that any information provided under Paragraph (c) of this Clause will reflect the most current information available to QR. QR will identify the currency of the information provided.
- (f) For the provision of Preliminary Information under this Clause 4.3, QR will be entitled to levy an appropriate charge commensurate with the cost of preparation and supply of the Preliminary Information.

4.4 ACKNOWLEDGMENT

- (a) Upon receiving an Access Application from a Third Party Operator, QR must acknowledge the Access Application in writing to the Third Party Operator within seven (7) days of its receipt or such longer period as specified in accordance with Paragraph (b) of this Clause. Subject to Paragraph (c) of this Clause, QR will use reasonable efforts to provide the Indicative Access Proposal to the Third Party Operator within thirty (30) days of such acknowledgment.
- (b) Prior to acknowledging the Access Application, QR may seek:
 - (i) additional information where QR can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal; or
 - (ii) clarification of the information that has been provided in the Access Application.

In such circumstances, QR will advise the Third Party Operator of the additional information or the clarification required within seven (7) days of receipt of the Access Application. Upon receiving the required information or clarification from the Third Party Operator, QR must provide written acknowledgment of the receipt of the completed Access Application within seven (7) days.

- (c) In assessing an Access Application, QR may consider that, due to the complexity of the Access Application or due to other extenuating circumstances, it is not reasonable to provide an Indicative Access Proposal within thirty (30) days of acknowledgment of the Access Application. In these circumstances, QR will advise of such in its acknowledgment and within a further seven (7) days will advise the Third Party Operator

of its estimate of the time required to deliver the Indicative Access Proposal. Where the Third Party Operator is of the view that the time estimated for preparation of the Indicative Access Proposal pursuant to this Paragraph is excessive, then the Third Party Operator may refer the matter to the QCA for a determination in accordance with Subclause 4.9.4. QR will use reasonable efforts to provide the Indicative Access Proposal within the estimated time period provided by QR or as otherwise determined by the QCA pursuant to this Paragraph.

4.5 INDICATIVE ACCESS PROPOSAL

- (a) 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 (e.g. frequency, transit time, commodity carried);
 - (iii) an indicative assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights and, if not, either an outline of the works and an indicative estimate of the cost of such works, required to provide the additional Capacity necessary to accommodate the requested Access Rights, or an outline of the requirements for an investigation into the provision of sufficient Capacity for the requested Access Rights;
 - (iv) advice in respect of the existence of other Railway Operators who have submitted an Access Application (except an Access Application in respect of which the time period specified in Paragraph 4.6(a) has expired without a notification of intent having been received by QR) in respect of Access which, if it were to be provided, would limit the ability of QR to provide Access in accordance with the Indicative Access Proposal.
 - (v) a summary of the standard terms and conditions under which Access is offered, as set out in Schedule E;
 - (vi) an initial estimate of the Access Charge for the requested Access Rights, based on the pricing principles set out in Part 5; and
 - (vii) details of the additional information required for QR to progress the proposal and develop the Access Charge and terms and conditions for acceptance. Typical information requirements to be addressed are outlined in Paragraph 4.7.2(a).
- (b) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige QR to provide Access in accordance with the specific terms and conditions, including Access Charge, contained within it.
- (c) If, after thirty (30) days following QR's acknowledgment of the Access Application, or if applicable after expiration of the time estimated by QR or determined by the QCA in accordance with Paragraph 4.4(c), the Third Party Operator believes that QR is not making reasonable progress in the preparation of the proposal, then the Third Party

Operator may refer the matter to the QCA for a determination in accordance with Subclause 4.9.4.

4.6 NOTIFICATION OF INTENT

- (a) If the Third Party Operator 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 Third Party Operator must notify QR of its intention in writing, within ninety (90) days of the date it receives the Indicative Access Proposal (or such other period of time that the parties agree). In the event that a notification is given after this period of time, QR will review the Indicative Access Proposal and, if considered necessary by QR, prepare a revised Indicative Access Proposal in accordance with Clause 4.5, and the negotiation process outlined in this Part 4 will recommence from that point.
- (b) Should the Third Party Operator be of the view 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, then the Third Party Operator shall notify QR of its concerns in writing within thirty (30) days of the date of receipt of the Indicative Access Proposal.
- (c) QR will respond to these concerns including, where appropriate, the making of revisions to the Indicative Access Proposal, within a reasonable time frame. If the Third Party Operator is satisfied with the response received from QR, including any revision to the Indicative Access Proposal, it must notify QR of its intention to proceed with negotiations within thirty (30) days of receiving QR's response. In the event that the Third Party Operator is not satisfied with the response from QR, including any revision to the Indicative Access Proposal, the Third Party Operator may seek to resolve the dispute in accordance with the dispute resolution process outlined in Clause 4.9. The Third Party Operator must commence this dispute resolution process within thirty (30) days of receiving QR's response.
- (d) Where a dispute is referred for resolution in accordance with Paragraph (c) of this Clause, then the Third Party Operator must notify QR of its intentions in writing within fourteen (14) days of resolution of the dispute if the Third Party Operator 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 referral.

4.7 NEGOTIATION PROCESS

4.7.1 Negotiation Period

- (a) If the Third Party Operator indicates its willingness to progress negotiations pursuant to Clause 4.6, then both parties shall commence negotiations as soon as reasonably possible to progress towards an Access Agreement.
- (b) The Negotiation Period shall commence upon the Third Party Operator providing a notification of intent pursuant to Clause 4.6.
- (c) The Negotiation Period will cease upon any of the following events:

- (i) execution of an Access Agreement in respect of the Access sought by the Third Party Operator;
 - (ii) written notification by the Third Party Operator that it no longer wishes to proceed with its Access Application;
 - (iii) a reduction in Available Capacity resulting from another Railway Operator finalising an Access Agreement, where that reduction in Available Capacity adversely impacts upon QR's ability to offer Access to the Third Party Operator under the terms of the Indicative Access Proposal;
 - (iv) the expiration of nine (9) months from the commencement of the Negotiation Period, or if both parties agree to extend the Negotiation Period, the expiration of the agreed extended period, provided that agreement to extend the Negotiation Period is not unreasonably withheld by either party; or
 - (v) if QR is of the view that the negotiations are not progressing in good faith towards the development of an Access Agreement within a reasonable time period and QR refers the application to the QCA in accordance with Subclause 4.9.4 for a determination, a determination by the QCA in QR's favour.
- (d) Upon cessation of the Negotiation Period, QR will be entitled to cease negotiations with the Third Party Operator.
- (e) If at any time during the Negotiation Period, a dispute arises between the parties which, after reasonable negotiation, the parties are unable to resolve to their mutual satisfaction, then either party may seek to resolve the dispute in accordance with the dispute resolution process outlined in Clause 4.9.

4.7.2 Issues to be addressed during Negotiation

- (a) During the Negotiation Period, QR and the Third Party Operator will negotiate and agree on the elements comprising the Access Agreement. In order to facilitate this process:
- (i) QR will provide Additional Information relative to the corridor of interest to the Third Party Operator, which will include any information outlined in Part 1 of Schedule D not provided as part of the Preliminary Information and the information outlined in Part 2 of Schedule D, to the extent that such information is required either by the Third Party Operator or as part of the Access Agreement;
 - (ii) an Operating Plan is to be prepared by the Third Party Operator in accordance with Clause 7.2;
 - (iii) a Safety Risk Assessment is to be undertaken by the Third Party Operator, jointly with QR, in accordance with Subclause 7.3.1;
 - (iv) a Safety Risk Management Plan is to be developed and agreed in accordance with Subclause 7.3.2;

- (v) an Environmental Investigation is to be undertaken by the Third Party Operator in collaboration with QR in accordance with Subclause 7.4.1 and an Environmental Risk Management Plan is to be developed and agreed in accordance with Subclause 7.4.2;
 - (vi) an Access Charge, determined in accordance with the principles set out in Part 5, is to be provided by QR;
 - (vii) a Capacity Analysis and an investigation of operational impacts are to be undertaken by QR and necessary Capacity enhancements to accommodate Access by the Third Party Operator are to be advised by QR;
 - (viii) the definition of the relevant Capacity Entitlement and advice of initial timetable are to be provided by QR, consistent with Part 6;
 - (ix) the Third Party Operator is to demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are consistent with the Rollingstock Interface Standards in accordance with Clause 7.1;
 - (x) an Interface Coordination Plan is to be prepared by QR in consultation with the Third Party Operator in accordance with Clause 7.6; and
 - (xi) other terms and conditions comprising the Access Agreement are to be provided by QR.
- (b) Where the Additional Information (or part thereof) is not available at the time of commencement of the Negotiation Period, QR will use reasonable endeavours to supply the information required by the Third Party Operator (to the extent the information required is consistent with Schedule D) as soon as practicable. QR will use reasonable efforts to ensure that any information provided will reflect the most current information available to QR. QR will identify the currency of the information provided.
- (c) For the provision of Additional Information under this Subclause 4.7.2, QR will be entitled to levy an appropriate charge 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 Paragraph (a) of this Subclause, the parties may agree to finalise certain aspects after the execution of the Access Agreement. In such circumstances the parties may choose to address the issue in question in a preliminary manner only during the Negotiation Period and then provide a mechanism to address any subsequently identified cost or operating impact after execution of the Access Agreement.
- (e) QR will be responsible for the investigation and design of any necessary enhancements for the Rail Infrastructure. However, if prior to entering into an Access Agreement the Third Party Operator requires detailed scoping of the enhancements which are required directly to facilitate the Access Rights under negotiation, QR will be entitled to require that the Third Party Operator provide funding in respect of such investigation and design.
- (f) In the event that, at any time prior to the execution of an Access Agreement with the Third Party Operator, another Railway Operator (other than a Railway Operator that was

the subject of advice provided in the Indicative Access Proposal pursuant to Subparagraph 4.5(a)(iv)) submits an Access Application where that Access would limit the ability of QR to provide Access in accordance with the Access Rights being negotiated, QR will notify the Third Party Operator of the existence of the Access Application prior to the provision of an Indicative Access Proposal to the other Railway Operator.

4.8 ACCESS AGREEMENT

- (a) The granting of Access will be underpinned by an Access Agreement which will be developed and finalised as part of the negotiation process. The parties to the Access Agreement will be QR and the Railway Operator for the relevant Train Services.
- (b) The Third Party Operator need not have received Accreditation as a Railway Operator prior to execution of the Access Agreement but must obtain such Accreditation prior to the commencement of Train Services and subsequently maintain its Accreditation for the duration of the Access Agreement.
- (c) The Access Agreement must, unless otherwise agreed between QR and the Third Party Operator, be consistent with the principles outlined in the standard Access Agreement summary which is contained in Schedule E. The summary of the standard Access Agreement does not provide an exhaustive list of the issues that may be included in an Access Agreement.
- (d) Once the Third Party Operator has notified QR that it is satisfied with the terms and conditions of the Access Agreement as drafted, QR will, as soon as reasonably practicable, provide a final Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) to the Third Party Operator for execution.
- (e) The parties will use reasonable efforts to duly execute the final Access Agreement as soon as practicable after its completion by QR.

4.9 DISPUTE RESOLUTION

4.9.1 Disputes

- (a) If any dispute or question (“Dispute”) arises under this Undertaking or in relation to the negotiation of Access between a Third Party Operator and QR then, unless otherwise expressly agreed to the contrary by both parties, such Dispute shall be resolved in accordance with this Clause 4.9 and either party may give to the other party to the Dispute notice in writing (“Dispute Notice”) specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 4.9.
- (b) Disputes in relation to an Access Agreement once executed shall be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking.

