



8 November 2024

Rail Operator Group Collaborative Submission to the QCA on Queensland Rail's 2025 Draft Access Undertaking

This is a public submission

1. Executive Summary

The Rail Operators Group (**ROG**) welcomes the opportunity to make a further submission to the Queensland Competition Authority (**QCA**) in relation to Queensland Rail's (**QR**) 2025 Draft Access Undertaking (**2025 DAU**) and collaborative stakeholder submissions.

The ROG acknowledges it has not seen QR's submission on the collaborative process and provides its comments within this submission, including in **Table 1**, based primarily on communications as part of the collaborative process and proposed amendments provided by QR to rail operators.

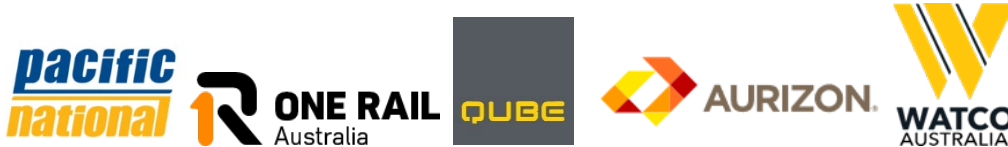
We appreciate the opportunity to engage with QR and other stakeholders on concerns relating to regulatory and operational matters in the 2025 DAU. During the collaborative submission process we note that QR agreed to several ROG concerns relating to:

- Insurance and limitations on liability clauses
- Dispute resolution
- Assignment by QR
- The updating/removal of the definition of ad hoc planned possessions.

In some instances, QR has provided updated drafting for review on these issues and accordingly these matters (items 1, 2, 4, 5, 6, 8, 9, 10, 14, 17 summarised in **Table 1**) can be considered by the QCA as collaboratively reached positions between rail operators and QR.

Despite reaching agreement on some regulatory and operational matters, disappointingly the parties failed to reach agreement on several key issues raised previously by rail operators. These are issues of:

- Public liability coverage
- The use of captive insurance companies
- Train path rescheduling
- Train path resumption
- Performance indicators
- Network management principles.



ROG concerns across these areas are discussed within the body of this submission and are also outlined in **Table 1** (items 3, 7, 11, 12, 13,15, 16, 18-23). We request the QCA's further consideration of these issues and provide the following suggestions:

Public liability limit of cover

Operators requested that public liability cover is capped at \$250m (the national industry standard maximum and readily available) rather than the \$350m proposed by QR (that is difficult to obtain and acts as a barrier to entry). Parties agreed to hold a workshop on this issue.

- The ROG suggests the QCA provide its support for the agreed process by recommending that QR undertake a joint review with rail operators about liability cap and maximum foreseeable loss scenarios, with the objective of resolving the required public liability coverage before the undertaking is finalised.

The use of captive insurance companies

Rail operators have requested that clause 16.3 expressly allow the use of captive insurance companies.

- We ask the QCA to consider rail operators request that clause 16.3 expressly allow the use of captive insurance companies, noting that the ARTC has recently agreed to amend their Interstate Access Agreement to include captive insurance companies. The ACCC has noted that this appears to be uncontentious and does not appear to disadvantage any operator¹.

Train path rescheduling

The ROG has concerns with drafting provided by QR and we have requested QR consideration of some further amendments.

- The ROG proposes that QR and Rail Operators continue to work to settle a mutually acceptable form of drafting. Once it is resolved it can be provided to the QCA.

Train path resumption

The ROG has concerns with drafting provided by QR and has requested QR consideration of the further amendments we are proposing.

- The ROG proposes that QR and Rail Operators continue to work to settle a mutually acceptable form of drafting. Once it is resolved it can be provided to the QCA.

Performance indicators and reporting

There was insufficient time within the current process to adequately address potential improvements to performance indicators and reporting. Parties agreed there is opportunity for ongoing discussion.

¹ [ACCC, Amendment Notice, Australian Rail Track Corporation's 2024 Interstate Rail Network Access Undertaking, 24 October 2024, p 26.](#)



- The ROG requests that the 2025 AU include a commitment by QR to hold an annual stakeholder forum to discuss matters related to the undertaking and standard access agreement (SAA), including further discussion of performance indicators and reporting. This would ensure a regular commitment from QR to meet with rail operators and would also provide for a smoother transition between access undertakings.
- Discussion topics at an annual stakeholder forum during the regulatory term could also include implementation of National Rail Action Plan (**NRAP**) interoperability and harmonisation objectives. We had requested the inclusion of various changes to reflect the priority areas of the NRAP, including improving interoperability and lifting rail productivity. We note the QCA's draft decision that it is not appropriate to require QR to amend the processes or arrangements in DAU3 to achieve improved alignment with those arrangements in other jurisdictions, and that the QCA's 2025 DAU investigation is not the right forum to attempt to establish consistent processes and standards across jurisdictions. However, the QCA did encourage QR to work towards achieving greater operational harmonisation with other network managers, in consultation with industry.

Queuing Framework

Rail operators requested amendments to clause 2.9.2 to put an existing access holder first in the queue when the existing access holder notifies QR of its intent to renew. This would be on the proviso that the access holder notifies QR within 120 days of the expiry of its access agreement that it wishes to renew its access entitlement.

- The ROG requests further QCA consideration of our proposed change to the queuing framework.

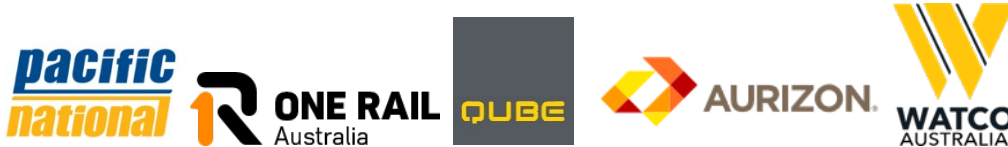
Network management principles

The ROG appreciates that QR has provided revised drafting of the Network Management Principles (**NMP**).

- In principle agreement was reached between parties on the need for greater recognition of the role of the Rollingstock Operator in the development of the Master Train Plan (MTP) and Daily Train Plan (DTP).
- We acknowledge that QR have included in their drafting (Appendix III) that rail operators will be notified of decisions around access rights. However, within the drafting provided by QR, rail operators don't believe that the consultation processes adequately recognise the need to include both Access Holders and rail operators. The ROG seeks inclusion of rail operators in the consultation processes and requests that QR amend their drafting to recognise Rollingstock Operators in consultation processes.

There are several other issues that have not been addressed in the amended NMP drafting to reflect operator concerns:

- Clause 2.1(f) - Faster MTP amendment (one month) where the change does not impact any other services
 - The ROG requests that QR consider other mechanisms for providing improved certainty to Operators around provision of paths in the 1–3-month timeframe. For example, the Special Train Notice (STN) process used by Sydney Trains and similar approaches used by ARTC. This is described in Figure 1.



- Clause 2.2(e)(ii) - Required notice for DTP – recognising that we are all operating continual 24/7 businesses:
 - The ROG maintains the position set out in its submission to the QCA that QR should accept path requests with 2 days’ notice, rather than 2 business days. This is a lesser obligation than arrangements with other rail networks which accept path applications *up to and including the proposed day of operation* and is reflective of the 24/7 nature of rail freight operations, the logistics industry more broadly and QR operations (as both a passenger operator and network manager). While QR has the right to refuse a path request on justifiable grounds (e.g. capacity, safety etc), QR should be required to make surplus capacity available to third party operators requiring access to the network.
- Clause 2.4 – Disputes on Planned Possessions – quicker resolution of disputes on planned possessions
 - The ROG supports an accelerated process for disputes on planned possessions to provide an opportunity for disputes to be raised and resolved prior to the planned possession. This would allow adequate consideration of the scope of the works to be delivered, as well as the interests of the rail operator and the social and economic impacts for the community.
- Clause 3(f)-(i) – Traffic Management Decision Making Matrix - Operators consider that there is a strong need to review these clauses, and the way in which QR applies its train control decisions, to provide greater certainty and reliability to freight services and ensure that passenger prioritisation is applied in a way that doesn’t exceed QR’s obligations under the Transport Infrastructure Act.
 - There was insufficient time during this current process to progress this issue. The ROG requests QR’s commitment to a joint review of the traffic management arrangements before the QCA’s final decision on DAU3. If this timing proves too challenging, we ask the QCA to require QR to complete the review within the first 6 months of AU3, noting that any changes to the Network Control Principles, including the traffic management decision making matrix, will require a DAAU and ratification by the QCA. We also acknowledge that changes to Train Control Principles impacting day of operation practices will require transitional arrangements, including time for education and training of Network Control Officers.

Southeast Queensland standard gauge operations

Acknowledging the dual gauge network is currently not a declared service the ROG nonetheless sees benefit in QR committing to a process for negotiating and managing access to interstate services and the dual gauge link.

- The ROG requests that QR commit to expanding the scope of the 2025 DAU to include access to interstate services using its dual gauge network.



2. Introduction and Background

The ROG welcomes the opportunity to offer further comment on QR's 2025 DAU and provide a collaborative submission.

As with the ROG submissions provided to the QCA in March 2024 and July 2024², the ROG's focus is on seeking resolution to common concerns shared by commercial rail operators using the QR network.

The ROG was formed in 2018 for the purpose of facilitating collective negotiation with Transport for New South Wales (**TfNSW**) on the Standard Track Access Agreement to apply to two New South Wales (**NSW**) rail networks: the Metropolitan Rail Network (MRN) and the Country Regional Network (CRN). The ACCC granted authorisation to the ROG for this purpose until October 2023.

On 1 February 2024 the ACCC granted authorisation to the ROG in respect of discussions and collective negotiations with an expanded group of rail network managers, including QR, in respect of access arrangements, including broad pricing principles. This authorisation is valid until October 2023.

Members of the ROG operate rail freight haulage services across Australia, including on QR Networks. Some ROG members also provide integrated supply chain services, including rail and road transportation, port services and material handling for a range of mining, metal, industrial and agricultural customers.

This submission is made on behalf of the following ROG members: Aurizon, Pacific National, Qube, One Rail Australia, and Watco Australia. Qube Logistics (Rail) Pty Ltd (**Qube**), Pacific National Pty Ltd (**PN**) and Aurizon Operations Limited (**AO**) operate services or have access rights across rail networks from Queensland (**Qld**) to NSW, Victoria (**Vic**), South Australia (**SA**), and Western Australia (**WA**); One Rail Australia operates in Qld and NSW, including the Hunter Valley; and Watco Australia operates services and has access rights in Qld, NSW and WA.

This submission does not contain confidential information and is a public submission.

3. Collaborative Submission Process

Following the QCA's Draft Decision on QR's 2025 DAU, QR and rail operators have engaged in a collaborative process, including semi-regular meetings. While some progress has been made on reaching agreed positions, the ROG remains disappointed with the effectiveness of QR consultation.³

Disappointingly, progress during the collaborative submission period was limited due to somewhat inefficient processes. It appeared that often QR had not sufficiently reviewed or considered issues in advance and therefore time was lost during consultation meetings recapping issues for QR's benefit. This was despite issues being flagged on forward agendas and despite QR having access to earlier ROG and rail operator submissions that covered the issues.

² Rail Operator Group responsive submission to the Queensland Competition Authority on Queensland Rail 2025 Draft Access Undertaking 14 March 2024; Rail Operator Group Submission to the QCA Draft Decision on Queensland Rail's 2025 Draft Access Undertaking 29 July 2024

³ The ROG outlined concerns with the effectiveness of QR consultation in its July 2024 Submission to the QCA Draft Decision on Queensland Rail's 2025 Draft Access Undertaking



Meeting materials, including QR position overviews and proposed drafting, were generally provided the evening before each meeting, leaving operators with limited time to consider their responses. QR also cancelled several meetings.

We appreciate that QR has competing demands, but it is reasonable to expect that all stakeholders undertake the necessary pre-work to enable efficient issues analysis and agreed meeting outcomes.

The ROG suggests that for future consultative negotiations it would be beneficial to have the QCA attend to observe the negotiations. This would provide the QCA with a greater understanding of the issues and reasons for each party's position. We consider that not only would this encourage the parties to genuinely seek agreement on issues, but it would also mean that the QCA was well placed to decide on issues where agreement was not able to be reached. This approach has been effectively used in other regulatory processes, including the ACCC's current review of the ARTC Interstate Access Undertaking. The ACCC has explained that its attendance at consultation and forums assists its understanding of rail operator, access seeker and ARTC interests, as well as ACCC understanding of public and community interests.

The ROG would welcome similar QCA involvement in the newly proposed annual stakeholder forums during the life of the access undertaking. This would provide greater understanding of all parties' needs and improve the transition between access undertakings. The current process creates a significant step change in the relationship between QR and its customers with each new undertaking. While QR facilitates user group forums for separate networks, focusing on operational performance, there is room for a more broad based customer forum to consider issues such as changes to reporting.

As well as enabling QR, rail operators, access seekers and the QCA to better understand industry reporting requirements, an annual forum would also offer an opportunity for QR to work with industry to adapt to changes in the freight and logistics market or the broader rail industry. Similarly, QR could update stakeholders on any changes and innovations it is considering.

With the Commonwealth and State Governments collectively aligning to deliver NRAP and support National Rail System interoperability for rail investments, operators would welcome a commitment by QR to update users regularly on its actions and engagement with forums related to interoperability and harmonisation. For example, reform of the Rail Safety National Law (RSNL) National Regulations to require rail transport operators (RTOs) on the National Network of Interoperability (NNI) to include an Interoperability Management Plan in their Safety Management Systems and longer term legislative changes to include overarching interoperability provisions in the RSNL, are being considered now. Operators are keen to know what steps network managers are taking to address issues around rail interoperability and promote the efficient operation, use of and investment in the infrastructure.

The proposed annual stakeholder forum (attended by the QCA), would provide at least one opportunity each year for such an update to be provided.



4. ROG Comments in Relation to Proposed Changes to the Undertaking and Standard Access Agreement

The outcome of the collaborative submission process and weekly stakeholder meetings with QR is explained below and summarised in Table 1. Table 1 outlines the ROG position on changes agreed by QR during the consultation process and demonstrates where ROG is supportive of the collaborative agreement reached and the amended drafting provided by QR (Appendices I-III). Table 1 also outlines where misalignments remain and/or where final drafting and agreement is still being sought.

The ROG comments and suggestions support the object of economically efficient operation under Part 5 of the QCA Act (s. 138(2)(a)) and are in the interests of QR, rail operators, access holders and in the public interest (ss.138(2)(b), (d), (e) and (h)). Importantly, we have taken a holistic view of the supply chain and our recommendations are aimed at supporting more freight on rail and improving economic activity within Queensland.

Insurance and claims

The ROG appreciates that QR has addressed most rail operator insurance concerns and reached an agreed position on several areas reflected in Table 1. The exception to this is public liability coverage and the use of captive insurance companies.