4.9.2 Chief Executive Resolution

Unless otherwise agreed by both parties or provided for in this Undertaking, any Dispute shall be referred in the first instance and in any event within seven (7) days of the Dispute Notice to the Chief Executive of QR (or their nominee) and the Chief Executive of the Third Party Operator (or their nominee) for the purposes of this Subclause 4.9.2 for resolution. Failing such resolution within fourteen (14) days, the relevant Dispute may, by agreement between QR and the Third Party Operator, be referred for resolution by an expert in accordance with Subclause 4.9.3.

Failing such agreement, either party may refer the dispute to the QCA in accordance with Subclause 4.9.4.

4.9.3 Expert Resolution

Where a matter is referred to an expert then the following shall apply:

- (a) An expert shall be appointed by the parties, or where agreement cannot be reached by the parties within fourteen (14) days, in the case of financial matters, by the President for the time being of the Australian Society of Certified Practicing Accountants and, in the case of non-financial matters, the President for the time being of the Institution of Engineers, Australia.
- (b) In any event the expert shall:-
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as expert, he or she being required to fully disclose any such interest or duty before his or her appointment; and
 - (iii) not be an employee of the Third Party Operator or QR or of a Related Party of either of them.
- (c) The expert appointed pursuant to this Subclause shall not act until the expert has given written notice of the acceptance of his or her appointment to both parties.
- (d) Any determination made by an expert in relation to a Dispute must be consistent with the provisions of this Undertaking.
- (e) The expert will provide both parties with a copy of the determination in relation to the Dispute within a reasonable time after his or her appointment.
- (f) The expert appointed pursuant to this Subclause shall 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.
- (g) Any person nominated as an expert hereunder shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1990 (Qld)*, as amended, shall not apply to the expert or to the determination or to the procedures by which the expert may reach that determination.
- (h) 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 Subclause 4.9.3, or failing such agreement, either party may refer the dispute to the QCA for resolution in accordance with Subclause 4.9.4.

- (i) The costs of the expert and any advisers shall be borne by the parties in such proportions as determined by the expert.

4.9.4 Determination by the Queensland Competition Authority

- (a) If a Dispute is referred to the QCA in accordance with this Clause 4.9, or as otherwise specified in accordance with this Undertaking, then Division 5 of Part 5 of the Act shall apply subject to any determination by the QCA being consistent with the provisions of this Undertaking.
- (b) Except in the circumstances outlined in Paragraph 4.9.3(h), if a Third Party Operator does not comply with a decision of an expert pursuant to Subclause 4.9.3 then the Third Party Operator will not be entitled to refer that dispute to the QCA and QR will no longer be obligated to continue negotiations regarding the provision of Access for that Third Party Operator.
- (c) If a Third Party Operator does not comply with a decision of the QCA pursuant to this Subclause, then QR will no longer be obligated to continue negotiations regarding the provision of Access for that Third Party Operator.
- (d) If an issue is referred to the QCA for determination as specified in accordance with this Undertaking, but does not constitute a Dispute 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, subject to any determination by the QCA being consistent with the provisions of this Undertaking.

PART 5. PRICING PRINCIPLES

5.1 PRICING OBJECTIVES

In developing Access Charges, QR's overriding objective is, over time, to achieve revenue adequacy (as defined in Subclause 5.1.1). In order to do this, QR will endeavour to maximise the commercially viable utilisation of the Rail Infrastructure through observing the processes identified in Subclause 5.1.3, however, within this context, QR will observe the constraints on price differentiation identified in Subclause 5.1.2.

5.1.1 Revenue Adequacy

- (a) QR will be entitled to earn revenue from the provision of Access, including both Access Charges and Infrastructure Payments, that is sufficient to achieve full recovery of reasonable costs, including a commercial rate of return on the value of assets reasonably required for the long term sustainable provision of Rail Infrastructure.
- (b) In order to achieve the objective identified in Paragraph (a) of this Subclause, QR is entitled to target earning a revenue stream such that:
 - (i) QR is able to recover all costs incurred in the provision and management of the Rail Infrastructure (including business and corporate overheads), provided that such costs reflect the reasonably expected improvements in efficiency that QR should achieve; and
 - (ii) QR is able to, on average, earn a risk-adjusted commercial rate of return on the value of all assets reasonably required for the provision of Access, taking account of the investment requirements for Rail Infrastructure enhancements and, where there is an ongoing requirement for the Rail Infrastructure, asset replacement.

5.1.2 Limits on Price Differentiation

- (a) Subject to Paragraph (c) of this Subclause, where Railway Operators are directly competing with each other for the purpose of providing a specified transport service, these Railway Operators will be offered consistent Access Charges when they negotiate for Access. A specified transport service is one which carries a specified commodity between a specified origin and destination. For the purpose of this Paragraph, Access Charges are considered to be consistent when differences in the Access Charges only reflect differences in the costs or risks to QR of providing Access as a result of, for example, the standard or type of Train Service, the Rollingstock used or the conditions of Access.
- (b) Subject to Paragraph (c) of this Subclause, where Railway Operators are not directly competing with each other as contemplated in Paragraph (a), but are providing Train Services for the same commodity type within the same Geographic System, when these Railway Operators negotiate for Access, QR will take a consistent approach to the determination of Access Charges for such Train Services, taking into account the characteristics of the Rail Infrastructure and the Train Services operating on that Rail Infrastructure.

- (c) Access Charges may vary over time. Paragraphs (a) and (b) of this Subclause relate to Access negotiations that occur at a similar time and does not require QR to develop Access Charges in a current negotiation with regard to Access Charges incorporated in existing Access Agreements. Rather, QR will give Railway Operators the opportunity to incorporate rate review provisions in Access Agreements to reflect, for example, changes in an applicable Reference Tariff.

5.1.3 Rail Infrastructure Utilisation

- (a) (a) Railway Operators serve a number of different Markets which 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 will be entitled to establish Access Charges with different levels of contribution to Common Costs for Railway Operators 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) Capacity will be allocated in accordance with Clause 6.3. Capacity will be augmented where QR reasonably considers that the achievable Access revenues are sufficient to commercially justify the required expenditure.
- (c) Where Available Capacity is limited QR may establish an Access Charge based on the highest Access Charge it is likely to achieve from potential Railway Operators, i.e. the Access Charge which incorporates the highest contribution to the Common Costs of providing the Rail Infrastructure. This Access Charge may then be quoted to all Railway Operators seeking Access in respect of that Available Capacity, irrespective of a particular Railway Operator'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.
- (d) In assessing Access Charges for the purposes of Paragraph (c) of this Subclause, where Infrastructure Payments are made conditional upon the benefit of those Infrastructure Payments being available only for Train Services serving a specified Market, the Access Charge assessable in respect of Train Services serving that Market will be identified by adding together the Access Charges actually paid in respect of those Train Services and the proportion of the Infrastructure Payments that is directly related to those Train Services.

5.2 PRICING LIMITS

5.2.1 Definition of Pricing Limits

Pricing limits will be applied 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 individual Train Services; 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.

5.2.2 Price Limits for Individual Train Services

- (a) Price limits will apply in respect to Access Charges to be established for each individual Train Service (referred to as “Individual Train Service”) such that, over the Evaluation Period, the relevant Access Charge for the Individual Train Service:
 - (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for the Individual Train Service; and
 - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for the Individual Train Service.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph (a)(ii) of this Subclause, a Revenue Limit will be established for the Individual Train Service. The Revenue Limit for an Individual Train Service will reflect the Stand Alone Cost of providing Access for the Individual Train Service over the Evaluation Period. The Revenue Limit will be determined in accordance with Subclause 5.2.4.

5.2.3 Price Limits on Train Service Combinations

- (a) In addition to Subclause 5.2.2, price limits will apply in respect of Access Charges to be established for Individual Train Services such that, over the Evaluation Period, the expected Access revenue (determined in accordance with Paragraph (c) of this Subclause) for any combination of Train Services incorporating the Individual 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 after giving consideration to the level of contribution provided by Infrastructure Payments towards the relevant Rail Infrastructure; and
 - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that combination of Train Services.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph (a)(ii) of this Subclause, a Revenue Limit will be established for identified Train Service Groups. The Revenue Limit for a Train Service Group will reflect the Stand Alone Cost of providing Access for the Train Service Group over the Evaluation Period. The Revenue Limit for the Train Service Group will be determined in accordance with Subclause 5.2.4.
- (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 certain Train Service types, expected Access Charges will be developed for Train Services falling within those Train Service types on a consistent basis to the Reference Tariff proposed; and
- (ii) where a Reference Tariff is not intended to be developed for certain Train Service types, expected Access Charges will be developed for Train Services falling within those Train Service types on a consistent basis to current applicable Access Charges.

5.2.4 Definition of Revenue Limit

- (a) The Revenue Limit will be determined as the maximum amount of expected Access revenue (determined consistent with Paragraph 5.2.3(c)) that may be earned from Access Charges over the Evaluation Period measured such that the net present value of the cashflows associated with providing Access for the Individual Train Service or the Train Service Group (as appropriate) over the Evaluation Period is zero. This measurement can be expressed as:

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

where:

AV_o is the depreciated replacement value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service or Train Service Group (as appropriate) 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 ;

RL_t is the Revenue Limit for the Train Service or Train Service Group (as appropriate) 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 or Train Service Group (as appropriate) in each year of the Evaluation Period;

M_t is the operating, maintenance and any other costs, including business and corporate overhead costs, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Service or Train Service Group (as appropriate) in each year of the Evaluation Period;

ROA is the maximum allowable rate of return expressed in nominal pre tax terms, as agreed by QR and the QCA or, failing such agreement, as determined by the QCA; and

AV_n is the depreciated replacement value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service or Train Service Group (as appropriate) at the end of the Evaluation Period.

- (b) The values identified for the variables set out in Paragraph (a) of this Subclause should reflect improvements in efficiency (in terms of both operating costs and asset utilisation) that QR should reasonably be able to achieve in each year of the Evaluation Period.
- (c) In order to determine the amount of each of the variables set out in Paragraph (a) of this Subclause, it will be necessary to identify the expected traffic task resulting from the Train Service or Train Service Group (as applicable) over the Evaluation Period. The expected traffic task shall be determined as a forecast of the traffic task resulting from the Train Service or Train Service Group (as applicable) which can be reasonably expected over the Evaluation Period, except where changes in traffic task are the result of the commencement or discontinuation of major projects which individually impact significantly on the traffic task. In such circumstances, increases in traffic task shall be built into the forecast at the time of service commitment and decreases in traffic task shall be excluded from the forecast at the time of expected service termination.

5.3 REFERENCE TARIFFS

5.3.1 Establishment of Reference Tariffs

- (a) It is recognised that, for individual Train Services, there may be a large range between the price limits established in Clause 5.2 within which Access Charges may be determined. Therefore, to assist in the facilitation of an efficient Access negotiation process, QR 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. The Access Charge for a specific Train Service which is the subject of an Access Application may, depending upon the specific issues associated with the provision of Access for that Train Service, be higher or lower than the Reference Tariff applicable for that type of Train Service.
- (c) Reference Tariffs will be established in a manner consistent with the pricing principles set out in this Undertaking, including the price limits identified in Clause 5.2.
- (d) 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 will give Railway Operators the opportunity to incorporate rate review provisions in Access Agreements to reflect, for example, changes in Reference Tariffs.
- (e) Reference Tariffs will be developed for those types of Train Services identified in Schedule G. Reference Tariffs for those types of Train Services will be applied in the manner set out in Schedule G.
- (f) Reference Tariffs for other types of Train Services will be developed as and when QR and the QCA agree necessary, taking into account the level of demand for Access for that type of Train Service by Third Party Operators. QR will submit a Draft Amending Undertaking varying Schedule G to identify the manner in which Reference Tariffs will apply to these Train Services within one (1) month of agreeing to develop the additional Reference Tariffs.
- (g) The Reference Tariffs for those types of Train Services identified in Schedule G at the Commencing Date will be submitted to the QCA for endorsement within three (3) months

of the Commencing Date. Where Schedule G is varied in accordance with Paragraph (f), QR will submit to the QCA Reference Tariffs for the types of Train Services added to Schedule G within three (3) months of the QCA accepting the relevant Draft Amending Undertaking. In considering whether to endorse a Reference Tariff the QCA must be satisfied that the Reference Tariff is consistent with the pricing principles established in this Part of the Undertaking.

5.3.2 Review of Reference Tariffs

- (a) A Reference Tariff will be effective for a maximum period of three (3) years from the date upon which the QCA endorses the Reference Tariff. Three (3) months prior to the expiry of a Reference Tariff, QR will submit to the QCA a revised Reference Tariff. In considering whether to endorse a Reference Tariff the QCA must be satisfied that the Reference Tariff is consistent with the pricing principles established in this Part of the Undertaking.
- (b) Within its effective life of three (3) years, a Reference Tariff may be reviewed upon the occurrence of a Material Change Event. Upon the occurrence of a Material Change Event that could reasonably be expected to result in QR materially exceeding its Revenue Limit, QR will notify the QCA of the occurrence of a Material Change Event. QR may notify the QCA of the occurrence of any other Material Change Event. QR's notification of a Material Change Event will include details of the Material Change Event and the required revisions to the existing Reference Tariff to reflect the impact of the Material Change Event. Such revisions will not reflect a full review of the Reference Tariff, but rather will be limited to revising the Reference Tariff to reflect the impact of the specific Material Change Event. The QCA shall consider the appropriateness of the changes to a Reference Tariff through assessing whether the changes adequately preserve the financial position of QR compared to the position QR would be in if the Material Change Event did not occur. If assessed as appropriate by the QCA, the revised terms of the Reference Tariff will apply for the remaining effective life of that Reference Tariff.

5.4 STRUCTURE OF ACCESS PRICES

- (a) The structure of Access Charges will be negotiated with individual Third Party Operators depending on their particular requirements and may include:
 - (i) an initial up-front component as a pre condition to being granted Access Rights;
 - (ii) an ongoing periodic fixed component independent of the level of usage of the Rail Infrastructure;
 - (iii) an ongoing variable component based on usage of the Rail Infrastructure; or
 - (iv) any other structure or combination as agreed by QR and the Third Party Operator.
- (b) Notwithstanding Paragraph (a) of this Clause, QR shall not require an Access Charge structure from a Third Party Operator that is significantly different from the Access Charge structures for existing Railway Operators providing Train Services for the same commodity type within the same Geographic System unless the different Access Charge structure is reasonable taking account of the costs and risks to QR of providing Access to

that Third Party Operator compared to the costs and risks of providing Access to existing Railway Operators providing Train Services for the same commodity type within the same Geographic System.

5.5 COST ALLOCATION

- (a) QR shall within the first three (3) months following the Commencing Date prepare and submit to the QCA for its approval a Cost Allocation Manual, which will set out:
 - (i) the process for identifying the cost base for Below Rail Services, separate from other services provided by QR;
 - (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 process for identifying pricing limits identified in Clause 5.2.
- (b) If the QCA approves the Cost Allocation Manual prepared by QR in accordance with Paragraph (a) of this Clause it will not be necessary for the QCA to prepare and distribute a Cost Allocation Manual in accordance with Division 9 of Part 5 of the Act.
- (c) QR shall comply with the procedures and protocols of the Cost Allocation Manual in determining the Revenue Limits for particular Train Services or Train Service Groups.

PART 6. CAPACITY MANAGEMENT

6.1 SERVICE SPECIFICATION AND TRAIN SCHEDULING

- (a) The Capacity Entitlement of a Third Party Operator will be defined in terms of a number of Train Services that can be operated in a given time period subject to constraints agreed with the Third Party Operator. The application of constraints is likely to vary significantly between different types of Train Services and may include, but will not necessarily be limited to, the following:
 - (i) a specified origin and/or destination time and where appropriate, specified arrival/departure times at intermediate locations, with an allowable variation around these specified time(s);
 - (ii) maximum time period between Train Services;
 - (iii) minimum time period between Train Services;
 - (iv) average travel time and acceptable variations to travel time;
 - (v) regularity of timetable reviews and the applicable review process; and
 - (vi) allowable modifications of timetable, e.g. cancellation or deferral of services.
- (b) As outlined in Clause 4.7, as part of the negotiation process, QR will develop an initial specification of the Third Party Operator's Capacity Entitlement. This specification of Capacity Entitlement will be further refined by QR and the Third Party Operator during the negotiation process. The Capacity Entitlement will be incorporated into the Access Agreement.
- (c) The Capacity Entitlement will be used to develop an initial timetable, which QR and the Third Party Operator will then be required to adhere to unless and/or until such time as the timetable is varied in accordance with the Third Party Operator's specified Capacity Entitlement and QR's Scheduling and Train Control Protocols.
- (d) QR will, subject to the Third Party Operator's Capacity Entitlement and the Scheduling and Train Control Protocols, be able to manage the development of timetables to optimise the use of the Rail Infrastructure as circumstances change from time to time. The dispute resolution provisions in the Third Party Operator's Access Agreement will provide an avenue for a Third Party Operator to challenge a decision by QR to make Train scheduling changes that result in an alteration to that Third Party Operator's timetable, if it believes QR's decision was inconsistent with the terms of its Capacity Entitlement and/or the Scheduling and Train Control Protocols.

6.2 CAPACITY ANALYSIS

- (a) An Initial Capacity Assessment will be undertaken by QR as part of the preparation of an Indicative Access Proposal. The Initial Capacity Assessment will identify the amount of Capacity that is not required to preserve existing Capacity Entitlements. The Initial

Capacity Assessment is designed to determine if there is sufficient Available Capacity to meet the Third Party Operator's requirements and, if not, the extent to which additional Capacity is required.

- (b) Where it is believed that there are major impediments to the provision of sufficient Capacity to meet the requirements of the Third Party Operator, and that the Capacity enhancements that might be necessary would have a significant bearing on the economics of the proposed operation, then the Initial Capacity Assessment will be conducted in more detail. This may add some time to the preparation of the Indicative Access Proposal and may be a reason for QR advising, in accordance with Paragraph 4.4(c), that an Indicative Access Proposal will not be available within thirty (30) days of QR's acknowledgment of the Access Application.
- (c) The results of the Initial Capacity Assessment will be indicative only and will be subject to confirmation by a Capacity Analysis undertaken as part of the negotiation process. As outlined in Clause 4.7, as part of the negotiation process QR will undertake a Capacity Analysis, including an investigation of operational impacts for the proposed Access. The Capacity Analysis will be conducted in a more comprehensive manner than the Initial Capacity Assessment and will be based on the further detail provided by the Third Party Operator in its Operating Plan. The Capacity Analysis will confirm whether there is sufficient Available Capacity to meet the Third Party Operator's requirements and, if not, detail the requirements for Capacity enhancements. The Capacity Analysis will enable the finalisation of the resultant Capacity Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process).

6.3 CAPACITY ALLOCATION

6.3.1 Register of Interested Parties

- (a) No Railway Operator is to assume that it has Access Rights beyond the term of its Access Agreement. However, where a Railway Operator requests Access which will utilise Capacity that will only become available following the expiration of an existing Access Agreement, QR will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the register established in accordance with Paragraph (b) of this Subclause as having an interest in the existing Access Rights of the existence of the Access Application. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement which may have been entered into by QR provided that such failure was not willful and QR has acted in good faith.
- (b) QR will maintain a register of parties who have an interest in existing Access Rights. The register will identify:
 - (i) the party who has an interest in the Access Rights;
 - (ii) the Access Rights in which they have an interest; and
 - (iii) the nature of that interest.

A Railway Operator with Access Rights under an Access Agreement will be automatically placed on the register. If any other party considers that it has an interest in existing Access Rights and wishes to be included in the register it must notify QR in writing.

6.3.2 Allocation of Capacity

- (a) Subject to Paragraph (b), Access Rights will be allocated to the first Railway Operator with whom QR can negotiate and execute an acceptable Access Agreement.
- (b) If, at any time, two or more Railway Operators are seeking access with respect to mutually exclusive Access Rights, each of the Railway Operators who has received an Indicative Access Proposal with respect to those mutually exclusive Access Rights will be advised, either in accordance with Subparagraph 4.5(a)(iv) or Paragraph 4.7.2(f), that there is one or more other Railway Operators seeking to negotiate for mutually exclusive Access Rights. In such circumstances, QR is entitled to seek to finalise an Access Agreement in respect of those Access Rights with the Railway Operator with whom QR can agree to terms and conditions, including an Access Charge, which are considered by QR to be the most favourable in terms of the commercial performance of Below Rail Services. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement which may have been entered into by QR provided that such failure was not willful and QR has acted in good faith.

6.4 CAPACITY TRANSFER

- (a) Where a Railway Operator:
 - (i) has consistently underutilised the Access Rights allocated to it under an Access Agreement for a period of six (6) months; and
 - (ii) cannot reasonably demonstrate to QR a future requirement for those Access Rights;

the terms of the Access Agreement will provide that QR may reduce the Railway Operator's Access Rights, provided that the adjusted Access Rights are sufficient to meet the Railway Operator's maximum monthly usage over that six (6) month period. In such event, the Access Charge payable by the Railway Operator will be varied in accordance with the terms of the Access Agreement.

- (b) Where QR makes a decision to reduce a Third Party Operator's Access Rights in accordance with Paragraph (a) of this Clause, and the Third Party Operator believes that QR's decision is not justified in the circumstances after having regard to the factors specified in Paragraph (a) of this Clause, the Third Party Operator may challenge the decision through the dispute resolution procedure provided in its Access Agreement. QR will not implement the reduction unless and until the dispute resolution procedure has been exhausted in favour of its decision, provided it is not otherwise required to do so by law.
- (c) Where a Railway Operator wishes that its Access Rights be reduced, it may seek to surrender the unwanted Access Rights to QR. QR will use reasonable endeavours to reassign the unwanted Access Rights to another Railway Operator. Such unwanted

Access Rights allocated to the Railway Operator under its Access Agreement will be reduced if and to the extent that QR allocates those Access Rights to another Railway Operator or as otherwise agreed between QR and the Railway Operator.

- (d) Where a Railway Operator seeks Access Rights that are already utilised by another Railway Operator, but in the reasonable opinion of either the first Railway Operator or QR, such Access Rights will not be required by the other Railway Operator after the time from which Access is being sought by the first Railway Operator, QR will approach the other Railway Operator to seek to negotiate an amendment to its Access Agreement so as to facilitate Access for the Train Services of the Railway Operator seeking Access.
- (e) Where a Railway Operator's Access Rights are reduced in accordance with Paragraphs (c) or (d) of this Clause, and where QR is able to reassign those Access Rights, the Railway Operator's Access Charge will be adjusted as agreed between the parties.
- (f) Access Rights may only be transferred by a Railway Operator assigning the whole of its respective rights and obligations under an Access Agreement in accordance with the assignment provisions of that Access Agreement.