Public liability coverage

Operators requested a reduction in public liability coverage from \$350m to \$250m, in line with other Rail Infrastructure Managers (**RIMs**) access agreements. QR explained that this is a complex issue and QR would need to consider foreseeable loss scenarios. We note that there is no issue regarding the overall public liability policy, it is just the limits of coverage that are being discussed.

It was agreed among parties that the topic of public liability coverage would be taken offline for further discussion and form the basis of a workshop to be attended by QR and rail operators. QR made it clear that any changes to coverage would need to go back to the QR Board. This workshop has not yet been scheduled.

- The ROG suggests the QCA provide its support for the agreed process by recommending that QR undertake a joint review with rail operators about liability cap and maximum foreseeable loss scenarios, with the objective of resolving the required public liability coverage before the undertaking is finalised.
- We also suggest that if the limit is subsequently changed to \$250m, then it should be immediately changed for all operators and flow on to all current agreements at the time. Should QR agree to lessen the maximum value we ask that they commit to renegotiating all their existing access agreements, thereby enabling operators to immediately adjust their insurance arrangements.



The use of captive insurance companies

Rail operators have requested that QR recognise the use of captive insurance companies by operators and that clause 16.3 be extended to expressly allow the use of captive insurance companies.

The ARTC has recently agreed to amend their draft Interstate Access Agreement to include captive insurance companies and although QR undertook to address this issue and provided drafting intended to do so, resolution was not reached.

- We ask the QCA to consider rail operators request that clause 16.3 expressly allow the use of captive insurance companies, noting additional wording could be used to provide confidence to QR of the standing of the captive, such as: *'wholly owned captive insurance company, reinsured with various insurers in Australia and London (Lloyds and company markets).'*

Dispute resolution and assignment by QR

Rail operators asked that Clause 19.2 in the Standard Access Agreement mirror the escalation timeframes and processes in section 6.1 of the 2025 DAU. Accordingly, QR agreed to reduce CEO negotiation to 10 days in the SAA and provided revised drafting that is supported by rail operators. Rail operators had opposed QR's SAA amendment to insert a new assignment clause (22.1(a)) if Queensland Rail ceases to have a right to operate all or part of the Network:

if Queensland Rail no longer has or expects to no longer have a right to operate the Network or any part of the Network, it may Assign all or part of its rights or obligations under this agreement to an Assignee who has the expertise, the financial resources and other relevant resources to enable it to provide the relevant Access Rights without the prior consent of the other Parties provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to provide the Access Rights to the extent of the rights and obligations Assigned to the Assignee.

The ROG welcomed the opportunity to work with QR on an amended clause with terms more reasonable to rail operators. Consequently, QR said it would consider the ability for rail operators to seek information and assurance regarding an assignee and agreed on the inclusion of a notification period in the case of assignment by QR. QR provided revised drafting with this provision to rail operators on 24 October 2024 (Appendix II).

Train path management

Rail operators have requested that QR include provisions in the 2025 DAU and SAA to enhance QR's ability to manage and optimise the utilisation of the network, including:

- Train service descriptions to be specified in a way that allows some flexibility for train scheduling;
- Providing QR an ability to reschedule train paths as a response to poor reliability performance; and
- Strengthening QR's rights regarding path resumption for underutilisation.



The QCA expressed support for these improvements, on the basis that they would promote more efficient utilisation of the rail network.

Operators consider that there is a need for a nationally consistent approach to the definition and application of provisions around the rescheduling and resumption of train paths, particularly in response to non-performance. Having a series of non-aligned provisions means that an entitlement to resume or reschedule may trigger on one network, but not on an adjoining network, stymieing the ability to efficiently re-allocate the path until both networks have triggered. This could limit the effectiveness of the provisions in promoting improved utilisation of the network and enhancing economic outcomes. Accordingly, we consider it is important that each network adopt consistent triggers and rights, notwithstanding that there may be some differences in each RIM's processes for exercising these rights.

4.1.1. Flexibility in train scheduling

The concept of providing QR with some flexibility in train scheduling (within boundaries to be agreed with the Access Holder when defining its Train Service Entitlement) was discussed between the ROG and QR. QR advised that if, as part of an MTP review, QR identified benefits from minor rescheduling of existing train services, it would seek to negotiate this with the relevant Access Holders. QR has not provided the ROG with any proposed SAA drafting amendments that would formalise this process.

The ROG considers that there is benefit in QR having a clear entitlement in its access agreements to apply some flexibility in train scheduling, to avoid such modifications being prevented if an Access Holder elects not to accept a variation through this informal process. Reflecting such an entitlement in the SAA would provide confidence that all Access Holders are on the same footing in relation to QR's ability to modify schedules to improve overall network utilisation and efficiency.

4.1.2. Train path rescheduling

The purpose of the requested changes was to provide QR with a right to reschedule a train path that has consistently been operated with poor reliability, with the ultimate objective of providing QR with improved tools to manage train paths to promote network utilisation and optimisation. The ROG had proposed indicative SAA drafting for this entitlement, modelled on the provisions applied in other RIM standard access agreements.

QR agreed in principle to include a train path rescheduling provision in its SAA and has prepared proposed amendments to its SAA to reflect this. While operators appreciate QR's agreement to address this issue, we have concerns with the drafting proposed (Appendix II) in that it applies material differences to the trigger and rights, compared to the usual approach from RIMs and in doing so, creates a significantly higher risk to operators.



Operators consider that QR's proposed drafting should be amended to address the following key issues.

(a) Review trigger

The purpose of the amendment is to enable QR to review schedules where paths are consistently operated with poor reliability. The ROG proposed that this be achieved by providing that a review would consider performance during the preceding continuous 3 month period, to identify if actual performance departed from the scheduled train path in material respects. While the review trigger was not specifically defined, the objective of the review would be to amend the scheduled train path so that it more closely reflected the 3-month performance.

However, we consider that QR's proposed review trigger is excessively tight, in that:

- it can trigger where the service is 'off path' even if it consistently departs and arrives on time,
- QR uses a narrow 15-minute threshold to determine on time, and
- the use of 3 - not necessarily consecutive months in a year - is much less indicative of consistently poor reliability performance.

Accordingly, QR's proposed drafting will trigger a review in circumstances that we believe do not constitute consistent poor reliability. Further, it is unclear how QR will measure performance against its proposed trigger to assess where the 50% threshold is met.

While the ROG acknowledge that our proposed drafting lacks certainty due to the absence of a defined performance trigger, given the ultimate requirement is that any amended timetabled path more closely reflect the 3-month history, this indicates that actual performance needs to differ from schedule for the majority of services operated. Noting QR's preference for a more clearly defined performance trigger, the ROG consider that this can be clarified by providing that:

- Where the ROG's proposed test was that services 'differ in material respects' from the schedule, this can be clarified to require 'that the service departure and/or arrival is ahead or late (using a 30-minute materiality threshold) for more than 50% of the times the service runs in any consecutive 3-month period of time'.
- The ROG had proposed that a rescheduled path should 'more closely reflect' the three month history but agree that QR's proposed requirement that the rescheduled path reflect 'as closely as reasonably practicable, the demonstrated 3-month history' is a better test, as this will ensure that (regardless of the performance trigger) a variation can only be implemented where there is a consistent pattern of poor reliability.

(b) Exclusions

Given the purpose of the clause is to identify where paths are consistently operated with poor reliability, the ROG considers that it is important that performance changes that are unusual or which have been agreed in advance are excluded from the assessment. This concept is reflected in QR's proposed drafting, however, we consider that the exclusions proposed by QR (being QR Cause (which includes force majeure events) and agreed variations but only where the agreement was requested by QR) are too narrow, and should be expanded to include the following:



- Where prior agreement of QR and Access Holder has resulted in the use of an alternative train path, regardless of who requested the variation. We note that QR has accepted this position in relation to the train path resumption, and query why the same approach is not adopted here.
- Other unforeseen events, where the Access Holder can supply objective evidence to show that it is exceptional in nature.

(c) Process and timeframes

The ROG's proposed drafting had included a joint review between QR and the Access Holder, however QR's proposed process is for a QR review of the Access Holder's performance. QR may then issue a Review Notice advising that it is considering amending the timetabled path (to resemble as closely as is reasonably practicable the 3-month history), and request that the Access Holder provide information relevant to QR's assessment. However, in practice, the ROG considers that there will need to be greater engagement with the Access Holder, and clarity around how the alternative path will be defined, including:

- The Review Notice must include specification of QR's proposed alternative path
- The information to be provided by the Access Holder should include information on 'whether, and if so how, the (alternative) Timetabled Train Path should be amended'
- The process should provide for an alternative Timetabled Train Path to be agreed, with the Review Decision Notice only provided where the alternative path has not been agreed between the parties.

The ROG had initially been concerned around the timeframes embedded in QR's proposed drafting, including the 40 business days available to an Access Holder to provide information about its ability to operate its Train Services on time, particularly given processes in other RIMs standard access agreements do not specify similar timeframes. However, on the expectation that this period will be used to provide opportunity to negotiate and agree an alternative path, as well as then giving the Access Holder an opportunity to provide information to defend against the rescheduling if an alternative path is not agreed, then this timeframe appears reasonable.

(d) Through running trains

Specifically in relation to through running trains, the ROG considers that it is necessary to recognise the interdependency between adjoining networks and address the risk that the rescheduling could be held up by an Access Holder refusing to reschedule its path on an adjoining network. In the ROG's proposed drafting, this was achieved by placing an obligation on the Access Holder to use best endeavours to vary its path on the adjoining network to align with the train path offered by QR (noting that QR's normal MTP process will take account of whether the path is able to be scheduled through the Aurizon Network sections of the North Coast Line). However, QR's drafting doesn't include any obligation on an Access Holder to align a varied Train path offered by QR with adjacent networks, and so may be effectively unenforceable for a through running service.



4.1.3. Train path resumption

The purpose of the requested changes to train path resumption provisions was to provide QR with greater rights to resume paths where they are not utilised and to allow these to be used more flexibly. QR agreed in principle to include a train path rescheduling provision in its SAA and has prepared proposed amendments to its SAA to reflect this (Appendix II). The ROG appreciate that many of our suggestions have been incorporated in QR's proposed drafting, however there are some instances where QR's drafting does not address concerns that have been raised by the ROG.

The ROG consider that QR's proposed drafting should be amended to address the following key issues.

(a) Resumption process

As requested by the ROG, QR has included additional triggers for resumption, including an access holder's loss of a connecting path on an adjoining network. This is intended to recognise the interdependency between adjoining networks and reduce the risk that the resumption may not be able to be applied efficiently across connecting networks.

In QR's proposed drafting, the resumption process commences within 10 business days after the last of the seven occasions where a service has not been operated, or on receipt of a notice from the Access Holder that it no longer has the required rights to use Private Infrastructure. However, the obligation of the Access Holder to notify QR of the loss of rights on Private Infrastructure is not clear. The existing SAA does not appear to provide such an obligation on an Access Holder, and QR has not provided the ROG with drafting showing how such an obligation will be included in the SAA.

(b) Rescheduling as an alternative to resumption

The ROG had proposed to allow rescheduling of a train path as an alternative to resumption, to make sure there was no financial disincentive for QR to resume. Such a disincentive could occur if there are capacity constraints within a premium window, but capacity is available at other times on the network. QR would receive a financial benefit if it kept an incumbent's access agreement for a premium path on foot (and received take or pay for paths not used) and only offered a new entrant a less attractive path. To address this risk, the ROG's proposed drafting provided that, when the underutilisation threshold is triggered, QR has the option of either resuming the path or rescheduling the path to the nearest otherwise available time.

QR has advised that it accepts this in principle but considered that rescheduling could apply via Clause 21.2 (discussed above). However, if the service is not being operated, it is unclear how the Clause 21.2 process could be applied, particularly given the requirement that the revised path must 'reflect, as closely as reasonably practicable, the 3-month history'.

Achieving the ability for QR to reschedule paths as an alternate to resumption will either require amendment to the Clause 21.2 process to include circumstances where the service has not been consistently operating or including a specific provision around rescheduling in Clause 21.3.



Performance indicators and reporting

The ROG maintains its call for the 2025 DAU to have a greater focus on the efficient performance of the QR network, including reporting changes that will improve the relevance of the data QR provides. There is a benefit in adjusting QR's performance reports to present information that provides more value to customers and stakeholders, and that improves the harmonisation of the performance metrics used across Australian rail networks.

In previous submissions the ROG developed drafting amendments for performance indicators reported in QR's quarterly reports, that we asked QR and the QCA to consider. We believe these amendments improve the usefulness of the information and better align with KPIs reported by other RIMs.

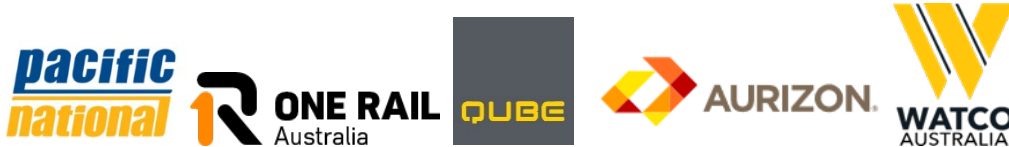
The QCA's draft decision did not address the ROG's sought amendments to the public KPIs. The ROG considers that the absence of any comment on the QCA's preferred direction contributed to the lack of progress during the collaborative process. Accordingly, the ROG requests that the QCA consider this issue further and provide clear direction around its expectations for public KPI reporting.

Performance and reporting issues are complex, due in part to QR systems restrictions and legacy issues. While issues relating to quarterly and standard access agreement reporting couldn't be resolved within the consultation timeframe, they remain of significant interest to rail operators. The ROG is concerned that we are operating within a legacy regulatory framework with legacy KPIs from an integrated railway that were incorporated in AU1 and have an inherent, historical focus on passenger trains.

Rail operators seek to drive improvements in reporting that are aligned to a future, increasingly harmonised, national network. QR has highlighted its willingness to address performance reporting concerns in system user groups. While the ROG appreciates the progress that has been made in system user groups to identify performance indicators that highlight opportunities to improve system performance, the ROG does not consider that this replaces the need for useful and informative public KPIs. System user groups are limited to existing system participants, and different indicators are being developed for each group reflecting the specific performance improvement objectives for each system.

In contrast, publicly reported KPIs provide information on rail system performance (including but not limited to QR performance) that is available not only to existing but also new rail operators. Information on system performance is critical for new operators considering entering a market, allowing them to assess likely performance outcomes. Publicly reporting a consistent suite of KPIs across systems also enables valuable comparison of performance across systems, and may enhance the operation of system user groups, who will have access to such comparative information.

Finally, reporting of network performance is important from a public policy perspective. Governments, including the Queensland Government, are continuing to pursue opportunities to promote modal shift to rail, recognising the economic and social benefits of increased use of rail for freight transport. It is known that a key driver of mode choice is relative performance, including transit time and reliability. KPIs such as those reported by QR and ARTC are an important source of information, informing both public policy and investment.