PART 7. INTERFACE CONSIDERATIONS

7.1 ROLLINGSTOCK INTERFACE STANDARDS

7.1.1 Development of Rollingstock Interface Standards

- (a) To ensure the integrity of the Rail Infrastructure, it is essential that all Rollingstock and Rollingstock Configurations operated on the Rail Infrastructure are compatible with the Rail Infrastructure and that they are operated in a manner consistent with the applicable Safeworking Procedures and Safety Standards. Accordingly, only Rollingstock and Rollingstock Configurations complying with the Rollingstock Interface Standards may operate on the Rail Infrastructure.
- (b) The Rollingstock Interface Standards incorporate:
 - (i) Rollingstock Standards, addressing:
 - safety constraints including all aspects of the Rail Infrastructure, Safeworking Procedures and other applicable Safety Standards that constrain Rollingstock design and performance; and
 - commercial constraints including other aspects of Rollingstock design and performance that impact on the cost or risk to QR of providing Access; and
 - (ii) Train Standards, addressing:
 - safety constraints including all aspects of the Rail Infrastructure, Safeworking Procedures and other applicable Safety Standards that constrain the configuration of Rollingstock to form a Train; and
 - commercial constraints including other aspects of the configuration of Rollingstock to form a Train that impact on the cost or risk to QR of providing Access.
- (c) QR will adopt a consistent approach in the application of the Rollingstock Interface Standards to all Railway Operators, having regard to Paragraphs (e) and (h) of this Subclause.
- (d) As provided in Clause 4.3, the Preliminary Information that may be provided by QR to Third Party Operators will include preliminary information on applicable Rollingstock Interface Standards for the purpose of assisting a Third Party Operator to make an initial assessment of its Rollingstock requirements. As provided for in Subclause 4.7.2, detailed Rollingstock Interface Standards will be advised by QR to the Third Party Operator as part of the provision of Additional Information to enable the Third Party Operator to finalise its Rollingstock requirements and Operating Plan.
- (e) QR acknowledges that variations to the Rollingstock Interface Standards may be made without sacrificing system safety, although they may have commercial consequences for QR. During the negotiation process QR may consider variations to the Rollingstock Interface Standards and/or the development of additional Rollingstock Interface Standards in response to particular requirements of the Third Party Operator with respect to either its proposed Rollingstock requirements or Operating Plan.

- (f) Proposed variations to the initially advised Rollingstock Interface Standards will be assessed by QR in terms of their likely impact on:
 - (i) the risks likely to arise at the interface between the Third Party Operator's operations and the Rail Infrastructure;
 - (ii) the financial implications for QR in regard to the management and maintenance of the Rail Infrastructure; and
 - (iii) the financial implications for other Railway Operators in regard to the operation of their Train Services.
- (g) QR's acceptance of variations to the initially advised Rollingstock Interface Standards will be dependent upon:
 - (i) the development by the Third Party Operator, in collaboration with QR, of an appropriate Safety Risk Management Plan in accordance with Clause 7.3;
 - (ii) QR's ability to commercially negotiate variations to its Access Agreements with other Railway Operators adversely impacted upon by the proposed variation to the Rollingstock Interface Standards; and
 - (iii) agreement on an Access Charge or other payments from the Third Party Operator to compensate QR for any financial implications associated with the proposed variation.
- (h) Where a Railway Operator (or group of Railway Operators) and QR agree to vary Rollingstock Interface Standards in accordance with this Clause and such variation(s) involve an additional cost funded exclusively by that Railway Operator (or group of Railway Operators), QR will be entitled to restrict other Railway Operators from benefiting from the variation in the Rollingstock Interface Standards unless and until they make an appropriate contribution to the costs thereof.

7.1.2 Compliance with Rollingstock Interface Standards

- (a) In order to ensure that only Rollingstock and Rollingstock Configurations complying with the Rollingstock Interface Standards operate on the Rail Infrastructure:
 - (i) all Rollingstock must be authorised by QR; and
 - (ii) all Rollingstock Configurations must be authorised by QR:
prior to operation on the Rail Infrastructure.
- (b) To obtain authorisation of Rollingstock, a Railway Operator must satisfy QR that Rollingstock has been constructed or modified to comply with the Rollingstock Standards. In order to demonstrate such compliance, a certificate of compliance must be prepared by a party who QR accepts as being competent to give the certification. The certificate of compliance may, on the request of QR, be required to be supported by reports on trials or commissioning tests.

- (c) To obtain authorisation of Rollingstock Configurations, a Railway Operator must satisfy QR that authorised Rollingstock has been configured in a manner which complies with the Train Standards. In order to demonstrate such compliance, a certificate of compliance must be prepared by a party who QR accepts as being competent to give the certification. The certificate of compliance may, on the request of QR, be required to be supported by reports on trials or commissioning tests.
- (d) Authorisation of Rollingstock and Rollingstock Configurations may be sought concurrently.
- (e) The Access Agreement will incorporate provisions to ensure the ongoing compliance of Rollingstock and Rollingstock Configurations with the Rollingstock Interface Standards, including the requirement for audit, as set out in Clause 7.5.

7.2 OPERATING PLAN

- (a) In order to analyse the impacts and requirements of the operations proposed by a Third Party Operator on the Rail Infrastructure, an Operating Plan must be submitted to QR by the Third Party Operator during the negotiation process. The Operating Plan is an enhancement of the initial information provided in the Access Application. During the negotiating process, the Operating Plan must be developed to the reasonable satisfaction of QR.
- (b) Details of the contents typically required in an Operating Plan for new or varied Train Services are set out in Schedule H.
- (c) The Operating Plan will be utilised by QR to refine and finalise the Capacity Entitlement, Interface Coordination Plan, Access Charge and other terms and conditions of the Access Agreement. It will also form the basis for the Third Party Operator's Safety Risk Assessment and Environmental Investigation and for QR's Capacity Analysis.
- (d) The Access Agreement will incorporate provisions ensuring the Third Party Operator's ongoing compliance with the Operating Plan.

7.3 SAFETY MANAGEMENT

7.3.1 Safety Risk Assessment

- (a) As outlined in Clause 4.7, as part of the negotiation process the Third Party Operator shall, jointly with QR, conduct a Safety Risk Assessment of its operations insofar as they interface with the Rail Infrastructure.
- (b) The parties may agree that a preliminary assessment need only be conducted prior to execution of the Access Agreement but a final Safety Risk Assessment must be completed, and a Safety Risk Management Plan agreed and implemented, prior to the operation of Train Services on the Rail Infrastructure.
- (c) The Safety Risk Assessment must be conducted by a suitably qualified person(s), reasonably acceptable to both parties.

- (d) The Safety Risk Assessment should identify all reasonably foreseeable hazards relating to the interface between the Third Party Operator, QR and other Railway Operators arising out of the proposed operation of Train Services, the risks of such hazards occurring and the implications of such hazards occurring.

7.3.2 Safety Risk Management Plan

- (a) To address the results of the Safety Risk Assessment, a Safety Risk Management Plan is to be developed and agreed between the Third Party Operator and QR. QR must be reasonably satisfied that the Safety Risk Management Plan is appropriate and compatible with the existing management systems for the Rail Infrastructure.
- (b) Prior to the operation of the Third Party Operator's Train Service on the Rail Infrastructure, the Third Party Operator shall incorporate in its Safety Management System:
 - (i) the elements agreed in the Safety Risk Management Plan, for which the Third Party Operator is responsible for implementing; and
 - (ii) necessary processes for ensuring that the Third Party Operator, its Rollingstock and Train Services, at all times comply with the safety requirements of the Access Agreement, including the Safeworking Procedures and other applicable Safety Standards.
- (c) Similarly, prior to the operation of the Third Party Operator's Train Service on the Rail Infrastructure, QR shall ensure that its Safety Management System incorporates the elements agreed with the Third Party Operator in the Safety Risk Management Plan, for which QR is responsible for implementing.
- (d) The implementation of the Safety Risk Management Plan may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and the Rollingstock Interface Standards.
- (e) Clause 7.5 provides for audit of the Third Party Operator's ongoing compliance with the Safety Risk Management Plan.

7.4 ENVIRONMENTAL MANAGEMENT PLAN

7.4.1 Environmental Investigation

- (a) As outlined in Clause 4.7, as part of the negotiation process the Third Party Operator shall, in collaboration with QR, conduct an appropriate Environmental Investigation of its operations insofar as they interface with the Rail Infrastructure. QR may, in recognition of its legal obligations in relation to the environment (in particular those obligations arising from the *State Development and Public Works Organisation Act 1971*, and the *Environmental Protection Act 1994*) require that the Environmental Investigation take the form of an Impact Assessment Study in circumstances where the operation proposed is substantially different to existing operations or if it will result in significant increases in traffic levels.

- (b) The parties may agree that a preliminary investigation need only be conducted prior to execution of the Access Agreement but a final Environmental Investigation based on the findings of the preliminary investigation must be completed, and appropriate controls agreed and implemented, prior to the operation of Train Services on the Rail Infrastructure.
- (c) The Environmental Investigation must be conducted by a suitably qualified party who is reasonably acceptable to both parties.
- (d) The Environmental Investigation must assess the environmental impact of Access by the Third Party Operator relating to the interface between the Third Party Operator, QR and other Railway Operators including risks related to those issues identified in Schedule I. The Environmental Investigation should use recognised techniques and procedures in assessing such environmental impacts including the assessment of the associated environmental risks and shall comply with all legislative requirements.

7.4.2 Environmental Management System

- (a) In response to the findings of the Environmental Investigation, an Environmental Risk Management Plan is to be developed and agreed by the Third Party Operator and QR. QR will need to be reasonably satisfied that the Environmental Risk Management Plan is appropriate and compatible with the existing management systems for the Rail Infrastructure.
- (b) Prior to the operation of the Third Party Operator's Train Services on the Rail Infrastructure, the Third Party Operator shall have developed an Environmental Management System which is accredited in accordance with the relevant ISO 14000 standards for environmental management systems and shall incorporate in this Environmental Management System:
 - (i) all legislative requirements including any requirements in respect of Environmental Authorities held by QR from time to time as appropriate;
 - (ii) the elements agreed with QR in the Environmental Risk Management Plan, for which the Third Party Operator is responsible for implementing; and
 - (iii) necessary processes for ensuring that the Third Party Operator, its Rollingstock and Train Services, at all times comply with the environmental requirements of the Access Agreement.
- (c) Similarly, prior to the operation of the Third Party Operator's Train Services on the Rail Infrastructure QR shall ensure that the elements agreed in the Environmental Risk Management Plan, for which QR is responsible for implementing, are incorporated in its environmental management system.
- (d) The implementation of the Environmental Risk Management Plan may necessitate changes to the terms and conditions of the Access Agreement, including variations to the Access Charge and the Rollingstock Interface Standards.

- (e) Clause 7.5 provides an audit procedure for the Third Party Operator's ongoing compliance with the Environmental Risk Management Plan and its Environmental Management System.

7.5 AUDITS

- (a) The Third Party Operator must be able to establish to QR's reasonable satisfaction that it is complying with the Rollingstock Interface Standards, the items identified in Paragraph 7.3.2(b), and the items identified in Paragraph 7.4.2(b), in its operations on the Rail Infrastructure. Therefore, the Third Party Operator will be required to have its operations on the Rail Infrastructure, including relevant systems, audited on an annual basis for compliance with these items.
- (b) In addition, QR may, at any time, require the Third Party Operator to have specific elements of its operations audited for compliance, where QR has reasonable grounds for believing that the Rollingstock Interface Standards, the items identified in Paragraph 7.3.2(b), and/or the items identified in Paragraph 7.4.2(b), have not been complied with and the Third Party Operator has not taken appropriate measures to rectify such non compliance.
- (c) Audits undertaken in accordance with Paragraphs (a) and (b) of this Clause, insofar as they relate to the Rollingstock Interface Standards and the items identified in Paragraph 7.3.2(b), may at the option of the Third Party Operator and subject to QR's reasonable satisfaction, be undertaken in conjunction with an audit required by the Safety Regulator. In any event, all audits must be conducted by a suitably qualified and competent person, who is independent of the Third Party Operator and reasonably acceptable to both parties.
- (d) The audit report(s) must advise whether the Third Party Operator is complying with the Rollingstock Interface Standards, the items identified in Paragraph 7.3.2(b), and the items identified in Paragraph 7.4.2(b), and provide details of any non-compliance. A copy of the audit report(s) must be provided to QR.