While agreement on amended public KPIs was not achieved during the collaborative process, the ROG would welcome further opportunity to work with QR and the QCA to develop more meaningful and useful indicators. In the event that the QCA believes it has insufficient information to determine a revised suite of public KPIs, for example due to uncertainty around what can be accommodated by QR's information systems, then the ROG requests that the QCA provide a clear direction around the type of public KPIs that it requires. This would aid further discussions between QR and its stakeholders to define an alternative KPI suite. Recognising the importance of continued public reporting of system performance, the ROG does not support removal of any of the existing KPIs until alternate, more relevant and useful indicators are developed.

The ROG also believes there is value in QR holding an annual stakeholder forum to discuss opportunities for improved performance indicators. As outlined in section 3, a regular commitment from QR to meet with rail operators in this forum would also provide a smoother transition between access undertakings, to reduce any surprises on issues likely to be raised during the undertaking process, and it would facilitate discussion of NRAP interoperability and harmonisation objectives. The ROG requests that the undertaking include a commitment by QR to hold an annual stakeholder forum to discuss matters related to the undertaking and SAA, including further discussion of performance indicators and reporting.

During the consultation process it emerged that the definition of ad hoc planned possessions in QR's 2025 DAU was incorrect. This has been updated in amended drafting provided by QR (Appendix III).

Queuing Framework

During the consultation process the ROG reiterated its call for QR to amend clause 2.9.2 to put an existing access holder first in the queue when the existing access holder notifies QR of its intent to renew. This would be on the proviso that the access holder notifies QR at least 120 days prior to the expiry of its access agreement that it wishes to renew its access entitlement. The ROG had explained that the 2025 DAU queuing framework may have unintended consequences for existing rail operators or access holders, in terms of the ability to renegotiate for currently contracted paths. If another access seeker has made an application for that path prior to the existing access holder, the formulaic 'order of application' queuing process may force QR to allocate that path to the access seeker, rather than allowing the existing access holder continuity of service.

During the consultation period QR did not support the amendment of "first in queue" rights and was only prepared to consider them for long term access agreements, suggesting 10 years as the minimum term for which QR was considering renewal rights for coal producers. The ROG highlights that the 'first in queue' provision is not equivalent to a contract renewal right, as QR would continue to have the ability to re-order the queue in order to provide the path to its highest value use. The 'first in queue' provision simply ensures that the formulaic queuing rules would not force QR to allocate paths away from the existing operator, solely due to the timing at which the competing access applications were submitted. Reflecting this, the ROG does not consider it reasonable to link the "first in queue" provision to long term access agreements, given the take or pay and relinquishment fee risks linked to long term contracts.



We note that the QCA in its draft decision was open to considering a change to clause 2.9.2 to put an existing access holder 'first in the queue' when the existing access holder notifies Queensland Rail 120 days prior to expiry of the access agreement, of its intent to renew, and the ROG would welcome further QCA consideration of this change to the queuing framework.

Network Management Principles

We acknowledge QR's revised drafting of the NMP, with our comments below.

Train Planning Principles

(a) Recognition of the Rolling Stock Operator

We appreciate the revised drafting (Appendix III) provides greater recognition of the role of the Rolling Stock Operator in the development of the MTP and DTP. While we agree that decisions regarding the access rights correctly remain with the Access Holder, in practice they rely heavily on their operator, with many changes acceptable provided that they are also amenable to the operator. We note there remain some instances where QR has specified consultation processes that do not include the Rolling Stock Operator notwithstanding that, in practice, the input of the operator is critical for the Access Holder to make the necessary decisions. These instances include:

- Clause 2.1(m)(i)
- Clause 2.2(f)(ii) – in this paragraph QR should consult with both Access Holder and Rollingstock Operator and should make reasonable endeavours to reach agreement with the Access Holder. On an editing point, we also note that QR has left in a reference to a Regular Planned Possession in this clause. This needs to be changed to Planned Possession. Further, because of changes in subparagraph numbering at 2.2(f)(i), the numbering in (ii), (iii) and (iv) will need to change. For example, (ii) relates to changes under (A) and (C), (iii) relates to changes under (B) and (D), and (iv) relates to (D).
- Clause 2.2(f)(iii)
- Clause 2.2(g), where changes are made in scheduling the DTP to accommodate an Emergency Possession and that results in a scheduled service not being provided, QR needs to inform the Operator (regardless of whether agreement has been reached with the Access Holder).
- Clause 2.2(h)(i), ROG had suggested that clause 2.2(h) could be removed from the NMP in entirety as its origin was the user working groups in the Central Queensland Coal Network (e.g. Blackwater User Group (BUGs) and Moura User Group (MUGs)) and no similar forums exist on QR's network today (to our knowledge). If the provision is retained, QR should provide the variation to both Access Holders and Rolling Stock Operators.

Under a Tripartite Agreement, typically QR contacts the Access Holder and they contact their operator for advice – decisions as to whether to accept QR's proposed changes are a joint decision between the Access Holder and the operator. Insistence that QR's consultation occur only with the Access Holder creates friction in the process. If QR is unwilling to recognise the operator's legitimate role in these processes, then it should



expressly recognise that the Access Holder will need to consult with the operator and will be given sufficient time for this to occur.

(b) Supply chain calendar (Clauses 2.1(c) and 2.1(m))

The Supply Chain Calendar (**SCC**) is a critical tool used by QR to record Planned and Urgent Possessions, however it only has limited recognition in the NMP. The SCC possessions, together with the Train Services in the MTP, are included in the DTP (per cl.2.2(e)). QR has referenced the SCC in some but not all relevant clauses in the NMP, i.e. cl. 2.1(c) and 2.1(m).

(c) Notification for changes in MTP (Clause 2.1(f))

The QCA's position in the Draft Decision was that QR should reduce the notification timeframes associated with modifying the MTP to one month where a request does not impact other access holders. Such a change would enable QR to be more responsive to customer requests. During our collaboration, QR explained that system and process issues constrain its ability to change the MTP in the 1-3 month timeframe.

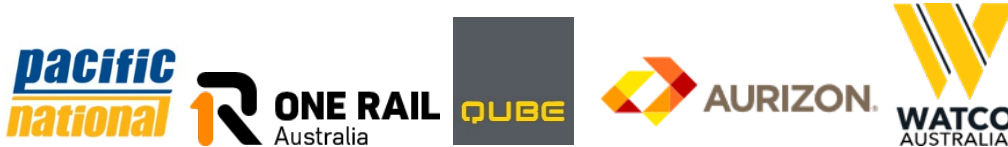
QR's normal practice is to only incorporate new or changed paths in the MTP once an agreement has been executed, meaning that an agreement must be executed 3 months before the paths are included in the MTP. There are exceptions, where QR has, at its discretion, agreed to enter paths in an upcoming MTP, prior to execution of an access agreement, however, this is typically where an existing operation is rolling over or making some operational change (such as increasing paths).

Consequently, the ROG believes improvements can be made to the NMP to incorporate changes to contracted paths prior to their inclusion in the MTP. A useful example to consider here is the Special Train Notice (**STN**) process used by Sydney Trains (described in Figure 1), where an STN can trigger either a permanent variation to the Standard Working Timetable (**SWTT**)/ MTP (either the addition or removal of a path) or a once off change (a possession or a special train). In the two weeks prior to the issue of the STN, the Operator needs to apply for an ad hoc path (or, if the change is to delete a path, formally cancel the train). The ARTC approach is very similar to the Sydney Trains process

The benefit to an operator of having a 'permanent' (MTP) path compared to a DTP path is, not only does the operator not have to apply for each path, but there is a higher level of commitment given by QR to provide the path at the stated time, and to offer a suitable alternate path if a possession is introduced.

QR could issue an STN comprising a suite of DTP paths to cover the period prior to the MTP revision, and incorporating an enhanced commitment (consistent with that provided for MTP paths) around how these paths can be varied by QR. Alternately QR could apply this approach in the West Moreton system, for example, by including STN/interim obligations in its Western Corridor Alignment Calendar (**WCAC**).

In either case, this would mean contractual obligations could be recognised before inclusion in the MTP. This would give rail operators greater visibility and more certainty around provision of train paths in the 1-3 month timeframe, than simply applying for them in the DTP.



(d) Notification for changes in DTP (Clause 2.2(e)(ii))

The ROG continues to request that QR adjust its processes to allow 2 days (not 2 business days) notice for changes to the times at which train services operate or for requests for additional trains (where these will be operated in accordance with an existing operating plan). This would, for example, allow an operator to run short notice shuttle services, or transfer rollingstock to maintenance facilities throughout the full week, including the weekend.

While QR can manage short term requests for DTP paths on weekends through its train control centres (and does this for emergency train movements), it has been unwilling to commit to this for non-emergency movements, even where these movements are included in an agreed operating plan. This appears to be due to a concern of not overloading its train control staff.

The ROG considers that this fails to recognise the 24/7 nature of QR's customers businesses. Operators understand that train controllers' priority is to safely control the movement of trains on the network, and that this must take priority over considering DTP path requests. However, we expect that short term requests for DTP paths over a weekend will occur only irregularly and are unlikely to create a material additional workload. Managing such requests through the train control room is normal practice for other rail networks.

The ROG maintains the position set out in its submission to the QCA that QR should accept paths requests with 2 days' notice, rather than 2 business days. This is a lesser obligation than arrangements with other rail networks which accept path applications *up to and including the proposed day of operation* and is reflective of the 24/7 nature of rail freight operations, the logistics industry more broadly and QR operations (as both a passenger operator and network manager). While QR has the right to refuse a path request on justifiable grounds (e.g. capacity, safety etc), QR should be required to make surplus capacity available to third party operators requiring access to the network.

(e) Aligning possessions with adjoining rail managers (Clause 2.3(b))

The ROG proposed that the NMP include a clause requiring QR to liaise with adjoining rail network managers with the objective of aligning possessions where reasonably possible. This obligation would be a clarification and further explanation of QR's existing reasonable endeavours obligation to minimise the material adverse effects on train services caused by modifications or variations to the MTP and DTP.

QR responded that adjoining network managers didn't have reciprocal obligations, and it couldn't accept a one-sided obligation. This is a reasonable position and we acknowledge that QR does engage with ARTC in practice on network closures. In the longer term, we note the ACCC has recognised the benefit to operators on the interstate network of a more uniform approach to frameworks and mechanisms within the ARTC Interstate Access Undertaking (IAU) and QR's Undertaking. We think it's positive that ARTC has voluntarily undertaken to include a recital in the preamble to its IAU committing to work to address issues around rail interoperability (including coordinating and communicating maintenance windows). On an editing point, because of changes in subparagraph numbering at 2.3(a), the numbering in 2.3(c) and (d) needs to be changed. E.g. (c) relates to changes under (i) or (ii), and (d) relates to (i) or (ii).



(f) Disputes on planned possessions (Clause 2.4)

QR's 2025 Draft AU continues to include obligations on QR in relation to consultation on planned possessions. QR's current AU NMP also included processes around disputes on planned possessions and provides that the possession would not proceed until the dispute has been resolved using the dispute resolution provisions of the undertaking. This entitlement applies only where there is a bona fide dispute, and where the dispute is commenced within 30 days of notification of the possession.

In its 2025 DAU, QR has proposed to remove the provisions around disputes on planned possessions. This means that while an access holder can still dispute the planned possession, if it isn't resolved, the possession will proceed. This was supported by the QCA, who took the view that including such a requirement has the potential to lead to inefficiencies and disruptions to the running of the network in circumstances where an access holder raises a dispute just before the start of a planned possession. However, Operators' concern is that this will reduce the strength of the incentive on QR to address their reasonable concerns.

In discussions on this issue, QR reiterated that it did not intend in any way to reduce QR's obligation to consult with access holders as part of its possession planning, or its intention to address legitimate concerns. However, QR confirmed that it considers it important that it is ultimately able to implement critical possessions without the ability for a single access holder to holdup the possession through a dispute.

Recognising QR's concerns, the ROG proposed a compromise position where:

- Operators would accept the removal of the requirement that planned possessions not proceed until a dispute is resolved, **BUT**
- This be on the condition that the 2025 DAU include an accelerated dispute resolution process for planned possession related disputes, which would provide opportunity for a dispute to be resolved before the possession is scheduled to occur.

The ROG considered that this would address the objectives of both QR and operators – QR will have certainty that a possession cannot be held up, but operators retain an effective right of dispute which maintains a strong incentive on QR to address their reasonable concerns.

QR has rejected this compromise position, on the basis that it does not want to have a different dispute process for disputes than for other issues.

Figure 1: Sydney Trains process for a timetable change

The Standard Working Timetable (SWTT) on the Sydney Trains network generally has a life of around 5 years, with new SWTTs driven by substantial changes in network geography, service structures and rolling stock. Revisions of the SWTT generally occur annually and incorporate permanent changes which have occurred since the previous update (e.g. new or cancelled freight paths) and reliability amendments.

The process for a timetable change on the network involves the publication of a Special Train Notice (STN). An STN can trigger either a permanent variation to the SWTT (either the addition or removal of a path,



amended route etc) or a once off change (a possession timetable, Special Event or a Special Train, such as a once-off heritage train operation). The STN is issued ('published') at least two weeks prior to the date it becomes effective.

For a permanent change to the SWTT, during the two weeks between the issue of the STN and the commencement date of the permanent variation, the Rail Service Operator (**RSO**) needs to apply for an ad hoc path or formally cancel the train through the train path ordering system (DTPOS) used by Sydney Trains, ARTC and UGL Regional Linx. The ARTC approach is very similar.

For any possession plans which are in development (i.e. between 14 and 2 weeks) there is an effort to accommodate the additional train path if there is degraded working (e.g. single line, pilot staff etc) but operators are aware of all planned possession at 14 weeks.

The Sydney Trains Operations Protocol which shows how amendments to the SWTT occur and how the DTP is developed is available in the Operations Protocol, which forms part the access agreement (see link: <https://www.transport.nsw.gov.au/system/files/media/documents/2017/operations-protocol-version4-dec-2017.pdf>)

Network Control Principles

The ROG consider that there is a strong need to review the Traffic Management Decision Making Matrix (Clause 3(f)-(i)) and the way in which QR applies its train control decisions, to provide greater certainty and reliability to freight services and ensure that passenger prioritisation is applied in a way that doesn't exceed QR's obligations under the Transport Infrastructure Act (**TIA**). We acknowledge that we have run out of time in this current process to progress this issue but consider it important that there is a further opportunity to address it. Ideally, we would like to jointly consider the issues raised⁴ during the time remaining prior to finalisation of the 2025 DAU but failing this we request QR's commitment to a joint review of the traffic management arrangements, to be completed within the first 6 months of AU3, noting that any changes to these arrangements may require a DAAU and ratification by the QCA.

We provided two options for suggested re-drafting of the Network Control Principles in the appendix to the ROG submission on the QCA's Draft Decision on QR's 2025 DAU. We request a review include consideration of a priority matrix that sets out priority levels for different types of services and includes greater clarity around when QR will prioritise passenger services (to meet the requirements of the TIA) and limits on the extent of delays that may be imposed on on-time freight services. This would set consistent and objective rules and give the train controllers and rail operators certainty over their operations. The fact that a similar framework is used in the Sydney Trains metropolitan network⁵ suggests that it would transfer well to QR's Metropolitan Network and would not compromise safety on the network. We recognise that other parts of the QR network are not as heavily trafficked and may encounter fewer conflicts between services. The train

⁴ Aurizon Coal & Bulk response to draft decision QR 2025 DAU

⁵ RailCorp Operations Protocol – version 4.0 – December 2017, Section 6



management framework operates just as well in these scenarios and provides the added advantage of clearly specifying the priority not only different types of revenue services, but also non-revenue movements on the network.

Other issues - Southeast Queensland standard gauge operations

QR operates the dual gauge rail line between Acacia Ridge and the Port of Brisbane, connecting the national standard gauge rail network with Brisbane's only open access container rail terminal. It also provides a narrow gauge rail network link between Queensland's largest container rail terminal at Acacia Ridge and the State's largest container port, as well as providing narrow gauge rail access to export coal and grain terminals.

We understand that QR's provision of access to the dual gauge link for either interstate (standard gauge) services or port shuttle (either narrow or standard gauge) services is currently not a declared service, as QR's metropolitan system is only declared when used in conjunction with another QR rail system. Nonetheless, we request that QR commit to a process for negotiating and managing access to the dual gauge link. The ROG maintains that the simplest way to achieve this would be for QR to voluntarily include these services within the scope of the 2025 DAU.

Expanding the scope of the 2025 DAU to include access to services operating between Acacia Ridge and the Port of Brisbane (using either standard or dual gauge rollingstock) would provide improved certainty and process transparency for rail operators, and support network harmonisation.

Freight trains operating on the dual gauge link between Acacia Ridge and the Port of Brisbane use the same service and consume the same capacity as a train originating from another of QR's rail systems. However, the current arrangements mean that:

- A dispute within the scope of the Undertaking may have a direct impact on an operator running interstate or port shuttle services (or vice versa) potentially creating contractual or regulatory confusion;
- There is potential for QR to not apply standard pricing principles (e.g. non-discriminatory treatment) or alternately to shift costs between services covered within or outside the Access Undertaking; and
- Operators of interstate and port shuttle services do not have the protections of QCA oversight, despite using the same product (i.e. a train path on the dual gauge link to Port of Brisbane) as trains originating on other QR rail systems.

The National Transport Commission (NTC) has identified the dual gauge (both standard and narrow gauges) to Port of Brisbane link to be part of the NNI supporting the National Rail Access Plan. The Queensland Government is a signatory to the Memorandum of Cooperation to deliver the NNI, with the work to be delivered through its agencies. This highlights the significant role of the dual gauge link to the Port of Brisbane for the benefit of interstate and regional freight, and its role in national supply chains.

The NTC has made significant commitments relating to harmonisation and interoperability across the NNI. For example, the NTC is developing a new regulatory requirement in the RSNL Regulations for rail transport operators to have an Interoperability Management Plan as part of their Safety Management System. The proposed regulatory change would require rail transport operators consider national interoperability when



planning changes to their railway operations. This would apply to all rail transport operators with railway operations on the NNI, including QR.

Addressing the standard/dual gauge issue is also needed in preparation for the arrival of Inland Rail. Into the future, this link between Acacia Ridge and the Port of Brisbane will be the corridor for all Inland Rail freight to access export markets in Brisbane. As the network manager, QR must commit to supporting the current demand for freight, providing support for future growth and deliver on Government policy objectives including open and transparent access, network inter-operability and increasing rail mode share. Without an effective connection to port, many of the benefits from Inland Rail are unable to be achieved.

Given the drive by the NTC and others to harmonise operating and regulatory arrangements across each of the rail infrastructure managers (including QR) which form the national rail network, the QCA should consider requesting QR to consider the inclusion of services between Acacia Ridge and the Port of Brisbane (both standard and narrow gauge) in this next access undertaking.

Table 1: ROG Position in Relation to Outcomes from the Collaborative Submission Consultation Process

Item	DAU3/ SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
Standard Access Agreement (SAA)					
1	SAA	<p>Clause 13.2</p> <p>Limitation on Claims</p> <p>Rail operator had suggested improving specificity by removing the term “full details of the Claim”.</p>	<p>QCA said the concern could be addressed by limiting the details required, such as by adding the term ‘to the extent known’ to clause 13.2(a). The clause then reads ‘notice and full details, to the extent known, of the Claim have been given to the other Party...’</p>	<p>QR agreed to add ‘to the extent known’ and provided amended drafting to rail operators on 3 October 2024.</p>	<p>ROG supports this change and the QR drafting (see Appendix I).</p>
2	SAA	<p>16.1 (a)(ii) & 16.1 (a)(iv)(B)</p> <p>Operator’s Obligation to obtain and maintain Insurance</p>	<p>QCA invited proposed amendments to the insurance coverage and deductible level provisions of clause 16.1.</p>	<p>QR agreed to remove the words ‘without limitation’.</p>	<p>ROG supports this change in the QR drafting (see Appendix II).</p>
3	SAA	<p>16.1 (a)(iv)(A)</p> <p>Coverage and deductible levels/limits</p>	<p>QCA invited proposed amendments to the insurance coverage and deductible level provisions of clause 16.1.</p>	<p>Operators requested a reduction in public liability coverage from \$350m to \$250m, in line with access agreements of other RIMs.</p> <p>QR agreed to hold a workshop to consider foreseeable loss scenarios and then decide on appropriate coverage. Due to time constraints this has not yet been held.</p> <p>We note that there is no issue regarding the overall public liability policy, it is just the limits of coverage that are being discussed.</p>	<p>It is ROG’s understanding that the workshop will be a joint process that QR undertakes with rail operators.</p> <p>The ROG suggests that the QCA provide its support for the agreed workshop process by recommending that QR undertake a joint review with rail operators about liability cap and maximum foreseeable loss scenarios and resolve the new maximum limit before the undertaking is finalised. The ROG notes that any changes to coverage would need to go back to the QR Board.</p>
4	SAA	<p>16.1(a)(iv)(D)</p>	<p>QCA invited proposed amendments to the insurance coverage</p>	<p>QR agreed to delete clause 16.1(a)(iv)(D) which currently reads</p>	<p>ROG supports this change and the QR drafting (see Appendix II).</p>

Item	DAU3/ SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
		Coverage and deductible levels/limits	and deductible level provisions of clause 16.1.	“has a maximum deductible for any one claim of \$500,000”.	
5	SAA	16.1(a)(v) Carrier liability policy of insurance	QCA invited proposed amendments to the insurance coverage and deductible level provisions of clause 16.1.	QR agreed to delete clause 16.1(a)(v) which requires Operators to hold carrier liability insurance.	ROG supports this change and the QR drafting (see Appendix II).
6	SAA	16.1(b) Coverage of Operator’s associated, agents and other parties	Queensland Rail proposed a new insurance clause, 16.1(b) that was opposed by some rail operators because it placed an unreasonable burden on rail operators. QCA consequently found that it may not be appropriate to approve Queensland Rail’s proposal and suggested that Queensland Rail amend the proposed drafting.	Rail Operators and QR agreed on amended wording that allowed Operators the choice as to whether they covered these parties under their insurance policy or required these parties to have their own insurance in place.	ROG supports this change and the QR drafting (see Appendix II).
7	SAA	16.3 Minimum Standard & Poor’s financial strength rating and Captive Insurance	It was proposed that: 1) the minimum Standard & Poor’s financial strength rating held by access holders’ and operators’ insurers under clause 16.3 should be reduced from an A to an A- 2) that clause 16.3 should be extended to allow the use of captive insurance companies QCA said we consider it is important that insurers’ minimum strength rating is commensurate with the parties’ needs and generally reflects industry standards. It may be appropriate to	QR agreed to remove specification of a specific financial strength rating and provided amended drafting for clause 16.3. However, the QR drafting doesn’t address captive concerns. QR explained they prefer to consider issues relating to the use of captive insurers on a case-by-case basis, rather than address it in a SAA. Rail operators explained that its inclusion in the SAA provides operators with confidence that QR will not unexpectedly change its requirements on captives. There is	QR provided amended drafting for clause 16.3 that removes specification of a specific financial strength rating. The ROG supports this. However, the QR drafting doesn’t address captive concerns and rail operators maintain the request that clause 16.3 expressly allow the use of captive insurance companies.

Item	DAU3/ SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
			amend the minimum strength rating in clause 16.3, and we invite submissions from stakeholders, including Queensland Rail in this regard, preferably on a consensus basis.	regulatory precedent to include it in QR's SAA as ARTC has agreed to amend their Interstate Access Agreement drafting to expressly include captives.	
8	SAA	16.4(b) Essential terms and conditions of insurance	Some operators recommended removing 16.4(b) because rail operators cannot reasonably be expected to seek the approval of QR each time an insurance policy is renewed or amended. The QCA did not support this proposal.	Rail operators and QR agreed to retain the clause with some suggested amendments.	ROG supports this change and the QR drafting (see Appendix II).
9	SAA	16.9 Claims	Some rail operators suggested amendments to clause 16.9 to remove the possibility of prejudicing the outcome of an insurance claim if Queensland Rail is the claimant. The QCA acknowledged that notifying QR of certain details surrounding active insurance claims may be inappropriate and harmful to the insured's interests in certain instances.	Rail operators and QR agreed on amended drafting for clause 16.9.	ROG supports this change and the QR drafting (see Appendix II).
10	SAA	19.2 Resolution by escalation Rail Operator request made to mirror the escalation timeframes and processes in	QCA said it may be appropriate to amend the dispute resolution process under the proposed SAA.	QR agreed to reduce CEO negotiation to 10 days in the SAA and provided revised drafting on 24 October.	ROG supports the change and the QR drafting (see Appendix II).

Item	DAU3/ SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
		section 6.1 of the 2025 DAU.			
11	SAA	<p>21.2</p> <p>Train path rescheduling</p> <p>It was proposed that the SAA be amended to allow Queensland Rail to reschedule train paths where an operator had consistent poor reliability performance and to require an operator to use its best endeavours to negotiate variations to agreements defining network entry and exit times to accommodate the varied schedule.</p>	<p>The QCA said it may be appropriate to amend the treatment of train path rescheduling and invited submissions on proposed drafting.</p>	<p>Rail operators explained the purpose of the requested changes was to provide QR with a right to reschedule a train path that has consistently been operated with poor reliability, with the objective of providing QR with improved tools to manage train paths to promote network utilisation and optimisation.</p> <p>QR agreed to consider and address the issue, noting however that they have concerns regarding the issue of poor performance and how it is defined.</p> <p>QR provided amended drafting, however the ROG has concerns about QR's excessively tight review trigger, narrow exclusions, and the omission of consideration of through running trains.</p>	<p>The ROG have advised QR of concerns regarding the drafting (see Appendix II) and would like to see the drafting amended to reflect ROG suggestions in section 4.5 to include:</p> <ul style="list-style-type: none"> Revised trigger that the service departure and/or arrival is ahead or late (using a 30 minute materiality threshold) for more than 50% of the times the service runs in any consecutive 3 month period of time Expanded exclusion terms that include all agreed variations and a broader set of unusual and unforeseen events Greater engagement with the Access Holder to define alternative pathing Consideration of through running trains.
12	SAA	<p>21.3</p> <p>Train path resumption / Reduction of access rights</p> <p>Operator amendments were proposed to provide QR with greater rights to resume paths where they are not utilised and to allow these to be used more flexibly.</p>	<p>The QCA said it may be appropriate to strengthen QR's path resumption rights to address network underutilisation and invited submissions on proposed drafting.</p>	<p>We appreciate that many of the Operators' suggestions have been incorporated in QR's proposed drafting, however within the resumption process drafted by QR the obligation of the Access Holder to notify QR of the loss of rights on Private Infrastructure is not clear and it is unclear how rescheduling as an alternative to resumption would apply.</p> <p>QR explained that because they have a</p>	<p>The ROG has advised QR of concerns regarding the drafting (see Appendix II) and would like to see the QR drafting amended to reflect our suggestions in section 4.6 to include:</p> <ul style="list-style-type: none"> Greater clarity on the obligation of the Access Holder to notify QR of the loss of rights on Private Infrastructure Amendment to clause 21.2 to include rescheduling as an alternative to resumption, or the addition of a specific provision around

Item	DAU3/ SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
				<p>clause that addresses rescheduling and then a clause that addresses resumption, any rescheduling would be addressed within the rescheduling (clause 21.2), rather than the resumption clause (21.3).</p> <p>However, it is unclear to the ROG how clause 21.2 could be applied in cases where a service is not being operated.</p>	rescheduling in clause 21.3.
13	SAA	<p>n/a</p> <p>Flexibility in train scheduling</p> <p>Operators proposed that train service levels be specified in a way that allows some flexibility for train scheduling, rather than specifying fixed network entry or exit times.</p>	The QCA said it may be appropriate to approve the proposed amendment to the specification of train service levels and invited submissions on proposed drafting.	QR advised that if, as part of an MTP review QR identified benefits from minor rescheduling of existing train services, it would seek to negotiate this with the relevant Access Holders. QR has not provided the ROG with any proposed SAA drafting amendments that would formalise this process.	The ROG considers that there is benefit in QR having a clear entitlement in its access agreements to apply some flexibility in train scheduling, to avoid such modifications being prevented if an Access Holder elects not to accept a variation through this informal process.
14	SAA	<p>22.1</p> <p>Assignment by Queensland Rail</p> <p>QR proposed a new clause to apply in circumstances where Queensland Rail ceases to have a right to operate all or part of the Network.</p>		<p>QR agreed to take into account the ability for rail operators to seek information / assurance regarding an assignee.</p> <p>Consequently, rail operators and QR agreed on QR including a notification period in the case of assignment by QR. QR provided revised drafting with this provision to rail operators on 24 October 2024.</p>	ROG supports this change and the QR drafting in principle, but requests QR clarification and examples of the operating and subcontracting obligations under the AA (see Appendix II).
15	SAA	Schedule 5 clause 1	QCA had a preliminary view that it may be appropriate to amend	The discussion on KPIs focussed on QR's quarterly report (see	Refer to item 18 in the table.