7.6 INTERFACE COORDINATION PLAN

- (a) Prior to the commencement of Train Services by the Third Party Operator, QR will develop, in consultation with the Third Party Operator, an Interface Coordination Plan. Both parties shall comply with the Interface Coordination Plan in exercising the rights and obligations of the Access Agreement. However to the extent any inconsistency arises between the Interface Coordination Plan and the Access Agreement the requirements of the Access Agreement shall prevail.
- (b) The Interface Coordination Plan will supplement the provisions of the Access Agreement and be consistent with such plans in existence for other Railway Operators and may include:
 - (i) operational procedures;
 - (ii) emergency procedures and incident management;
 - (iii) track possession procedures;
 - (iv) train control contacts;
 - (v) train schedule variation procedures;

- (vi) service recovery procedures; and
- (vii) any other issues considered necessary in respect of the procedures to be followed in administering the Access Agreement.

7.7 ADJOINING INFRASTRUCTURE

- (a) Unless otherwise agreed, where a Third Party Operator proposes to construct infrastructure which connects to the Rail Infrastructure but for which QR will not be Railway Manager, QR shall either design, or approve the design of, and supervise the construction of the connection and those elements of adjoining infrastructure essential to the operation of safeworking systems on the Rail Infrastructure including the connection itself.
- (b) The Third Party Operator shall reimburse QR's reasonable costs for such design and supervision work and, unless otherwise agreed, shall be responsible for funding all costs associated with the construction of the adjoining infrastructure and the connection.

PART 8. DEFINITIONS & INTERPRETATIONS

8.1 DEFINITIONS

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

“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;

“Access” means the non-exclusive utilisation of a specified section of Rail Infrastructure for the purposes of operating Train Services;

“Access Agreement” means an agreement between QR and a Railway Operator for the provision of Access and will include arrangements between Network Access and other QR business groups for the provision of Access for the purpose of QR operated Train Services;

“Access Application” means a request for Access by a Third Party Operator which has been prepared in writing and which complies with the information requirements of Paragraph 4.3(b);

“Access Charge” means the price paid by a Railway Operator for Access under an Access Agreement;

“Access Rights” means the entitlement of a Railway Operator to Access in accordance with a specified Capacity Entitlement;

“Accreditation” means accreditation in accordance with Part 4, Chapter 6 of the *Transport Infrastructure Act 1994 (Qld)* and **“Accredited”** has a similar meaning;

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

“Additional Information” means that information that is to be provided by QR to a Third Party Operator during the Negotiation Period as set out in Schedule D, excluding any information that is provided as part of the Preliminary Information, but only to the extent required either by the Third Party Operator or as part of the Access Agreement;

“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;

“Available Capacity” means Capacity that is not Committed Capacity and includes Capacity which will cease being Committed Capacity prior to the time in respect of which Capacity is being assessed;

“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 and the implementation of Safeworking Procedures;

“Capacity” means the capability of a specified section of Rail Infrastructure to accommodate Train Services within a specified time period after providing for QR’s reasonable requirements for the exclusive utilisation of that specified section of Rail Infrastructure for the purposes of performing activities associated with the repair or enhancement of the Rail Infrastructure, including the operation of work trains;

“Capacity Analysis” means an assessment of the extent a specified section of Rail Infrastructure has Available Capacity and whether that Available Capacity is sufficient for the proposed Access requirements and, if the Available Capacity is not sufficient for the proposed Access requirements, an assessment of Rail Infrastructure expansion or other Capacity enhancement required to meet those proposed Access requirements;

“Capacity Entitlement” means a Railway Operator’s entitlement under an Access Agreement 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, and, until such time that Access Agreements have been developed for all existing QR operated Train Services, includes the Capacity that is demonstrably required for the purpose of QR operated Train Services and in respect of which Access Charges are applicable;

“Committed Capacity” means that portion of the Capacity that is required to meet the Capacity Entitlements of Railway Operators;

“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;

“Confidential Information” means any information, data or other matter marked confidential by a party when disclosed to the other party or disclosed to the other party with an express requirement in writing that the information, data or other matter be treated as confidential, where such information, data or other matter:

- (i) is not already in the public domain;
- (ii) does not become available to the public through means other than a breach of confidentiality;
- (iii) was not in the other party’s possession prior to such disclosure; and
- (iv) is not received by the other party independently from a third party free to disclose such information, data or other matter;

“Corporations Law” has the meaning given to that term in the *Corporations (Queensland) Act 1990*;

“Cost Allocation Manual” means a manual prepared by QR which identifies the matters outlined in Paragraph 5.5(a);

“Cross Subsidy” means where one Train Service or combination of Train Services pays Access Charges which are insufficient to meet:

- (a) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and
- (b) in respect of a group 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;

“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;

“Environmental Authorities” has the meaning given to that term in the *Environmental Protection Act 1994 (Qld)*;

“Environmental Investigation” means a study of the likely short term and long term beneficial and detrimental effects on the environment of the Third Party Operator’s operations insofar as they interact with the Rail Infrastructure and other Train Services;

“Environmental Management System” means the Third Party Operator’s plan of management to address all environmental risks and to ensure compliance with all environmental laws and licenses;

“Environmental Risk Management Plan” means a plan identifying the set of controls and measures agreed between QR and the Third Party Operator to address risks identified through the Environmental Investigation, and identifying the party responsible for implementation of those controls and measures;

“Evaluation Period” means, 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 Agreement in respect of the relevant Train Service or, when in reference to a group of Train Services, the period which is equal to the length of the expected duration of the longest existing or proposed 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;

“Explanatory Guide” means the document developed for the purpose set out in Paragraph 1(d) of this Undertaking;

“Geographic System” means sections of the Rail Infrastructure identified as such in the Cost Allocation Manual;

“Impact Assessment Study” means a detailed study of the short and long term beneficial and detrimental effects on the environment of the Third Party Operator’s operations insofar as they interact with the Rail Infrastructure and which includes an assessment of all relevant environmental factors, including social, economic and biophysical factors related to such operations;

“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 group of Train Services (as appropriate) did not operate;

“Indicative Access Proposal” means a non-binding response from QR to an Access Application of a Third Party Operator, prepared in writing and including the information set out in Clause 4.5;

“Infrastructure Payments” means payments to QR from the Queensland Government to enable QR to provide specified sections of Rail Infrastructure;

“Initial Capacity Assessment” means a preliminary Capacity Analysis undertaken in a manner to give an indicative assessment only and which will require further analysis as part of the final Capacity Analysis;

“Interface Coordination Plan” means a plan which identifies the procedures to be followed and the responsible officers from both QR and the Third Party Operator, in respect of all regular operational interfaces between the parties that arise in the exercise of rights and the performance of obligations under the Access Agreement;

“Market” has the meaning given to that term in section 71 of the Act;

“Material Change Event” means the occurrence of any of the following events on or after the date upon which the QCA approved the relevant Reference Tariff/s:

- (a) any amendment, repeal, modification or enactment of any acts, ordinances, regulations, by-laws, proclamations and subordinate legislation made under, by or pursuant to any Commonwealth or State statute or any relevant Authority (“Legislation”);
- (b) any binding change in the interpretation or application of any Legislation resulting from a decision of a court or tribunal;
- (c) the making of any new policy, instruction, direction or order (“Directive”) of an Authority (including without limitation QR’s shareholding ministers) which impacts on QR, or the modification, extension or replacement of any existing Directive;
- (d) the imposition of a requirement for any license, permit, approval, consent or other authority (“Authorisation”) not required as at the date upon which the QCA approved the relevant Reference Tariff;
- (e) after the date of grant of any Authorisation, a change in the terms and conditions attaching to that Authorisation or the attachment of any new terms or conditions;
- (f) the imposition or abolition of, increase or reduction in the rate of, or change in the basis of calculating, any Commonwealth, State or Local Government imposed tax, charge, levy, duty, impost, rate, royalty or imposition (“Tax”) imposed on, or payable by, QR including, without limitation, any Tax relating to the protection of the environment imposed on users of electricity or imposing a form of consumption, value added or sales tax, but excluding any income tax; or

- (g) a change in the Commonwealth Government ten (10) year bond rate of more than one hundred (100) basis points from the time that the Reference Tariff:
- (i) was endorsed by the QCA; or
 - (ii) was varied in accordance with Paragraph 5.3.2(b) to reflect a change in the Commonwealth Government ten (10) year bond rate;
- whichever is the later;

“Material Default” means:

- (a) repeated failure to comply with the terms and/or conditions of any of the agreements specified in Paragraph 4.1.2(c); or
- (b) any breach of a fundamental term and/or condition of any of the agreements specified in Paragraph 4.1.2(c);

“Negotiation Period” means the period during which the terms and conditions of an Access Agreement will be negotiated and which commences upon the Third Party Operator providing QR with a notification of intent to proceed with negotiations pursuant to Clause 4.6 and concludes upon any of the events set out in Paragraph 4.7.1(c);

“Network Access” means the business group established within QR to manage the provision of Below Rail Services with the exception of stations, platforms and selected marshalling yards;

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

“Preliminary Information” means that information that, prior to the submission of an Access Application, QR will be required to provide to a Third Party Operator, if and to the extent requested by the Third Party Operator, where the scope of such information is as set out in Part 1 of Schedule D;

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

“Queensland Transport” means the Department of Transport for the State of Queensland;

“Rail Infrastructure” means Rail Transport Infrastructure as defined in the *Transport Infrastructure Act 1994 (Qld)* for which QR is the Railway Manager;

“Railway Manager” has the meaning given to that term in the *Transport Infrastructure Act 1994 (Qld)*;

“Railway Operator” means a person who has, or is seeking, Access from QR to operate Train Services on the Rail Infrastructure and who is, or who will become, Accredited in respect of those Train Services;

“Reference Tariff” is an Access Charge applicable for a specified Reference Train Service, established in accordance with Clause 5.3, the purpose of which is to provide information to Third Party Operators as to the likely level of Access Charge for Train Services of a similar type as the specified Reference Train Service;

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

“Related Party” has the meaning given to Related Body Corporate in the Corporations Law;

“Revenue Limit” is the maximum revenue which QR should be entitled to earn from the provision of Access to the Train Service or Train Service Group (as appropriate) over the Evaluation Period;

“Ringfencing Guidelines” means guidelines prepared by QR in accordance with Clause 3.5;

“Rollingstock” means locomotives, carriages, wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle which 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 and which include standards relating to the criteria identified in Part 2 of Schedule D;

“Rollingstock Standards” are those Rollingstock Interface Standards that relate to the design and performance of Rollingstock;

“Safety Management System” means:

- (a) 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 Safety Risk Assessment; and
- (b) 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 the Safety Risk Assessment;

and which forms the 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 Part 4 of the *Transport Infrastructure Act 1994*;

“Safety Risk Assessment” means an assessment of the operational and safety risks associated with the Third Party Operator’s operations insofar as they interface with the Rail Infrastructure and other Train Services;

“Safety Risk Management Plan” means a plan identifying the set of controls and measures agreed between QR and the Third Party Operator to address risks identified through the Safety Risk Assessment, and the party responsible for the implementation of those controls and measures;

“Safety Standards” means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or QR 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;

“Scheduling and Train Control Protocols” means protocols prepared by QR outlining the approach QR will adopt with respect to the matters outlined in Paragraph 3.2(e);

“Solvent” means none of the following events have happened in relation to the Third Party Operator:

- (a) the Third Party Operator 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 Law;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within one month;
- (d) the appointment of a controller (as defined in the Corporations Law) of any of its assets;
or
- (e) the Third Party Operator proposes 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;

“Stand Alone Costs” means those costs that QR would incur if the relevant Train Service or combination of Train Services (as appropriate) was the only Train Service or group of Train Services provided Access by QR and **“Stand Alone”** has a similar meaning;

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

“Third Party Operator” means a Railway Operator other than QR;

“Track” means that part of the Rail Infrastructure comprising the rail, ballast, sleepers and associated fittings upon which Trains operate;

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

“Train Service” means the operation of a Train between specified origins and destinations on the Rail Infrastructure;

“Train Service Group” means a specified combination of Train Services that operate over discrete parts of the Rail Infrastructure and which is nominated as such in Schedule F;

“Train Standards” are those Rollingstock Interface Standards that relate to Rollingstock Configurations; and

“Undertaking” has the meaning given to that term in the Act.