Item	DAU3/ SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
		Performance Indicators	the list of performance indicators in Schedule 5, clause 1. QCA said we encourage the parties to engage further with each other on appropriate revisions to this list, and we invite stakeholders' further submissions in this regard.	Item 18) and KPIs specific to SAA Schedule 5 clause 1 were not discussed.	
Draft Access Undertaking (DAU3)					
16	DAU3	<p>2.9.2</p> <p>Mutually exclusive access applications (Queuing)</p> <p>Rail operators explained that the queuing framework prioritises an access application (ahead of a renewing access application), if that application is lodged before the existing access holder notifies its intent to renew. It was suggested that to address this issue cl.2.9 is amended so that if an existing access holder notifies QR it is seeking renewal of its access rights prior to expiry of its agreement, it will be placed first in any queue.</p>	<p>QCA was open to considering change to the clause to put an existing access holder 'first in the queue' when the existing access holder notifies Queensland Rail 120 days prior to agreement expiry of its intent to renew.</p>	<p>QR said it does not support the amendment of renewal provisions for "first in queue" rights for short term contracts but is prepared to consider a minimum contract term e.g. 10 years for these rights to apply.</p> <p>Rail operators explained it was not about renewal rights for an existing Access Holder, rather it is about giving Access Holders stronger certainty around business continuity beyond the term of the access agreement.</p>	<p>The ROG would welcome further QCA consideration of the queuing framework and proposal to place an existing access holder 'first in the queue' when the existing access holder notifies Queensland Rail 120 days prior to expiry of the access agreement, of its intent to renew.</p> <p>The ROG does not consider it reasonable to link the "first in queue" provision to long term access agreements, given the take or pay and relinquishment fee risks linked to long term contracts.</p>
17	DAU3	<p>Part 5 – Reporting</p> <p>5.1.2(a)(x) –(xi)</p> <p>QR proposed to remove the obligation to report</p>	<p>It is not appropriate to approve Queensland Rail's proposed reporting requirements (Part 5 of the 2025 DAU).</p>	<p>QR explained that the definition of ad hoc possessions in the undertaking was incorrect and said an ad hoc possession does not affect a train, and this was the reason</p>	<p>The ROG accepts the removal of references to ad hoc planned possessions in the drafting provided by QR on 25 October (Appendix III).</p>

Item	DAU3/ SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
		on Ad Hoc Planned Possessions	It is appropriate for the 2025 DAU to require that Queensland Rail to report on ad hoc possessions as part of its quarterly report.	<p>QR could not record/report on it, because it didn't affect a train and therefore there was no 'drop down bar' for it in QR's reporting system.</p> <p>QR noted they would update drafting and definitions to clarify that there is only one form of a planned possession - which is any possession that impacts on the Master Train Plan or contracted train paths – and for these QR undertakes a full process of consultation and reporting.</p>	
18	DAU3	Part 5 – Reporting 5.1.2 Quarterly Reports	See item 15	<p>Rail Operators explained that the DAU3 performance indicators do not always present the most useful information, and that there is an opportunity to provide performance indicators that deliver greater value to customers and stakeholders and that harmonise/align with performance indicators of other RIMs. Examples discussed included:</p> <ul style="list-style-type: none"> -improved reporting of root cause of delays -the categorisation of cause for late running services and healthy/unhealthy services -the revision of KPI 5.1.2 (iii) to minutes per transit hours rather than minutes per 100 tkm 	<p>During the consultation period parties ran out of time to thoroughly discuss reporting. In the absence of agreement on alternative KPIs, the ROG does not support removal of any of QR's existing KPIs.</p> <p>The ROG requests the undertaking include a commitment by QR to hold an annual stakeholder forum to discuss matters related to the undertaking and SAA, including further discussion of performance indicators.</p> <p>The ROG requests that the QCA attend and observe the discussions. This would provide the QCA with greater understanding of the issues and reasons for each party's position.</p>

Item	DAU3/ SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
				<p>-completion of maintenance within planned windows</p> <p>-the number/percentage of train services cancelled and rescheduled for the purpose of accommodating a possession.</p> <p>QR acknowledged that rail operators are seeking process improvements and said these would be addressed through current operational performance meetings and system user forums. QR noted that in some instances their systems did not allow for enhanced reporting, and any changes may involve considerable additional costs that would need to be passed on to Access Holders and Rail Operators.</p> <p>There was a willingness by all parties to commit to further discussion on these issues.</p>	
19	DAU3	<p>Schedule F – Network Management Principles</p> <p>Clause 2.1 Master Train Plan (MTP) Principles</p> <p>Some rail operators suggested reducing timeframes for MTP changes to one month where a request had no impact on any other service and would not impact other operators.</p>	<p>The 2025 DAU requires Queensland Rail to provide affected parties with 3 months’ notice of any modifications to an MTP. However, where a request to modify an MTP or a planned possession does not impact other access holders, we consider it is appropriate that Queensland Rail reduce the notification timeframes associated with modifying the MTP to one month.</p>	<p>QR stated that their current system did not afford the flexibility to modify MTP timeframes. The MTP ‘dropdown’ is permanently set at 90 days, and at that point it changes from the MTP to the Daily Train Plan (DTP). QR said they could consider putting a request into the DTP but could not guarantee that the path would ultimately be available.</p> <p>Rail operators said QR could consider a bridging system</p>	<p>This issue has not been addressed in the amended NMP drafting (Appendix III).</p> <p>The ROG requests that QR consider other mechanisms for providing improved certainty to Operators around provision of paths in the 1–3-month timeframe. For example, the STN process that recognises interim obligations used by Sydney Trains.</p> <p>An example of how QR could apply this approach in the West Moreton system, for example, would be for QR to include</p>

Item	DAU3/ SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
			<p>The 2025 DAU does not prescribe a process whereby Queensland Rail is to periodically revise the MTP on set dates. However, where this approach is applied in practice, it has the potential to unnecessarily prolong the timeframes associated with responding to stakeholder requests. As such, we consider it is appropriate to include a process in the NMP to incorporate changes to contracted paths in between periodic revisions of the MTP.</p>	<p>between the MTP and DTP. For example, on the Sydney Trains network they have an STN process that sits somewhere between a MTP and the DTP and it affords changes and gives them standing /certainty between the usual MTP period.</p>	<p>STN/interim obligations in its western corridor alignment calendar that it uses to change possessions outside the MTP process.</p>
20	DAU3	<p>Schedule F – Network Management Principles</p> <p>Required notice for DTP – rail operators have asked that QR adjust its processes to allow 2 days (not 2 business days) notice for changes to the times at which train services operate or for requests for additional trains.</p>	<p>We consider that providing access holders with opportunities to request short-term path variations or ad hoc paths needs to be balanced with any potential implications for other end users that may be affected by those changes to the scheduling.</p> <p>The 2025 DAU provides for Queensland Rail to amend the DTP after it has been scheduled, at the request of an access holder — provided the change does not affect another access holder’s train service entitlement.</p>	<p>Rail operators explained the need for improved QR responsiveness, noting that we are all operating 24/7 businesses.</p> <p>ARTC, Sydney Trains, UGL and VLine all have limited hours for train planners but will manage out of course requests at night and on weekends through the network controllers.</p> <p>QR explained that consideration of this issue depended on whether it was a movement covered by an existing access agreement and operating plan, but ultimately, they weren’t proposing a change.</p>	<p>We appreciate that QR provided revised drafting of the NMP, however this issue has not been addressed in the amended NMP drafting (Appendix III).</p> <p>The ROG maintains its request that QR adjust its processes to allow 2 days (not 2 business days) notice for changes to the times at which train services operate or for requests for additional trains (where these will be operated in accordance with an existing operating plan).</p> <p>We understand there are resourcing constraints for QR on weekends, but given rail operators run 24/7 businesses and other rail networks nationally provide non-scheduled access up to and including on the day of operation we request QR reconsider this issue.</p>

Item	DAU3/SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
21	DAU3	<p>Schedule F – Network Management Principles</p> <p>Clause 2.4 – Disputes on Planned Possessions</p> <p>Queensland Rail is proposing to remove clause 2.4 that a possession (other than an Emergency or Urgent Possession) cannot proceed if an affected third party makes a bona fide Dispute</p>	<p>We do not consider it necessary for the 2025 DAU to include a requirement for Queensland Rail to delay implementing any planned possession that is subject to a dispute.</p> <p>Including such a requirement has the potential to lead to inefficiencies and disruptions to the running of the network in circumstances where an access holder raises a dispute just before the start of a planned possession.</p>	<p>Rail operators acknowledged QR concerns around possessions potentially being held up and accepted QR’s position that the planned possession will not be delayed for resolution of the dispute.</p> <p>Rail operators proposed an alternate position for QR to consider that accelerated the dispute resolution process to help support resolving the dispute by the time the planned possession was intended to occur.</p>	<p>This issue has not been addressed in the amended NMP drafting (Appendix III).</p> <p>The ROG supports an accelerated process for disputes on planned possessions to provide an opportunity for disputes to be raised and resolved prior to the planned possession. This would allow adequate consideration of the scope of the works to be delivered, as well as the interests of the rail operator and the social and economic impacts for the community.</p>
22	DAU3	<p>Schedule F – Network Management Principles</p> <p>Clause 3(f)-(i) – Traffic Management Decision Making Matrix</p>	<p>In relation to passenger services, processes for allocating capacity to passenger services and for passenger priority obligations are prescribed by the Transport Infrastructure Act 1994.</p> <p>The legislation includes an obligation for the railway manager to:</p> <ul style="list-style-type: none"> bring delayed passenger train services back to their scheduled running time allocate rail capacity that is available, or will become available, to meet the requirements for regularly scheduled passenger train services, as set out by the director-general of 	<p>Operators consider that there is a strong need to review these clauses, and the way in which QR applies its train control decisions, to provide greater certainty and reliability to freight services and ensure that passenger prioritisation is applied in a way that doesn’t exceed QR’s obligations under the Transport Infrastructure Act.</p> <p>QR explained they needed to have internal discussions to get agreed positions on this.</p> <p>Essentially parties ran out of time within this current process to progress this issue, but the ROG considers it important that there is an opportunity to address this issue.</p>	<p>This issue has not been addressed in the amended NMP drafting (Appendix III).</p> <p>The ROG proposes a discrete consultation process between QR and Operators in relation to traffic management.</p> <p>If we run out of time to resolve this issue before 1 July 2025, we suggest that the QCA place an obligation on QR to jointly review these principles in the first 6 months of the new undertaking and any changes will be ratified by the QCA.</p>

Item	DAU3/ SAA	Clause / Issue	QCA Draft Decision	Discussion & Outcome	ROG Comment
			<p>the Department of Transport and Main Roads (DTMR).</p> <p>We consider that prescribing further rules in the 2025 DAU network control principles could adversely affect Queensland Rail's ability to effectively manage its legislative obligations.</p>		
23	DAU3	<p>Schedule F – Network Management Principles</p> <p>Inclusion of the term nominated rollingstock operator</p>	N/A	<p>Operators explained that in some instances actions relate to both the access holders and/or operators and suggested inclusion of the term 'nominated rollingstock operator'. QR agreed and have reflected it in the amended drafting.</p>	<p>ROG appreciates the revised drafting and supports the greater recognition of the role of the Rollingstock Operator and inclusion of the term 'nominated rollingstock operator' with respect to notification of decisions around access rights. (see Appendix III).</p> <p>The revised drafting does not include Rolling Stock Operators in consultation processes and the ROG requests that QR recognise the Operator's role in consultation processes, or expressly recognise that the Access Holder will need to consult with the Operator and leave sufficient time for this process.</p>



Appendix I – SAA Drafting Provided by QR 3 October 2024

Commencement Date and the Termination Date) and on each day after the Termination Date while those indemnities survive the expiry or termination of this agreement.

13. Limitations on liability

13.1 No liability for Consequential Loss

- (a) Subject to clause 13.1(b), despite any other provision in this agreement no Party is liable to another Party for any Consequential Loss suffered or incurred by, or Claimed against, the other Party.
- (b) Clause 13.1(a) does not apply in relation to any Loss suffered or incurred by, or Claimed against a Party to the extent caused or contributed to by an Inspecting Party failing to comply with its obligations under clauses 9.4 to 9.10 in relation to conducting that Inspection or Audit.

13.2 Limitation on Claims

A Party must not make any Claim against the other Party under, in relation to or arising out of this agreement or its subject matter including any breach of this agreement by, or any act or omission of, the other Party unless:

- (a) notice and, to the extent known, full details of the Claim have been given to the other Party within one year after the occurrence of the event or circumstance out of which such Claim arises; and
- (b) subject to clause 13.3, the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action (and, for clarity, the amount of any Claim is not limited to the amount exceeding that threshold).

13.3 Failure to pay amounts

No exclusion or limitation of liability, or restriction on the existence of or ability to make any Claim, in this clause 13 applies to Claims made by a Party against the other Party for monies due and payable in accordance with this agreement including under clause 6 and clauses 13.4, 13.5, and 13.6.

13.4 Liability for Network

- (a) Subject to clause 13.4(b), without limiting any other provisions of this agreement and to the extent permitted by law, Queensland Rail and its Associates are not liable to another Party for any Losses, and the other Party must not make any Claim against either Queensland Rail or its Associates, including in respect of any damage to or loss or destruction of any property (including that other Party's property) or any injury to or death of any person, arising out of or in connection with:
 - (i) the standard, capability or condition of the Network; or
 - (ii) any failure of or defect in the Network;
 - (iii) maintenance of the Network; or
 - (iv) failure to meet Performance Indicators (but not including payments due for failure to meet the Agreed Performance Levels).
- (b) Despite clause 13.4(a), another Party may bring a Claim against Queensland Rail to the extent that any Loss, damage, injury, cost or expense results directly from the failure of Queensland Rail to perform its obligations under clause 7.1 or Queensland Rail's negligence in performing those obligations.



Appendix II – SAA Drafting Provided by QR 24 October 2024

- (i) rights which accrued on or before termination, including for breach of this agreement which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this agreement; or
- (ii) any provisions which are expressed as surviving the expiry or termination of this agreement.

15.11 Removal of Rolling Stock following termination

- (a) Immediately on expiration of the Term, and as soon as practicable after termination of the operational right to operate for any other reason, the Operator must, at the Operator's cost and risk, remove from the Network (or the land on which the Network is located) all of the Operator's Rolling Stock and all vehicles, equipment, freight, debris, or rubbish brought onto the Network (or the land on which the Network is located) by, for or on behalf of the Operator relating to the Train Services.
- (b) If the Operator fails to remove its Rolling Stock and other items from the Network in accordance with clause 15.11(a):
 - (i) Queensland Rail may give a notice to the Operator demanding the removal of Rolling Stock by a time specified by Queensland Rail; and
 - (ii) if the Operator fails to remove that Rolling Stock by that time, Queensland Rail may remove that Rolling Stock and recover the reasonable costs of doing so from the Operator.
- (c) The Operator is liable, and indemnifies Queensland Rail, for all costs and expenses incurred by Queensland Rail in relation to any damage caused to the Network by the Operator in removing any Rolling Stock.
- (d) The Operator must comply with all Network Control Directions, and all other directions issued by Queensland Rail (acting reasonably), in relation to the removal of the Rolling Stock and other items in accordance with this clause 15.11.

15.12 Access Holder remedy of Operator breach

If the Operator has breached the agreement then the Access Holder, at its election, may seek to remedy the breach in accordance with clause 15.6.