8.2 INTERPRETATION

In this Undertaking unless the context otherwise requires:

- (a) reference to a person includes any other entity recognised by law and vice versa;
- (b) reference to “dollars” or “\$” means a reference to Australian dollars;
- (c) words importing the singular number includes the plural number and vice versa;
- (d) words importing any gender include the other gender;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) 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;
- (g) a reference to conduct includes a benefit, remedy, discretion, authority or power;
- (h) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (i) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or ensures for the benefit of those persons jointly and each of them severally;
- (j) clause headings are for reference purpose only;
- (k) any reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (l) any reference to the words “include” or “including” must be read as if they are followed by the words “without limitation”;
- (m) any reference to time is to local time in Queensland;

- (n) reference to a Clause, Subclause, Paragraph or Schedule is a reference to the corresponding Clause, Subclause, Paragraph or Schedule to this Undertaking as amended or replaced from time to time;
- (o) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time and notwithstanding any changes in the identity of the parties;
- (p) reference to any legislation includes all legislation under and amendments to that legislation and any legislation passed in substitution for that legislation or incorporating any of its provisions to the extent that they are incorporated;
- (q) if there is any inconsistency between matters contained in a Schedule and the body of this Undertaking, the provisions of the Undertaking prevail.

SCHEDULE A

Timetable for Internal Access Agreements

Date for Completion	Products
4 months after the Commencing Date	<ul style="list-style-type: none">• unit trains of coal and major industrial products (e.g. minerals, bulk fertilizer, bulk acid)
6 months after the Commencing Date	<ul style="list-style-type: none">• unit trains of containers• unit trains of primary industry products (e.g. grain, sugar)• Brisbane urban and interurban passenger• long distance and country passenger
9 months after the Commencing Date	<ul style="list-style-type: none">• other traffics, e.g. small freight, livestock

SCHEDULE B

Ringfencing Guidelines

A. Ringfencing Principles

- assist in meeting QR's obligations under section 104 of the Act, namely that having regard to the relevant criteria Access is not provided to QR business groups operating Train Services on more favourable terms than the terms on which QR intends to provide Access to Third Party Operators;
- ensuring that QR business groups operating Train Services are not placed at a competitive disadvantage in relation to the negotiation and provision of Access, by virtue of QR's status as a vertically integrated railway; and
- ensuring that, as far as possible taking into account QR's obligations under the Undertaking and under the QCA Act, QR retains the economic and other benefits which come from being a vertically integrated railway.

B. Ringfencing Issues

- the provision of a framework for the movement of information within QR to ensure that the confidentiality of information provided by Railway Operators, including both Third Party Operators and QR Railway Operators, is maintained consistent with Clause 4.2 of this Undertaking. This framework will ensure that Confidential Information provided to QR by Third Party Operators will not be made available to those areas of QR responsible for the commercial arrangements associated with QR operated Train Services;
- the protection of QR's intellectual property and the intellectual property rights of Third Party Operators;
- requiring all Network Access employees, contractors and other relevant QR employees (including staff employed by QR business groups operating Train Services) dealing with Access to undergo training in relation to QR's Ringfencing Guidelines in order to ensure they are aware of QR's obligations with respect to Confidential Information and the importance of complying with QR's Ringfencing Guidelines;
- establishing procedures for staff transfer and secondment to assist in meeting QR's obligations in relation to the Confidential Information belonging to Third Party Operators whilst not unreasonably limiting the potential career paths of QR employees;
- establishing a register to identify ringfencing issues and the actions taken to resolve them. Specifically, the register will deal with questions of interpretation raised in relation to compliance with QR's Ringfencing Guidelines, suggestions for improvement to the Ringfencing Guidelines, changes to procedures or controls that may be implemented over time, action taken in response to audits of QR's compliance with the Ringfencing Guidelines, and notification of breaches, potential breaches and complaints (internal or external) received;
- establishing procedures to conduct investigations into any complaints received from third parties that QR had breached its Ringfencing Guidelines and to report the outcome of the

investigation to the complainant. A system of investigating possible breaches of the Ringfencing Guidelines reported by QR employees will also be established; and

- providing for audits of QR's compliance with the Ringfencing Guidelines.

SCHEDULE C

Summary of Information Requirements as part of Access Application

A. Third party operator's name and contact details

(if the Third Party Operator is an unincorporated joint venture, all parties should be identified)

B. Train service description for freight services

- 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 per annum for years 1 to 4 and onwards from year 4. Seasonal peak tonnages should be noted.
- Access to station yards required, including load/unload and storage time
- Storage/servicing locations, repositioning requirements
- Required frequency of train services, including specific daily requirements, weekly requirements, seasonality variations and any trends over the agreement term
- General train details:
 - ◆ 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

- ◆ Axle load/spacing
- ◆ Wheel size
- ◆ Gross tonnes per train service, forward and return
- Maximum operation speed of loaded and empty train

C. Train service description for passenger services

- Route of operation (include diagram if necessary)
- Required term of Access Agreement
- Type of passenger traffic (e.g. long distance, commuter, tourist)
- Embarking and disembarking stations enroute, facilities required at stations and estimated dwell time
- Stabling/servicing locations, empty returning/repositioning requirements
- Required frequency of train services, including specific daily requirements, weekly requirements, seasonality variations and any trends over the agreement term
- General train 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
 - ◆ Tare mass per carriage
 - ◆ Type and class of PMU
 - ◆ Nominal gross mass of PMU
 - ◆ Tare mass per PMU
 - ◆ Axle load/spacing
 - ◆ Wheel size
 - ◆ Gross tonnes per train service, forward and return
- Maximum operation speed of loaded and empty train

SCHEDULE D

Preliminary and Additional Information

Part One: Preliminary Information

1.1 Introduction

This section defines the extent of the Rail Infrastructure to which this information is applicable ('Nominated Network') and details the criteria for use of the data and purpose of the document.

1.2 Technical Information

- (a) Civil Infrastructure
 - description of track
 - operational constraints (e.g. ruling grades)
- (b) Signals and Operational Systems
 - description of safeworking systems
- (c) Telecommunications
 - description of communications system used
- (d) Electric Traction
 - general system description
- (e) Rollingstock Interface Requirements
 - track gauge
 - axle load/s
 - train speed/s
 - minimum structure gauge
 - noise limits
- (f) Locality information
 - terrain information
 - environmental conditions, including temperature ranges, rainfall, exposure to floods, cyclones etc.
- (g) Committed and/or potential corridor upgrades
- (h) Relevant maps and drawings
 - corridor maps
 - working plan and section drawings
- (i) Level crossings
 - number of level crossings

- type of protection used

1.3 Operational Information

- (a) Capacity
 - indication of Capacity utilisation for the Nominated Network
 - general description of known Capacity constraints
 - committed Capacity upgrades
- (b) Train operation
 - sectional running times
 - maximum train length
- (c) Description of systems
 - operational
 - safeworking

1.4 Commercial Information

- (a) Reference Tariffs (if applicable Reference Tariffs have been approved by the QCA)
- (b) Cost Allocation Manual

1.5 Policies

- (a) Undertaking
- (b) Ringfencing Guidelines
- (c) Process for authorisation of Rollingstock
- (d) Process for authorisation of Rollingstock Configurations
- (e) Scheduling and Train Control Protocols

Part Two: Additional Information

2.1. Rollingstock Standards

This section will identify the Rollingstock Standards currently applicable for the Nominated Network. The Rollingstock Standards shall be based on:

- parameters necessary to manage risks of incidents involving the Rail Infrastructure/Rollingstock interface;
- parameters necessary to manage risks of incidents with adverse consequences for the infrastructure integrity related to Rollingstock integrity; and
- Rollingstock characteristics used in formulating Access Charges.

2.2. Train Standards

This section will provide information on the Train Standards applicable to the Nominated Network. The Train Standards shall be based on parameters necessary to reasonably manage risks of incidents involving the Rail Infrastructure/Rollingstock Configuration interface.

SCHEDULE E

Summary of Standard Access Agreement

Operative Provisions - Access Rights

- Access Rights granted are for non-exclusive rights for the operation of Train Services in terms of agreed service levels over the nominated network and are for Access only to those parts of the infrastructure specifically included in the nominated network.
- Access Rights do not include Above Rail Services such as carrying out any provisioning, inspection, testing, maintenance of rollingstock, marshalling, shunting or other relocation or storage of rollingstock.
- The Agreement is to be for the specified term.

General Conditions of Contract

1. Definitions and Interpretation

2. Access Charges

- The Third Party Operator is to pay Access Charges (together with costs for any ancillary services) in accordance with the Agreement. Periodic review of Access Charges may be agreed in the case of longer term agreements.
- QR renders accounts on a monthly billing basis with payment required 5 business days from receipt of invoice.
- Late payments will bear interest at the default rate (Commonwealth Bank Reference Rate for overdrafts of \$100,000.00 or more, plus 2%).
- In the case of a dispute over any amount payable the Third Party Operator is to pay the non-disputed amount together with 50% of the disputed amount pending resolution of the dispute by expert determination.
- Any reimbursement required from QR to the Third Party Operator will be made by way of deduction from subsequent accounts for Access Charges.
- The Third Party Operator is required to lodge a security deposit in the form of an irrevocable bank guarantee for an amount specified in the Agreement to secure performance by the Third Party Operator of its obligations under the Agreement.

3. Train Service Entitlements

- The Third Party Operator must operate Trains of the nominated specification for the transport of the nominated product over the nominated network.
- The operation of Train Services must be in accordance with agreed scheduling procedures subject to the constraints specified in the Agreement;
- Where the Third Party Operator fails during any 6 consecutive months (other than for reasons of Force Majeure or default by QR) to operate the Train Services which it is entitled to operate under the Agreement, QR may seek a reduction in the Third Party Operator's entitlements to a level commensurate with demonstrable requirements.

4. Day to Day Train Movements

- QR is to have exclusive responsibility for train control and will use reasonable efforts to ensure efficient utilisation of the nominated network having regard to the entitlements of all users and safety and maintenance requirements.
- The Third Party Operator is required to comply with all QR train control directions.

5. Train Operations

- All Train Services are to comply with all laws, Safety Standards, Safeworking Procedures, the Interface Coordination Plan and other requirements of the Agreement. QR may vary the Safeworking Procedures at any time following consultation with, and the giving of reasonable notice to, the Third Party Operator.
- The Third Party Operator is to use reasonable endeavours to ensure that its Train Services conform to the train schedule and must notify QR of any circumstances which may affect compliance with the train schedule. QR will use reasonable endeavours to provide an alternative time for any Train Service unable to operate in accordance with the train schedule however if it is unable to do so then the Train Service may be cancelled by either party.
- Except as otherwise prescribed in the Agreement neither party has any liability for delays to train movements unless arising from the willful default of either party.
- The Third Party Operator must provide the necessary communication links with QR's information systems and provide the specified details of Train Services prior to operation.
- The Third Party Operator must provide an Operating Plan detailing all procedural aspects relevant to its Train Services and must comply with that plan at all times. No alteration to the Operating Plan will be permitted without the prior approval of QR.
- The parties are required to meet specified performance levels and liquidated damages may be applied where these performance levels are not met. Performance levels may be reviewed periodically and QR may adjust the Third Party Operator's performance levels, the Access Charges and/or the service levels where the Third Party Operator consistently fails to meet its performance levels.
- The Third Party Operator 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 laws, the Rollingstock specification and Rollingstock Interface Standards specified in the Agreement.