16. Insurance

16.1 Operator's Obligation to obtain and maintain Insurance

- (a) The Operator must:
 - (i) effect, or cause to be effected, before the Commitment Date (or, if applicable, the earliest Commitment Date); and
 - (ii) maintain, or cause to be maintained, until both the expiry of the Term and the Operator having fully complied with clause 15.11, insurances in accordance with Prudent Practices having regard to the Operator's activities, works, obligations and responsibilities under this agreement (including insurances covering all risks of an insurable nature in respect of which the Operator is obliged to indemnify Queensland Rail under this agreement) provided that such insurances must include **without limitation**:
 - (iii) insurance covering such liability as arises at common law or by virtue of any relevant Workers Compensation Legislation in respect of any Operator's staff;
 - (iv) a public liability policy of insurance:
 - (A) ~~that covers the Operator and each of the Operator's agents, consultants, contractors and their sub-contractors (each an Insured Party);~~

~~(B)(A)~~ for an amount of not less than \$350 million per occurrence;

~~(C)(B)~~ the coverage of which includes ~~(without limitation)~~:

(I) the rights, interests and liability in respect of any Claim against an Insured Party arising out of:

- (1) any damage or loss occurring to any property; and
- (2) injury (including death) to any person,

arising out of or in connection with ~~any thing done or omitted to be done in the performance or purported performance of this agreement~~ the business activities of the Operator; and

~~(II)~~ the Operator's operations and activities on the Network; and

~~(D)~~ that has a maximum deductible for any one claim of \$500,000;

~~(v)~~ a carrier liability policy of insurance:

~~(A)~~ that covers the Operator's liability in relation to goods being transported by Train Services;

~~(B)~~ for an amount of not less than \$10 million per occurrence; and

~~(C)~~ that has a maximum deductible for any one claim of \$500,000; and

~~(vi)(v)~~ all other insurances that the Operator or the Operator's agents, consultants, contractors and their sub-contractors are required by Law to hold in relation to or in connection with the exercise of rights or the performance of obligations under this agreement.

~~(b)~~ The Operator must ensure that each of the Operator's Associates, agents, consultants, contractors and their subcontractors take out and maintain insurance referred to in this clause 16, sufficient to protect the interests of those Associates, agents, consultants, contractors and their subcontractors (as the case may be).

~~(e)(b)~~ The Operator agrees to use its best endeavours to engage its agents, consultants and contractors involved in the provision of services relevant to the performance of the Operator's functions under this Agreement on terms that require those agents, consultants and contractors to hold the same types and values of insurance policies that the Operator is obliged to hold under this Agreement, to the extent relevant to the particular service being provided by the consultant or contractor.

16.2 Access Holder's obligation to obtain and maintain Insurance

The Access Holder must:

- (a) effect, or cause to be effected, before the Commitment Date (or, if applicable, the earliest Commitment Date); and
- (b) maintain, or cause to be maintained, until both the expiry of the Term and the Operator having fully complied with clause 15.11,

insurance in accordance with Prudent Practices having regard to the Access Holder's activities, works, obligations and responsibilities under this agreement (including insurances covering all risks of an insurable nature in respect of which the Access Holder is obliged to indemnify Queensland Rail under this agreement) provided that such insurances must include insurance covering such liability as arises at common law or by virtue of any relevant Workers Compensation Legislation in respect of any Access Holder's staff.

16.3 Insurer

~~The Access Holder and the Operator must ensure that their respective Insurance, effected and maintained in accordance with clause 16.1 or 16.2, is with an insurer having an insurance~~

~~financial strength rating of “A” or better by Standard & Poor’s or, if Standard & Poor’s ceases to exist or to provide such ratings, the rating which most closely corresponds to that rating by another agency or person which is recognised in global financial markets as a major ratings agency.~~

~~The Access Holder and the Operator must ensure that their respective insurance, effected and maintained in accordance with clause 16.1 or 16.2, is with an insurer that is:~~

- ~~(a) a corporation (as defined in the Corporations Act; and~~
- ~~(b) licensed to conduct insurance business in Australia; or~~
- ~~(c) otherwise reasonably acceptable to Queensland Rail.~~

16.4 Essential terms and conditions

The Access Holder and the Operator must ensure that, for their respective Insurances, to the extent permitted by Law, all Insurances effected and maintained in accordance with clause 16.1 or 16.2 must:

- (a) note the interests of Queensland Rail; and
- (b) not contain any exclusions, endorsements or alterations which ~~adversely amend~~ reduce the cover ~~provided below that which is required by clause 16 of this agreement without the written consent of Queensland Rail (which consent must not be unreasonably withheld or delayed).~~

16.5 Payment of premium and deductibles

The Access Holder and the Operator:

- (a) must pay when due all premiums, charges and other expenses necessary for effecting and maintaining in force their respective Insurances; and
- (b) are responsible for the payment of all policy deductibles or excesses for their respective Insurances.

16.6 No prejudicial action by the Operator

The Access Holder and the Operator respectively must not do, or permit anything to be done (including any omission), which:

- (a) may result in any respective Insurance being vitiated or rendered void or voidable; or
- (b) would give rise to an entitlement by its insurer to avoid payment of any claim in whole or in part under its respective Insurances.

16.7 Disclosure of Insurance

- (a) The Access Holder and the Operator must provide to Queensland Rail evidence of their respective insurance policies effected and maintained pursuant to this clause 16 (including evidence that the cover provided under those insurance policies comply with clause 16 and of the currency of those insurance policies) to Queensland Rail’s reasonable satisfaction:
 - (i) at least ten Business Days prior to the initial Commitment Date;
 - (ii) upon renewal of each Insurance during the Term; and
 - (iii) whenever requested to do so in writing by Queensland Rail.
- (b) If the Access Holder or the Operator, whenever required to do so under this agreement, fails to produce to Queensland Rail evidence to the satisfaction of Queensland Rail (acting reasonably) of Insurances that have been effected or maintained by it, Queensland Rail may:
 - (i) effect and maintain the Insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Queensland Rail; or

- (ii) suspend this agreement under clause 14.1(a)(i) or 14.2(a).
- (c) For the avoidance of doubt, a certificate of currency which provides evidence of compliance with clause 16 will be considered sufficient evidence for the purposes of clause 16.7(a).

16.8 Compliance

The Access Holder and the Operator must at all times comply with the terms of their respective Insurances effected under this clause 16.

16.9 Claims

- (a) In addition to any other obligation on the Access Holder or the Operator, the Access Holder and the Operator respectively must:
 - (i) notify Queensland Rail as soon as practicable after the occurrence of any claim under their respective Insurance (including providing reasonable details of the claim relevant to or arising out of the subject matter of this agreement); and
 - (ii) keep Queensland Rail informed of subsequent developments concerning any claim
to the extent that such claims affect, relate to or are in connection with this agreement or any right, liability or real or other property of Queensland Rail or otherwise affect the ability to claim under the relevant policy of insurances.-
- (b) Upon settlement of a claim under any Insurance covering damage to the Network, if Queensland Rail is entitled to payment in respect of such damage, the Insurance monies received must be paid to Queensland Rail commensurate with the amount to be paid out by Queensland Rail in relation to the damage unless the Access Holder or the Operator has already partially or totally indemnified Queensland Rail for the relevant damage (including in respect of the amount of any deductible), in which case the monies will be paid to the Access Holder or the Operator (as applicable) but only to the extent that Queensland Rail has been indemnified.

16.10 Insurance not a limit of Operator's liability

The Access Holder and the Operator's compliance with their respective Insurances does not limit that Party's liabilities or obligations under this agreement.

16.11 Joint Insurance Policy

- (a) To the extent that the Operator has complied with its obligations to insure in accordance with clause 16.1, the Access Holder is not required to take out insurance which would cover the same risks.
- (b) If the Operator and Access Holder deem it efficient and appropriate, the Operator and Access Holder may take out joint insurance policies to comply with their respective insurance obligations under this clause 16.

17. Security

17.1 Obligation to provide Security

- (a) The Operator and the Access Holder (if the Access Holder is not also the Operator) must (in appropriate cases):
 - (i) on or before the Commitment Date, provide to Queensland Rail security in the form set out in clause 17.1(b) for the relevant Security Amount respectively (except where the relevant Security Amount is zero); and

- (ii) thereafter maintain that security (including for any increased or decreased amount or any top up) in accordance with this clause 17.

The initial Security Amount for each of the Operator and the Access Holder will be set out in Item 11 of Schedule 1.

- (b) Security must be in the form of:
 - (i) a bank guarantee that:
 - (A) is unconditional and irrevocable and in favour of Queensland Rail;
 - (B) is issued by an Australian institution:
 - (I) authorised to carry on a banking business and entitled to call itself a 'bank' pursuant to the *Banking Act 1959* (Cth); and
 - (II) which has an Acceptable Credit Rating;
 - (C) requires the issuing bank to pay on demand by Queensland Rail:
 - (I) without recourse to the Operator or the Access Holder (as the case may be) or any other person;
 - (II) irrespective of the performance or non-performance of the Operator or the Access Holder (as the case may be) or Queensland Rail under this agreement; and
 - (III) despite any notice or other communication from the Operator or the Access Holder (as the case may be) or any other person, an amount or amounts up to the amount specified in the bank guarantee;
 - (D) has no expiry date; and
 - (E) is otherwise in a form acceptable to Queensland Rail; or
 - (ii) any other form acceptable to Queensland Rail (in its absolute discretion).

17.2 Recourse to Security

- (a) Subject to clause 15.1, a Security may be called upon by Queensland Rail in any circumstance where the Access Holder or Operator (as the case may be):
 - (i) fails to pay, on or before the due date, any amount that is payable by the Access Holder or Operator (as the case may be) to Queensland Rail under this agreement; or
 - (ii) Queensland Rail otherwise suffers or incurs a Loss in respect of which the Access Holder or Operator (as the case may be) is required to indemnify Queensland Rail in accordance with this agreement.
- (b) If Queensland Rail calls on a Security, the Access Holder or Operator (as the case may be) must deliver to Queensland Rail a further Security for the amount called upon, or a replacement Security for the remaining amount of the existing Security plus the amount called upon in exchange for the existing Security, within five Business Days after Queensland Rail calls on the Security so that the Security held by Queensland Rail is equal to the Security Amount.
- (c) Subject to clause 15.1, if an Insolvency Event occurs, or Queensland Rail (acting reasonably) suspects that an Insolvency Event has occurred, in relation to the Access Holder or Operator (as the case may be), Queensland Rail may:
 - (i) in respect of any amounts due but unpaid by the Access Holder or Operator (as the case may be) under this agreement:
 - (A) decline payment from the Access Holder or Operator (as the case may be) of all or part of those amounts; and

- (B) immediately call upon the Security for those amounts for which payment was so declined; or
- (ii) in respect of any amounts paid by the Access Holder or Operator (as the case may be) under this agreement after the time when the Insolvency Event occurred or Queensland Rail (acting reasonably) suspects that an Insolvency Event occurred:
 - (A) refund all or part of those amounts to the Access Holder or Operator (as the case may be); and
 - (B) immediately call upon the Security for the amounts so refunded.

17.3 Review of Security

- (a) Queensland Rail may:
 - (i) at any time, from time to time, and must upon a request from the Access Holder or Operator (who may each request a review only once in any 12 month period), review the amount of the Security Amount, taking into consideration all of the matters that Queensland Rail considers relevant including:
 - (A) the financial performance of the Operator or the Access Holder (as the case may be);
 - (B) the Operator's or the Access Holder's (as the case may be) past performance under this agreement (whether in relation to payments or otherwise); and
 - (C) expected future payment obligations under this agreement; and
 - (ii) acting reasonably, determine that the amount of the Security Amount should be increased or decreased.
- (b) If Queensland Rail determines under clause 17.3(a) that the amount of the Security Amount should be:
 - (i) increased, the relevant Security provider must deliver to Queensland Rail further Security for the amount of the increase, or a replacement Security for the revised amount in exchange for the existing Security; or
 - (ii) decreased, the relevant Security provider must deliver to Queensland Rail a replacement Security for the revised amount in exchange for the existing Security,within ten Business Days after Queensland Rail gives notice of its determination so that the Security held by Queensland Rail is equal to the Security Amount as determined by Queensland Rail.

17.4 Return of Security

Queensland Rail must, subject to the rights of recourse to the Security under this clause 17, promptly return the Security to the relevant Security provider as soon as practicable after both of 17.4(a) and 17.4(b) below occur or 17.4(c) below occurs:

- (a) this agreement has expired or terminated; and
- (b) in Queensland Rail's opinion (acting reasonably) there is no reasonable prospect that:
 - (i) money or damages will become owing (whether actually or contingently) by that Party to Queensland Rail in connection with this agreement; and
 - (ii) any payment towards the satisfaction of that Party's obligation to pay any amount to Queensland Rail under this agreement will be void, voidable or refundable under any Law (including any Law relating to insolvency),

provided that, in any event, Queensland Rail will return the Security to the relevant Party within three months of the expiry or termination of this agreement; or

- (c) an Assignee provides a replacement Security in accordance with clause 22.2(d)(ii) (in which case Queensland Rail must return the relevant Security within two Business Days of lodgement of that replacement Security).

18. Adjustment for changes

18.1 Review of Schedule 3

- (a) This clause 18.1:
 - (i) applies to the extent that a Reference Tariff applies to the Train Services (including where a relevant Reference Tariff is approved by the QCA after the Commencement Date); and
 - (ii) does not apply where there is no Reference Tariff that is applicable to the relevant Train Services.
- (b) Schedule 3 must be reviewed by Queensland Rail as soon as practicable after a Reference Tariff Provision, or any change in a Reference Tariff Provision, is approved by the QCA from time to time. For clarity, Queensland Rail is not obliged to conduct such a review where there ceases to be a Reference Tariff that is relevant to the Train Services.
- (c) The purpose of the review under this clause 18.1 is to determine the amendments to Schedule 3 that are necessary to ensure Schedule 3 remains consistent with the Reference Tariff Provisions (including take or pay) —to the extent that Schedule 3 was consistent with those Reference Tariff Provisions at the Commencement Date (and always subject to any differences referred to in clause 18.1(d)(ii)).
- (d) Without limiting the matters that Queensland Rail must consider in a review under clause 18.1(b), any review of Schedule 3 must have regard to the following:
 - (i) any relevant new or varied Reference Tariff;
 - (ii) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Provision; and
 - (iii) any other relevant provisions of the Access Undertaking.
- (e) After Queensland Rail's review of Schedule 3, Queensland Rail must notify the other Parties of whether it proposes to amend Schedule 3 and if so, the amendments to Schedule 3 that will apply and the date from which those amendments take effect (Amendment Notice). For clarity, the amendments may take effect retrospectively, but must not take effect prior to the time when the relevant Reference Tariff Provision, or amendments to the relevant Reference Tariff Provision, take effect as approved by the QCA.
- (f) If the Access Holder does not accept some or all of the amendments in the Amendment Notice or where Queensland Rail has decided not to amend Schedule 3, then:
 - (i) the Access Holder may only give Queensland Rail a Dispute Notice within ten Business Days after being given that Amendment Notice; and
 - (ii) if the Access Holder gives such a Dispute Notice and the Parties do not resolve the Dispute in accordance with clause 19.2, the Dispute must be referred for determination by an Expert under clause 19.3.
- (g) For clarity, in this clause 18.1 a reference to Schedule 3 includes each other provision (including defined terms) of this agreement relevant to Schedule 3 but only to the extent that they are directly necessary for the application, or interpretation, of Schedule 3.
- (h) For clarity, clause 2.2 of Schedule 3 and clause 18.1 must not be applied in a manner that will result in any part of an Access Charge Input being escalated twice for the same period based on the change in CPI over that period.

18.2 Adjustment for a Material Change

- (a) This clause 18.2 does not apply where a Reference Tariff applies or in relation to a Material Change to the extent that the Net Financial Effect of that Material Change has been, or will be, removed as a result of:
 - (i) amendments to Schedule 3 in accordance with clause 18.1; or
 - (ii) the escalation or variation of Access Charge Inputs in accordance with this agreement.
- (b) If a Material Change occurs, then Queensland Rail must as soon as reasonably practicable notify the Access Holder giving details of the Net Financial Effect of that Material Change.
- (c) Within five Business Days after Queensland Rail gives a notice under clause 18.2(b), the Access Holder and Queensland Rail must meet and negotiate, in good faith, adjustments to this agreement, including adjustments to the Access Charges, in order to remove as far as practicable the relevant Net Financial Effect and to put Queensland Rail in the position it would have been in had there been no Material Change.
- (d) If the Access Holder and Queensland Rail do not reach agreement within 15 Business Days after Queensland Rail's notice under clause 18.2(b) or otherwise resolve the matter in accordance with clause 19.2, then the matter must be referred to an Expert for determination in accordance with clause 19.3.
- (e) Each Party's obligations under this agreement will continue despite the existence of a Material Change.

19. Disputes

19.1 Application of Dispute resolution process

If any dispute, complaint or question arises between the Parties in relation to this agreement (Dispute), then:

- (a) that Dispute must be resolved in accordance with this clause 19; and
- (b) a Party may give the other Parties a notice in writing (**Dispute Notice**) setting out details of the Dispute and requiring that it be dealt with in the manner set out in this clause 19.

19.2 Resolution by escalation

- (a) Within five Business Days after the date on which a Party gives the other Parties a Dispute Notice (**Dispute Notice Date**), representatives of the Parties must meet and use reasonable endeavours to resolve the Dispute.
- (b) If the Dispute is not resolved under clause 19.2(a), senior management representatives of the Parties (who, for a Party, are senior to that Party's representative(s) referred to in clause 19.2(a)) must, within 10 Business Days after the Dispute Notice Date, meet and use reasonable endeavours to resolve the Dispute.
- (c) If the Dispute is not resolved under clause 19.2(b), the Dispute must be referred to each Party's chief executive officer (or his or her nominee – who, for a Party, must be more senior than that Party's representative(s) referred to in clauses 19.2(a) and (b)) for resolution who must use reasonable endeavours to resolve the Dispute within ten Business Days (or such longer period as agreed by the parties) after the Dispute has been so referred.
- (d) If the Dispute is not resolved under clause 19.2(c) within ~~20~~10 Business Days after the ~~Dispute Notice Date~~dispute has been so referred (or such other time as agreed between the Parties), the relevant Dispute:

- (i) unless otherwise agreed by the Parties to the Dispute (in each Party's absolute discretion), must, where this agreement requires referral to an Expert; and
- (ii) may, by agreement of the Parties to the Dispute (in each Party's absolute discretion) in any other case,

be referred for resolution by an Expert in accordance with clause 19.3.

- (e) If a Party's representative under clause 19.2(a) or 19.2(b) is not authorised:

- (i) to act on behalf of that Party in relation to the Dispute; or
- (ii) to resolve the Dispute with immediate binding effect on that Party,

the Dispute is deemed to have not been resolved under clause 19.2(a) or 19.2(b) (as applicable).

19.3 Resolution by Expert

- (a) If a Dispute, or any other matter, is required to be referred to, or determined by, an Expert in accordance with this agreement (including under clause 19.2(d)):

- (i) the Expert must be appointed by agreement between the Parties or, in default of such appointment within 10 Business Days after the need to refer the Dispute to an Expert, will be that person nominated, at either Party's request, by:

- (A) where the Parties agree the Dispute is primarily of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
- (B) where the Parties agree the Dispute is primarily of a financial or accounting nature, the Chairperson (for the time being) of the Resolution Institute; or
- (C) in any other case, the President (for the time being) of the Queensland Law Society Inc.;

- (ii) the Expert must:

- (A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
- (B) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by written notice to the Parties before his or her appointment;
- (C) not be an employee of a Party or of a Related Party of a Party;
- (D) not be permitted to act until he or she has given written notice to each Party that he or she is willing and able to accept the appointment;
- (E) have regard to the provisions of this agreement and consider all submissions (including oral submissions by each Party provided that such oral submissions are made in the presence of the Parties), supporting documentation, information and data with respect to the matter submitted by the Parties;
- (F) for clarity, only make a determination in a way that is consistent with this agreement;
- (G) provide the Parties with a copy of his or her determination in the form of a report within a reasonable time after his or her appointment;
- (H) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties; and

- (i) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration including the *Commercial Arbitration Act 2013* (Qld), will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and
 - (iii) if the Expert is to be nominated by a person referred to in clause 19.3(a)(i), the Parties must comply with and do all things necessary to satisfy and to give effect to the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert; and
 - (iv) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting appointment as the Expert.
- (b) The Parties must do everything reasonably requested by the Expert to assist the Expert including producing information and materials as requested by the Expert and attending any hearing convened by the Expert.
 - (c) In the absence of manifest error, a decision of the Expert is final and binding upon all Parties.
 - (d) The costs of the Expert (and any advisers engaged by the Expert) will be borne in equal shares by the Parties. Each Party must bear its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).

19.4 Resolution of technical Disputes

If there is a Dispute in respect of clauses 6.7(e), 8.3(c), 8.6, 8.7(b), 8.8(a), 8.8(c), 8.10, 9.1(a), 9.1(d), 9.2 or 10.7:

- (a) the Parties must seek to resolve the Dispute in accordance with clause 19.2; and
- (b) if the Parties do not resolve the Dispute in accordance with clause 19.2, the Dispute must be referred for determination by an Expert under clause 19.3.

19.5 Determination by court

If any Dispute is not resolved in accordance with this clause 19, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.

19.6 Injunctive Relief

Nothing in this agreement prevents a Party from seeking urgent injunctive relief from a court.

19.7 Dispute not to affect performance of obligations

The Parties are not relieved from performing their obligations under this agreement because of the existence of a Dispute.

19.8 Extension of time frames

Where a timeframe applies under this clause 19 in relation to a Dispute, the Parties may (acting reasonably) agree to vary that timeframe and if the Parties do agree a varied timeframe then this clause 19 will apply in relation to that Dispute subject to that varied timeframe.

20. Force majeure

20.1 Force Majeure Event occurrence

- (a) If a Party (**Affected Party**) is prevented or hindered by a Force Majeure Event from fully or partly complying with any obligation (except for any obligation to pay money) under this agreement, the Affected Party must, as soon as reasonably practicable, give notice of the Force Majeure Event to the other Parties including reasonable details of:
- (i) the Force Majeure Event;
 - (ii) the effect of the Force Majeure Event on the performance of the Affected Party's obligations;
 - (iii) the likely duration of the delay in performance of those obligations; and
 - (iv) details of the actions the Affected Party has taken to remedy the situation and details of any actions that the Affected Party proposes to take to remedy the situation.

20.2 Suspension of obligations

- (a) The obligations of the Affected Party will be suspended where by reason of a Force Majeure Event that Party is delayed in, or prevented from, carrying out its obligations under this agreement.
- (b) Notwithstanding clause 20.2(a), the Access Holder will be relieved from obligations in respect of the payment of Access Charges during the period that the Network is damaged or destroyed by a Force Majeure Event or the Force Majeure Event otherwise prevents Queensland Rail from providing access to the Network in accordance with clause 2 of this agreement.

20.3 Duty to Mitigate

Each Party will use all reasonable diligence to remedy or overcome the effect of the Force Majeure Event as soon as possible and will attempt to identify alternative viable means of providing the Access Rights affected and to mitigate the effect of the Force Majeure Event. No Party will be obliged to settle any strike, lockout or other labour dispute on terms not acceptable to it.

20.4 End of period of Force Majeure

Subject to clauses 20.5(c) and clause 20.6, the suspension of the obligations of the Parties due to a Force Majeure Event ends when the Affected Party is able to resume full performance of its obligations under this agreement at which time it must issue a notice to the other Parties advising that it intends to recommence the performance of its obligations and must thereafter recommence the performance of its obligations.

20.5 Termination for Loss or Damage to the Network

- (a) In the event that any part of the Network is damaged or destroyed by a Force Majeure Event and in Queensland Rail's reasonable opinion the cost of repairing such damage or replacing that part of the Network is not economic on the basis of the then and committed future utilisation of that part of the Network, Queensland Rail must promptly by written notice advise the Access Holder of:
- (i) the estimated cost of effecting the necessary repairs or replacement works;
 - (ii) the amount of insurance available to effect the necessary repairs and replacement works;
 - (iii) a detailed explanation as to why the cost of repairing or replacing is not economic; and

- (iv) Queensland Rail's intention to not repair or replace the relevant part of the Network unless the Access Holder or any other access holder using that part of the Network pays the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.
- (b) If the Access Holder gives notice to Queensland Rail advising that it will pay the difference between the amount of insurance available to effect the necessary repairs or replacement works and the cost of necessary repairs or works (or a part of that cost as requested by Queensland Rail), then Queensland Rail will proceed with the repairs or replacement within a reasonable time after receipt by Queensland Rail from the Access Holder of payment of the relevant amount subject to reaching agreement with any other access holder using the affected part of the Network. Where the Access Holder pays to Queensland Rail the whole of the estimated cost, Queensland Rail must, upon completion of the necessary repairs or replacement works, refund to the Access Holder any amount by which the amount paid by the Access Holder exceeds the actual cost and the Access Holder shall pay to Queensland Rail the amount by which the actual cost exceeds the amount paid by the Access Holder.
- (c) If within three months after receipt of a notice from Queensland Rail under clause 20.5(a) the Access Holder has not given notice to Queensland Rail pursuant to clause 20.5(b) indicating that it will pay the whole, or that part requested by Queensland Rail, of the cost of the necessary repairs or replacement works, and Queensland Rail has not subsequently agreed to fund the repairs or replacement works within that period, the Access Holder or Queensland Rail shall have the right to terminate this agreement in accordance with clause 20.7.

20.6 Repair Negotiations

If an Access Holder gives Queensland Rail a notice pursuant to clause 20.5(b), then the Access Holder and Queensland Rail will promptly commence negotiations of a Funding agreement in accordance with clause 1.4 of the Access Undertaking.

20.7 Termination after extended Force Majeure Event

Subject to clause 20.6 or the process under clause 20.5 having been finalised (if applicable), if by reason of a Force Majeure Event either Queensland Rail or the Access Holder (relevantly the **Afflicted Party**) is rendered unable to perform its obligations under this agreement for a period of more than six consecutive months, the Access Holder and Queensland Rail must meet in an endeavour to identify any alternative viable means to provide the suspended Access Rights and failing an alternative means being agreed upon within one month of the end of the six month period the other Party may terminate this agreement by 30 days' written notice to the Afflicted Party and the provisions of this agreement relating to termination set out in clauses 15.10 and 15.11 apply without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

21. Rescheduling, rReduction and relinquishment of Access Rights

21.1 Definitions

In this clause 21:

_____ Timetabled Train Service means a Train Service operating on a Timetabled Train Path

(a) _____

_____ Timetabled Train Path means the use of a specified portion of the Network, which may include multiple sections in sequential order, at times specified in Attachment 1 of Schedule 2.

~~(a)(b)~~ _____

21.2 Rescheduling of #Timetabled Train Paths

(a) _____ This clause 21.224.4. applies to Timetabled Train Services.

(b) _____ In this clause 21:

(i) _____ On Time means:

(A) _____ in the case of a Timetabled Train Service outside the Metropolitan System, it is travelling in accordance with the schedule for the Timetabled Train Path allocated to it, plus or minus 15 minutes; and

(B) _____ in all other cases, it is travelling in accordance with the schedule for the Timetabled Train Path allocated to it.

(ii) _____ Ahead means:

(A) _____ in the case of Timetabled Train Service outside the Metropolitan System, it is travelling more than 15 minutes in advance of the schedule for the Timetabled Train Path allocated to it; and

(B) _____ in all other cases it is travelling in advance of the schedule for the Timetabled Train Path allocated to it.; and

(iii) _____ Late means:

(A) _____ in the case of a Timetabled Train Service outside the Metropolitan System, it is travelling more than 15 minutes behind the schedule for the Timetabled Train Path allocated to it; and

(B) _____ in all other cases it is travelling behind the schedule for the Timetabled Train Path allocated to it.

(c) _____ Nothing in this clause 21.224.4 prevents Queensland Rail from exercising its rights under the remainder of this clause 21.

(d) _____ If:

_____ During any period of three or more (not necessarily consecutive) months out of any Year, more than 50 per cent Timetabled Train Services operated under this agreement are Ahead or Late; and

(i) _____ the failure to operate the Timetabled Train Service On Time is not the result of:

(A) _____ a Queensland Rail Cause; or

(B) _____ prior agreement between Queensland Rail and the Operator, at Queensland Rail's request,

then:

(ii) _____ Queensland Rail may, within 30 Business Days after the last of those occasions, give notice to the Access Holder (**Review Notice**):

(A) _____ that Queensland Rail is considering amending the Timetabled Train Path so that the Timetabled Train Path reflects, as closely as is reasonably practicable, the demonstrated three month history; and

- (B) requesting the Access Holder to demonstrate an ability to have an Operator utilise the Timetabled Train Path On Time, and provide any other information relevant to Queensland Rail's assessment of whether the Timetabled Train Path should be amended.
- (iii) If a Review Notice is given to the Access Holder and the Access Holder has not demonstrated, to Queensland Rail's reasonable satisfaction, within 40 Business Days (or longer period agreed between the Access Holder and Queensland Rail (both acting reasonably)) of receiving the Review Notice, an ability to have an Operator operate the Timetabled Train Services On Time:
 - (A) Queensland Rail must promptly notify the Access Holder of whether Queensland Rail has decided to proceed to amend the Timetabled Train Path (**Review Decision Notice**); and
 - (B) If Queensland Rail has decided to proceed with rescheduling, the Access Holder's entitlement to have an Operator operate Timetabled Train Services will be amended with effect on and from the date specified in the Review Decision Notice.
- (iv) If the Access Holder does not agree with the amendment of the Access Holder's entitlement proposed by Queensland Rail pursuant to clause 21.2(d)(iii)21.1(d)(iv), the Access Holder may, within 20 Business Days of the receipt of the Review Decision Notice, notify Queensland Rail in writing that it disputes the proposed amendment in which case the Access Holder may refer the Dispute for determination by an Expert in accordance with clause 19.3 of this agreement (subject to any other dispute resolution process otherwise agreed by the Parties to the Dispute (in each Party's absolute discretion)). The Expert will determine whether the conditions for an amendment of a Timetabled Train Service have been met. The amendment will not take effect until resolution of the dispute and then only to the extent that the reduction is consistent with the Expert's determination.
- (v) In the event that the Access Holder's entitlement to operate the Timetabled Train Services is amended in accordance with this clause 21.221.1, the agreement will be varied accordingly.
- (vi) Queensland Rail may not amend a Timetabled Train Path if to do so would cause the Access Holder to be in breach of its contractual obligations owed to any person (including Queensland Rail).