- Only Rollingstock and Rollingstock Configurations authorised by QR may operate on the nominated network. For Rollingstock and Rollingstock Configurations to be authorised by QR the Third Party Operator must demonstrate to QR's reasonable satisfaction that Rollingstock and Rollingstock Configuration complies with the Rollingstock Interface Standards. Such authority to operate may be withdrawn if at any time Rollingstock or Rollingstock Configurations fail to comply with the Rollingstock Interface Standards.
- The Third Party Operator must ensure all loadings of Rollingstock are secure and comply with the requirements of the Rollingstock specification in the Agreement. QR may require discontinuance of any service and appropriate remedial action where it has a reasonable belief that Rollingstock is not properly loaded.
- QR may vary the Rollingstock Interface Standards at any time and where this necessitates modification of the Third Party Operator's Rollingstock, the cost of such modifications are to be borne in the manner agreed by the parties or, failing agreement, as determined by an expert.
- All Rollingstock must be equipped with the equipment necessary for compliance with the Safeworking Procedures and the Third Party Operator is responsible for providing any additional equipment required due to changes in the Safeworking Procedures required by QR from time to time.
- QR and the Third Party Operator must comply with the Interface Co-ordination Plan.

6. Infrastructure Management

- QR is responsible for the management and control of the nominated network and in developing and maintaining its Safety Management System shall have regard to the Rollingstock Interface Standards.
- QR will carry out maintenance work on the nominated network to the standard required to maintain its Accreditation as a Railway Manager and consistent with its Safety Management System.
- QR 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. Except for emergency possessions QR will comply with the specified notification procedures and, subject to compliance with those procedures, QR has no liability for delays or cancellations of Train Services caused by the imposition of operational constraints.

7. Incident Management

- The Third Party Operator is required to develop and comply with an Emergency Response Plan containing procedures for dealing with incidents such as derailments, breakdowns and accidents. The Plan must be consistent with QR's emergency procedures.

- The Third Party Operator must not cause any obstruction on the nominated network and must notify QR of any obstruction or breach of Safeworking Procedures of which it becomes aware or anything which may cause or contribute to an incident or obstruction.
- QR is responsible for the overall co-ordination and management of incident responses and, except for action required to avoid imminent risk of injury or damage, the Third Party Operator is not to take any action without the prior approval of QR.
- In the event of an incident the Third Party Operator is required to arrange recovery of Rollingstock and to co-operate and assist with the restoration of train movements, comply with the directions of QR and alter or divert Train Services as directed by QR.
- The Third Party Operator is to provide reasonable assistance to QR (including the provision of Rollingstock or equipment) to deal with circumstances which could delay train movements subject to the Third Party Operator being reimbursed its reasonable costs.
- The parties must use all reasonable endeavours to minimise damage arising from restoration of services or recovery of Rollingstock however QR is entitled to take any action it considers necessary to recommence services as soon as possible.
- Investigations into incidents are to be carried out in accordance with the process specified in the Agreement with the parties to co-operate in any investigation and the implementation of any recommendations.

8. Environmental Protection and Other Issues

- Prior to the commencement of Train Services the Third Party Operator is required, in collaboration with QR, to procure an Environmental Investigation to be conducted by a suitably qualified person reasonably acceptable to both parties to identify all risks of environmental harm arising out of the use of the nominated network. The Third Party Operator and QR will then develop and agree specific controls and measures to address the risks identified in the environmental investigation and incorporate them into the Environmental Risk Management Plan.
- The Third Party Operator is required to incorporate the Environmental Risk Management Plan so developed into its Environmental Management System and at all times ensure compliance with the Environmental Risk Management Plan and all environmental laws.
- If the Environmental Investigation, the Environmental Risk Management Plan or any independent audit identifies environmental factors preventing the provision of access as envisaged or indicate to the reasonable satisfaction of QR that it will be placed at an unacceptable risk of liability from possible environmental harm or of breaching environmental laws, QR may terminate the Agreement. Before QR may terminate the Agreement it must first have the material or report on which it has based its assessment of risk subjected to an independent review by an expert.
- If Train Services are to carry dangerous goods, the Third Party Operator is to comply with the Dangerous Goods Code (including obtaining the necessary authorisations and

providing details to QR prior to the commencement of each Train Service) and must include procedures for the handling of any incident in its Emergency Response Plan.

- The Third Party Operator must comply with the Noise Guidelines specified in the Agreement and any other documents prepared by QR in accordance with the relevant Environmental Protection Policy. Where the Train Services of the Third Party Operator exceed permitted noise levels the Third Party Operator, at its cost, may be required to participate in noise abatement measures and further monitoring of noise levels.
- The Third Party Operator is responsible for taking measures to prevent contamination and to deal with any spillage or leakage which could result in contamination.
- The Third Party Operator is required to have an independent environmental compliance audit conducted at least annually by a suitably qualified person reasonably acceptable to QR and provide a copy of the audit report to QR.

9. Accreditation

- Both parties are required to warrant that prior to the commencement of Train Services they are accredited under the *Transport Infrastructure Act 1994* to the extent required to perform their obligations and exercise their rights under this Agreement. The parties must also notify each other of any conditions, variations, amendment, investigation, suspension or cancellation affecting their Accreditation relevant to operating the Train Services on the nominated network.

10. Third Party Operator's Staff

- The Third Party Operator is responsible for the health and safety of its staff and their property.
- The Third Party Operator is required to demonstrate the competence of all of its staff involved in safety related work and to ensure that they hold and keep current all necessary qualifications and accreditations.
- The Third Party Operator is to ensure that all staff comply with QR train control directions, Safeworking Procedures and Safety Standards and QR may temporarily suspend the right of staff to operate on the nominated network in the event of breach.

11. Risk Management

- Prior to the commencement of Train Services the Third Party Operator is required, jointly with QR, to procure a Safety Risk Assessment to be conducted by an appropriately competent person reasonably acceptable to both parties to address the risks (other than environmental risks) of operations over the nominated network. The Third Party Operator and QR will then develop and agree on a Safety Risk Management Plan to be included in the Third Party Operator's Safety Management System.
- The Third Party Operator is required to have an audit undertaken and produce a certificate of compliance with the Safety Risk Management Plan at least annually. All audits are to be undertaken by an independent appropriately qualified person reasonably

acceptable to QR or may be undertaken as part of an audit required by the Safety Regulator.

12. Reporting and Inspection Rights

- Upon reasonable notice QR is entitled to inspect and audit those aspects of the Third Party Operator's operation, procedures and documentation relevant to the Third Party Operator's compliance with this Agreement.
- QR is also entitled to inspect any trains or Rollingstock to review compliance with the Rollingstock specification and the Rollingstock Interface Standards and the Agreement without liability for delays to Train Services caused by such inspection provided that QR uses its reasonable efforts to minimise any disruptions.

13. Insurance by Third Party Operator

- Prior to the commencement of Train Services the Third Party Operator must effect the required insurance policies noting the interests of the Third Party Operator, any contractor and QR and provide evidence of such insurance to QR upon commencement and renewal. The terms and conditions of the policies must be approved by QR.

14. Indemnities and Liabilities

- The Third Party Operator is required to indemnify QR in respect of:
 - claims arising from non-compliance with environmental obligations although indemnity reduced proportionately by extent of QR's default or negligence (if any);
 - claims in respect of damage to property or injury to or death of any person to the extent that such claims arise from the deliberate or negligent act or omission of, or default by, the Third Party Operator; and
 - claims in respect of damage to property or injury to any person carried on Train Services.
- The Third Party Operator is to release QR from all claims for damage to property or injury to persons associated with the use of the nominated network except where they arise from the deliberate or negligent act or omission of, or default by QR.
- Except as provided above QR is required to indemnify the Third Party Operator in respect of claims brought against the Third Party Operator in respect of any damage to property or personal injury or death to the extent that such claims arise from the deliberate or negligent act or omission of QR.
- QR is to release the Third Party Operator from all claims for damage to property or injury to persons associated with the use of the nominated network except where they arise from the deliberate or negligent act or omission of, or default by the Third Party Operator.

15. Limitation of Liability

- The liabilities of the parties for default are limited to the amount specified in the Agreement.

- Neither party has any liability for consequential loss or damage or loss of profits.
- Claims by either party must be lodged within six months of the occurrence of the event or circumstance giving rise to the claim.

16. Material Change

- QR will give the Third Party Operator notice of the occurrence of a material change which may give rise to an additional cost or variation to it of performing its obligations under the Agreement and the parties will enter into good faith negotiations to determine if any amendments to the Agreement are necessary as a consequence.
- Access charges are to be adjusted to reflect the impact of any material change which includes, but is not limited to, changes in taxes, laws and QR's Government Infrastructure Payments.

17. Disputes

- Any dispute between the parties is to be firstly referred 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. Events of Default

- Events of Default and Material Events of Default are as defined in the Agreement.
- An Event of Default or Material Event of Default must be remedied within the time specified in a Notice of Default otherwise access rights can be suspended and/or a court order sought however only a Material Event of Default can result in termination of the Agreement.

19. Suspension

- QR may immediately suspend Access Rights where the Third Party Operator fails to comply with its obligations under the Agreement and such failure is likely to cause disruption to Train movements or create risks to the safety of any person or property. QR may also suspend Access Rights for default in payment of money, maintenance of security or maintenance of insurance.
- QR may suspend the authorisation of any Rollingstock or Rollingstock Configurations where the Rollingstock or Rollingstock Configurations do not comply with the requirements of the Agreement until the non-compliance is rectified.
- Train Services will be suspended if the Third Party Operator's Accreditation is suspended or cancelled however QR may approve the operation of Train Services by another Accredited operator. The original Third Party Operator remains liable to pay the Access Charges during any period of suspension.

- If QR's Accreditation is suspended or cancelled payment of Access Charges is suspended during the period of suspension or cancellation provided such suspension or cancellation is not contributed to by the Third Party Operator.

20. Force Majeure

- The obligations of either party (other than an obligation to pay monies) will be suspended where by reason of Force Majeure that party is delayed in or prevented from carrying out its obligations under the Agreement.
- In the event that infrastructure on certain specified corridors of the nominated network is damaged or destroyed by an event of Force Majeure and in QR's reasonable opinion the cost of repairing the damage is not economic, QR may elect not to proceed with repairs or replacement unless the parties agree as to the funding of the cost of that work.
- In the event of a Force Majeure which prevents performance for a period of six months the other non-affected party may terminate the Agreement.

21. Termination

- The parties will have the right to terminate the Agreement for specified Material Events of Default.
- Upon termination of the Agreement for a Material Event of Default the parties are released from further obligations or liabilities under the Agreement except in respect of any antecedent breaches.

22. General

- The Agreement contains standard provisions in relation to jurisdiction, variation, waiver etc.
- The Third Party Operator may assign the whole of its respective rights and obligations under the Agreement to a related body corporate Accredited to operate Train Services and otherwise capable of performing its obligations under the Agreement or to a non-related body corporate with the prior written consent of QR (such consent not to be unreasonably withheld). A change in control of a Third Party Operator not a publicly listed corporation will be deemed to be an assignment of the Agreement.
- The respective Chief Executive Officers are to consult on all media releases and public statements on any issues which are in the parties' common interests provided that neither party is to disclose Confidential Information without the other party's approval.
- The parties are obliged to keep confidential the terms of the Agreement and any information disclosed to the other on a confidential basis except where disclosure is required by law. Confidential Information can only be used by the Third Party Operator for the purpose of operation of Train Services pursuant to the Agreement.
- All notices and communications must be in writing and effective on receipt.

- The Agreement relates only to the use of QR infrastructure and it is the responsibility of the Third Party Operator to obtain the necessary consent from the owners of any land which is not controlled by QR.
- The Third Party Operator is to ensure that QR is entitled to enter upon any of its land, premises or Rollingstock for the purpose of exercising any rights under the Agreement.

SCHEDULE F

Train Service Groups

1. The **Central Queensland Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising rail corridors:
 - from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine and Oaky Creek mine;
 - from the port of Gladstone to Oaky Creek mine;
 - from the port of Gladstone to Moura mine;
 - from the port of Abbot Point to Newlands mine; and
 - all branch lines directly connecting coal mine loading facilities to the abovementioned corridors.

2. The **Goonyella Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising rail corridors:
 - from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine and Oaky Creek mine; and
 - all branch lines directly connecting coal mine loading facilities to the abovementioned corridors with the exception of any branch lines south of Oaky Creek.

3. The **Moura Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising the rail corridor:
 - from the port of Gladstone to Moura mine; and
 - all branch lines directly connecting coal mine loading facilities to the abovementioned corridor.

4. The **Blackwater Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising the rail corridor:
 - from the port of Gladstone to Oaky Creek mine; and

- all branch lines directly connecting coal mine loading facilities to the abovementioned corridor with the exception of any branch lines north of Oaky Creek.
5. The **Newlands Train Service Group**, which comprises all Train Services operating on the 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 the abovementioned corridor.
6. The **Mount Isa Train Service Group**, which comprises all Train Services operating on the Rail Infrastructure comprising the rail corridor:
- from Townsville to Mount Isa; and
 - all branch lines directly connecting mine loading/unloading facilities to the abovementioned corridor.

SCHEDULE G

Application of Reference Tariffs

Part A - Coal Carrying Services

1. Reference Train Services

1.1 Commodity type

Reference Train Services identified in accordance with this Part A will be defined as Train Services operated for the purpose of transporting coal. Any reference to Train Services in the remainder of this Part A of this Schedule will, unless otherwise specified, be taken to be a reference to a Train Service operated for the purpose of transporting coal.

1.2 Geographical Scope

Each Reference Train Service will be defined with respect to operation between any loading point within the relevant geographical area nominated as origin and any unloading point in the relevant geographical area nominated as destination. Reference Train Services will be developed as follows:

- (a) Newlands Reference Train Service:
 - Origin: geographical area within 2 km of the Rail Infrastructure corridor that exists between the loading points at Newlands and McNaughton;
 - Destination: geographical area within 2 km of Abbot Point Coal Terminal;
- (b) Moura Reference Train Service:
 - Origin: geographical area within 2 km of the Rail Infrastructure corridor that exists between the loading points at Boundary Hill, Dunn Creek and Moura Mine;
 - Destination: geographical area within 2 km of the Rail Infrastructure corridor that exists between the unloading points at Queensland Alumina Limited, Clinton, Barney Point, Gladstone Power Station, and Queensland Cement Limited;
- (c) West Moreton Reference Train Service:
 - Origin: geographical area within 2 km of the Rail Infrastructure that exists between the loading points at Ebenezer and Box Flat;
 - Destination: geographical area within 2 km of Fisherman Islands;
- (d) Blackwater Reference Train Service:
 - Origin: geographical area within 2 km of the Rail Infrastructure that exists between the loading points at Boonal, Koorilgah, Curragh, Boorgoon, Kinrola, Ensham, Gordonstone, and Gregory;

- Destination: geographical area within 2 km of the Rail Infrastructure corridor that exists between the unloading points at Queensland Alumina Limited, Clinton, Barney Point, the Gladstone Power Station, and Queensland Cement Limited;
- (e) Goonyella South Reference Train Service:
- Origin: geographical area within 2 km of the Rail Infrastructure corridor that exists between the loading points at Coppabella, Peak Downs, Saraji, Norwich Park, German Creek, Oaky Creek, and Gregory;
 - Destination: geographical area within 2 km of Dalrymple Bay coal terminal and Hay Point;
- (f) Goonyella North Reference Train Service:
- Origin: geographical area within 2 km of the Rail Infrastructure corridor that exists between the loading points at Burton, Moranbah North, Goonyella, Riverside, and North Goonyella;
 - Destination: geographical area within 2 km of Dalrymple Bay coal terminal and Hay Point; and
- (g) Goonyella West Reference Train Service:
- Origin: geographical area within 2 km of Blair Athol;
 - Destination: geographical area within 2 km of Dalrymple Bay coal terminal and Hay Point.

1.3 Train Service Characteristics

Each Reference Train Service nominated in Clause 1.2 will also be defined in accordance with other characteristics as follows:

- (a) Train Technical Characteristics including:
- axle load/configuration;
 - train length;
 - gross tonnage (loaded and unloaded);
 - traction type;
 - terminal configuration; and
 - compliance with other existing Rollingstock Interface Standards applicable for the relevant Rail Infrastructure.
- (b) Train Operational Characteristics including:
- compliance with nominated sectional running times;
 - availability for operation (e.g. 24 hours/day, 7 days/week);
 - loading/unloading time on network;
 - capacity entitlement defined according to specified regularity on weekly basis, specified intervals between train cycles and specified transit times;
 - compliance with QR's coordinated corridor scheduling process; and
 - variability of operation.

- (c) Contract Terms and Conditions including:
- consistency with the principles incorporated in the summary of the standard Access Agreement at Schedule E;
 - term; and
 - incorporation of an Access Charge review provision in the Access Agreement which relates movement in the Access Charge to movements in the Reference Tariff.

2. *Reference Tariff applicable to Reference Train Services*

Reference Tariffs will be defined for each Reference Train Service nominated in Clause 1.2 of:

- (a) amount of Reference Tariff identified as \$/000 gtk;
- (b) proportion of Reference Tariff payable as a fixed charge; and
- (c) escalation of Reference Tariff.

3. *Other Conditions applicable to Reference Tariffs*

The validity of the Reference Tariff for each Reference Train Service nominated in Clause 1.2 will be conditional upon:

- (a) Traffic Volume Range

The Reference Tariff for each Reference Train Service nominated in Clause 1.2 will be valid within a nominated annual traffic volume range. Traffic volume will be measured as gross tonne kilometres resulting from Train Services operating on the Track between all loading points within the relevant loading geographical area and all unloading points within the nominated unloading geographical area (including from Train Services that are not subject to the relevant Reference Tariff).

4. *Development of Access Charges for actual Train Services*

4.1 Where there is an applicable Reference Tariff

The Access Charge for a Train Service that is consistent with the specified commodity type and geographic area nominated in a Reference Train Service will only differ from the relevant Reference Tariff where the Train Service characteristics differ from the Reference Train Service characteristics. In such circumstances, QR will determine the Access Charge by assessing variations to the Reference Tariff to ensure that the change in the revenue that would be received by QR reasonably reflects the change in costs (including the impact of changes in risks) to QR arising from the operation of the Train Service compared to the operation of it if it matched the Reference Train Service.

In doing so, QR will endeavour to ensure that variations in Access Charges from the Reference Tariff to reflect variations in Train Service characteristics from the Reference Train Service characteristics will be assessed consistently for all Train Services within the same specified commodity type and geographic area of the Reference Train Service.

4.2 Where there is no applicable Reference Tariff

(a) Development of Applicable Reference Tariff

Where a proposed Train Service is not consistent with the geographic scope of an existing Reference Train Service as identified in Clause 1.2, QR may, depending on the significance of the traffic flows arising from the proposed Train Service:

- develop an additional Reference Train Service to those identified in Clause 1.2 which identifies a geographic scope that incorporates the loading/unloading points for the proposed Train Service, and develop an associated Reference Tariff for this additional Reference Train Service;
- extend the geographic scope of an existing Reference Train Service identified in Clause 1.2 to incorporate the loading/unloading points for the proposed Train Service; or
- not develop a Reference Train Service incorporating the loading/unloading points for the proposed Train Service due to the relative insignificance of the resultant traffic flows.

QR will not extend the geographic scope of an existing Reference Train Service to incorporate an additional loading/unloading point, if the inclusion of this additional loading/unloading point would result in an increase in the applicable Reference Tariff.

Where it is proposed to extend the geographic scope of an existing Reference Train Service, or develop an additional Reference Train Service, QR will incorporate in its Indicative Access Proposal for the proposed Train Service its estimate of the expected Access Charge to apply. QR will also submit to the QCA for its approval the Reference Tariff to apply to the existing Reference Train Service (as geographically extended) or the additional Reference Tariff (as applicable). When the Reference Tariff for the Reference Train Service applicable to the proposed Train Service is approved by the QCA, the quoted Access Charge will be replaced by the Reference Tariff, adjusted as necessary for changes in the actual Train Service characteristics from the specified Reference Train Service characteristics in the manner outlined in Clause 4.1.

(b) Amendment of Schedule G

Where an applicable Reference Tariff is to be developed in accordance with Paragraph (a) of this Clause, QR will submit to the QCA a Draft Amending Undertaking amending this Schedule G to reflect the amendment to the existing Reference Train Service or the identification of a new Reference Train Service, whichever is applicable.

5. Review of Reference Tariffs

For the purpose of Reference Tariffs subject to this schedule, a Material Change Event will include:

- (a) actual traffic volume falling outside the volume range nominated for the relevant Reference Train Service pursuant to Paragraph 3(a) of this Schedule.

SCHEDULE H

Operating Plan

1. Area of Operation

- Origin
- Destination
- Route Description
- Entry and exit points onto Network

2. Business Plan

- Tonnage profile
- Passenger loading and unloading profile
- Anticipated project life
- Seasonality of haulage

3. Operation

- Type of service (passenger, freight)
- Commodity
- Train Consist Configuration
- Load and Length of train service
- Operational constraints
- Dangerous goods
- Overload management system
- Timing of scheduled servicing activities

4. Service Levels

- Frequency requirements, including specific daily and weekly requirements
- Maximum train services per year
- Dwell times at loading facility
- Dwell times at unloading facility
- Enroute operational requirements
- Rollingstock operational speed
- Indicative timetable requirements
- any connecting services
- any critical timings at specified locations

5. Train Service Planning/Ordering

- Train service ordering preference
- Train service canceling preference

6. Train Information

- Type
- Class and number of locomotives per train
- Gross tonnage of train
- Tare of train
- Method of operation
- Traction type
- Fuel range
- Safety systems
- Communication system
- Train length
- Achievable operating speeds

7. Crewing Plan

- Train service crew requirements
- Location of crew depots
- Crew change points
- Dwell times at change points

8. Recovery Methods

- Recovery of marked off rollingstock at loading/unloading locations/enroute
- Recovery of derailments
- Recovery of failed locomotives

SCHEDULE I

Environmental Investigation

This list is to be taken as the minimum requirements to be addressed and the Environmental Investigation and the Environmental Management System should not be restricted to the elements included in this list.

1. Water Quality Management

The Third Party Operator must consider the impact on storm water systems and natural waterways. In doing so, all relevant water quality standards and regulations must be met.

2. Air Pollution Management

The Third Party Operator must consider the impact on air quality. In doing so, all relevant air quality standards and regulations must be met.

3. Contaminated Land Management

The Third Party Operator must consider the impact of the operation on land contamination. In doing so, all practicable control measures to prevent the contamination of land must be undertaken.

4. Nature Conservation

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

5. Management of Hazardous Substances and Dangerous Goods

The Third Party Operator must consider the environmental impacts associated with the management of hazardous substances and dangerous goods by the Third Party Operator. In particular, the Third Party Operator must ensure that QR's requirements for the management of hazardous substances and dangerous goods are complied with.

6. Waste Management

The Third Party Operator must consider the impact of any waste produced by the operation. In doing so, all relevant government and local authority requirements must be met.

7. Environmental Noise Management

The Third Party Operator must consider the impact of any noise produced by the operation. In particular, the Third Party Operator must meet the requirements of the Rail Noise Plan referred

to in the Environmental Protection Policy (Noise) and, where appropriate, must comply with QR's requirements for meeting the Rail Noise Plan referred to above.

8. Environmental Monitoring

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

9. Education, Awareness and Training

The Third Party Operator must consider the impact of the level of employee training with particular emphasis on the implementation of the Environmental Management System.