20.821.3 Reduction of Access Rights

- (a) If:
 - (i) the Access Holder fails to have an Operator operate ~~all a~~ Train Services on ~~a~~ Scheduled Train Paths for seven or more (not necessarily consecutive) weeks out of any 12 consecutive weeks when such Train Services are scheduled; or
 - (ii) the Access Holder fails to have an Operator operate a Train Service on a Scheduled Train Path for seven or more (not necessarily consecutive) weeks out of any 26 consecutive weeks when such Train Services are scheduled; or
 - (iii) the Access Holder no longer has rights to access or use Private Infrastructure that are necessary to enter or exit the Network at the scheduled times,
- (b) _____ and
- (c) Queensland Rail can demonstrate that it has a reasonable expectation of:
- (d) a sustained alternative demand for the capacity used by the Access Rights in question; or
- (e) receiving a commercial benefit sufficiently material to justify the resumption of the Access Rights in question,

then:

~~(f)~~(iv) Queensland Rail may, within ten Business Days after the last of those seven occasions, or after receipt of notice from the Access Holder that it no longer has rights to access or use Private Infrastructure that are necessary to enter or exit the Network at the scheduled times, give a notice to the Access Holder (**Resumption Notice**):

- (A) that Queensland Rail is considering reducing the Access Holder's Access Rights from a nominated date (**Date of Resumption**) to the extent of that underutilisation; and
- (B) requesting the Access Holder to demonstrate a sustained requirement for and ability to utilise the Access Rights.

~~(f)~~(b) If a Resumption Notice is given to the Access Holder and the Access Holder has not demonstrated to Queensland Rail's reasonable satisfaction, within 40 Business Days (or longer period if agreed between the Access Holder and Queensland Rail (both acting reasonably)) of receiving the Resumption Notice, a sustained requirement for and ability to utilise the Access Rights that were not utilised:

- (i) Queensland Rail must promptly notify the Access Holder of whether Queensland Rail has decided to proceed with the resumption and, if Queensland Rail has decided to proceed, whether Queensland Rail has decided to reduce the level of resumption, or nominate a later date for the Date of Resumption, from that given in the Resumption Notice (**Resumption Decision Notice**); and
- (ii) if Queensland Rail has decided to proceed with the resumption, the Access Holder's entitlement to operate Train Services shall be reduced to the level specified in the Resumption Notice with effect on and from the Date of Resumption (except to the extent that those matters have been varied in accordance with clause ~~21.3(b)(i)21.2(b)(i)21.1(b)(i)~~).

~~(g)~~(c) If the Access Holder does not agree with the reduction of the Access Holder's entitlement proposed by Queensland Rail pursuant to clause ~~21.3(a)21.2(a)21.1(a)~~ and ~~21.3(b)21.2(b)21.1(b)~~, the Access Holder may, within 20 Business Days of the receipt of the Resumption Decision Notice, notify Queensland Rail in writing that it disputes the proposed reduction in which case the Access Holder may refer the Dispute for determination by an Expert in accordance with clause 19.3 of this agreement (subject to any other dispute resolution process otherwise agreed by the Parties to the Dispute (in each Party's absolute discretion)). The Expert will determine whether the conditions for a reduction in Access Rights set out in clause ~~21.3(a)21.2(a)21.1(a)~~ have been met and whether the Access Holder has demonstrated a sustained requirement for that part of the Access Rights to which the reduction would apply. The reduction proposed in the Resumption Decision Notice will not take effect until resolution of the dispute and then only to the extent that the reduction is consistent with the Expert's determination.

~~(h)~~(d) Queensland Rail may withdraw the Resumption Notice or the Resumption Decision Notice at any time prior to the later of the Date of Resumption and 10 Business Days following the resolution of the dispute.

~~(i)~~(e) In the event that the Access Holder's entitlement to operate Train Services is reduced in accordance with this clause ~~21.221.4~~, the agreement (including the Access Charges) will be varied accordingly.

~~(j)~~(f) A Train Service has not been operated on a Scheduled Train Path if the Operator has failed:

- (i) to present the relevant Train at the scheduled entry point onto the Network; ~~or~~
- (ii) to operate the relevant Train so that it completes its full journey; or

(iii) to operate the relevant Train with at least fifty per cent of the approved maximum length of the consist specified in the train route acceptance applicable to the relevant Train in Attachment 3 of Schedule 2,

in conformance with the locations and days set out in the Scheduled Train Paths applicable to such Train Service except:

(iv) for a Queensland Rail Cause; or

(ii)(v) where the prior agreement of Queensland Rail and the Operator has resulted in the Operator using an alternative Train Path for that Train Service.

20.921.4 Relinquishment of Access Rights

- (a) If the Access Holder intends to relinquish all or part of the Access Rights, the Access Holder must give Queensland Rail reasonable notice of its intention to do so specifying:
- (i) the Access Rights that the Access Holder intends to relinquish (**Nominated Access Rights**);
 - (ii) if the Access Holder intends that all or part of the Relinquished Access Rights be used so Queensland Rail can grant specific access rights to a specified Access Seeker (as defined in the Access Undertaking) (**Transfer**), the identity of that Access Seeker (**Transferee**) – and, for clarity, the Access Holder may itself be that Access Seeker; and
 - (iii) subject to clause 21.4(b)21.3(b)21.2(b), the date (**Relinquishment Date**) on which and the period for which the Nominated Access Rights are to be relinquished.
- (b) The period from the giving of the notice under clause 21.4(a)21.3(a)21.2(a) until the Relinquishment Date must not exceed nine months.
- (c) The relinquishment of any Nominated Access Rights in accordance with this clause 21.421.321.2 is subject to and conditional on the Access Holder paying to Queensland Rail the Relinquishment Fee on or before the Relinquishment Date.
- (d) If the Access Holder pays the Relinquishment Fee to Queensland Rail on or before the Relinquishment Date, then the terms of this agreement will cease to apply in respect of the Nominated Access Rights on the Relinquishment Date.
- (e) Queensland Rail must facilitate a Transfer in respect of a Transferee if:
- (i) the relevant Access Rights to be granted to the Transferee are included in a new or varied access agreement with the Transferee on terms satisfactory to Queensland Rail (acting reasonably);
 - (ii) Queensland Rail is satisfied (acting reasonably) that the new or varied access agreement with the Transferee has been developed in accordance with the requirements of the Access Undertaking;
 - (iii) the Access Holder has complied with clause 21.4(a)21.3(a)21.2(a) and paid the Relinquishment Fee to Queensland Rail on or before the Relinquishment Date; and
 - (iv) Queensland Rail has sufficient Available Capacity (as defined in the Access Undertaking) so that it can grant all of the relevant access rights to the Transferee without adversely affecting any other third Party.
- (f) If the Relinquishment Fee is not paid on or prior to the Relinquishment Date, then the Access Holder is taken to have withdrawn the notice given under clause 21.4(a)21.3(a)21.2(a) and Queensland Rail has no further obligations under this clause 21.421.321.2 in relation to the relevant relinquishment.

20.1021.5 Replacement Access Agreement

If Queensland Rail or the Access Holder identify an opportunity for Queensland Rail to enter into an access agreement with an existing or prospective access holder that would result in a lessening of the Relinquishment Fee that would otherwise be payable to Queensland Rail under clause ~~21.421.3~~~~21.2~~, Queensland Rail will not unreasonably delay the process for negotiating and executing an Access Agreement with that existing or prospective access holder.

20.1121.6 Termination where no Access Rights remain

- (a) Subject to clause ~~21.6(b)~~~~21.5(b)~~~~21.4(b)~~, where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this agreement to the extent that there are no longer any Access Rights remaining the subject of this agreement, then Queensland Rail may terminate this agreement by notice to the Access Holder (without prejudice to those provisions which are stated to survive this agreement).
- (b) Where, but for the operation of Ad Hoc Train Services, the Access Holder has no right to utilise the Network, unless otherwise agreed between the Parties (each acting reasonably), this agreement will continue to operate in relation to those Ad Hoc Train Services.
- (c) Any termination under clause ~~21.621.5~~~~21.4~~ is without prejudice to any rights of any Party which accrued on or before termination.

20.1221.7 Effect on entitlement to operate and Access Charge Rates

Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this agreement then for the avoidance of doubt:

- (a) the Access Holder's entitlements to have an Operator operate Train Services is also reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights;
- (b) the Access Holder's Nominated Monthly Train Services for each applicable Train Service Description will be taken to be varied to be reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights; and
- (c) the Access Holder will no longer be obliged to pay Access Charges in respect of the resumed, reduced, relinquished or transferred Access Rights (except for any such Access Charges that accrued prior to the resumption, reduction, relinquishment or transfer payable in respect of the part of the Year prior to the resumption, reduction, relinquishment or transfer).

21.22. Assignment

21.122.1 Assignment by Queensland Rail

~~If Queensland Rail no longer has or expects to no longer have a right to operate the Network or any part of the Network, it may Assign all or part of its rights or obligations under this agreement to an Assignee who has the expertise, the financial resources and other relevant resources to enable it to provide the relevant Access Rights without the prior consent of the other Parties provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to provide the Access Rights to the extent of the rights and obligations Assigned to the Assignee.~~

- (a) ~~If Queensland Rail will no longer have a right to operate the Network or any part of the Network relevant to providing the Access Rights under this Agreement it will Assign all or part of its rights or obligations under this agreement corresponding to the parts of the Access Rights which Queensland Rail can no longer provide to an Assignee who:~~
 - (i) ~~will have the right to operate the relevant parts of the Network; and~~

(ii) has the expertise, the financial resources and other relevant resources to enable it to provide the relevant Access Rights,

without the prior consent of the other Parties, provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to provide the Access Rights to the extent of the rights and obligations Assigned to the Assignee.

~~(a)~~(b) Queensland Rail may Assign all or part of its rights or obligations under this agreement to an Assignee who has the expertise, the financial resources and other relevant resources to enable it to discharge the obligations of Queensland Rail under ~~the QCA Act, the Access Undertaking and~~ this agreement without the prior consent of the other Parties provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to be bound by and to perform the obligations of Queensland Rail under ~~the Access Undertaking and~~ this agreement to the extent of the rights and obligations Assigned to the Assignee.

(c) Before exercising its right under clause 22.1(a) or 22.1(b), Queensland Rail will:

(i) give the Access Holder and the Operator no less than 21 **Business** Days notice; and

(ii) use its best endeavours to secure the cooperation of the Assignee to:

(A) provide information requested by the Access Holder or the Operator to confirm that it has the expertise, financial resources and other relevant resources to enable it to provide the relevant Access Rights; and

(B) negotiate and enter into an interface agreement (as defined in the RSNL) with the Operator.

~~(b)~~(d) On the Assignee entering ~~that a~~ deed required under clause 22.1(a)-22.1(a) or clause 22.1(b), and subject to that deed becoming effective in accordance with its terms, Queensland Rail is released and discharged from further liability under this agreement in respect of the obligations which the Assignee has undertaken to be bound by and to perform.

21.222.2 **Assignment by the Access Holder**

(a) The Access Holder may only Assign all or part of its rights and obligations under this agreement in accordance with this clause 22.2.

(b) The Access Holder may, provided it is not in material default in the performance or observance of any of its obligations under this agreement, Assign the whole of its rights and obligations under this agreement to:

(i) subject to clause 22.2(c), a Related Party who is capable of performing the obligations of the Access Holder under this agreement; or

(ii) a person who is not a Related Party with the prior written consent of Queensland Rail provided that such consent will not be unreasonably withheld if Queensland Rail is satisfied (acting reasonably) that such person:

(A) has the financial resources and capability to perform the Access Holder's obligations under this agreement; and

(B) is otherwise capable of performing the Access Holder's obligations under this agreement.

(c) Where clause 22.2(b)(i) applies:

(i) the Access Holder remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee (**Assigned Obligations**); and

- (ii) the Assignee's performance of the Assigned Obligations will (to the extent of such performance) discharge the Access Holder's liability for performance of those Assigned Obligations.
- (d) Any Assignment by the Access Holder of its rights or obligations under this agreement is conditional on and does not take effect until:
 - (i) the Assignee covenants with Queensland Rail by deed, in such terms as Queensland Rail may reasonably require, to be bound by and to perform the obligations of the Access Holder under this agreement; and
 - (ii) the Assignee provides to Queensland Rail any Security that is required to be provided and maintained by the Access Holder in accordance with clause 17.

21.322.3 Assignment by Operator

The Operator cannot Assign all or part of its rights and obligations under this agreement.

21.422.4 Charging

- (a) The Access Holder (Chargor) may only mortgage, charge, encumber or otherwise grant any security over (Charge) all or any of its rights and obligations under this agreement in whole or in part, in favour of any person (Chargee), if the Chargor, the Chargee and Queensland Rail execute a covenant by deed on terms satisfactory to Queensland Rail (acting reasonably), including terms that the Chargee, and any person (including any receiver or receiver and manager or agent) claiming through the Chargee, must comply with the provisions of this agreement including this clause 22 in the exercise of its rights in relation to the Charge (including in exercising any power of sale) as if it were originally a Party to this agreement in the position of the Chargor.
- (b) If the Operator is not also the Access Holder, then the Operator cannot Charge all or any of its rights and obligations under this agreement in favour of any person.

21.522.5 Effect of Assignment or Charge

Any purported Assignment or Charge in breach of this clause 22 is of no effect.

22.23. Representations and warranties

- (a) In addition to any other express or implied representations and warranties in this agreement, Queensland Rail and the Operator respectively represent, warrant and undertake to each other that:
 - (i) it is a corporation validly existing under the laws applicable to it;
 - (ii) it has the power to enter into and perform all of its obligations under this agreement and has obtained all necessary consents and approvals to enable it to do so;
 - (iii) it has the resources and capability to perform all of its obligations under this agreement and is able to pay its debts as and when they fall due;
 - (iv) its obligations under this agreement are enforceable in accordance with the relevant terms and are fully binding on it;
 - (v) it is not in breach or default under any agreement to which it is a Party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this agreement;
 - (vi) there is:
 - (A) no litigation, arbitration or administrative proceeding taking place, pending, commenced or, to its knowledge, threatened against it; and



Appendix III – Consultation Draft – Network Management Principles
provided by QR 25 October 2024

Accredited means accredited (including exempted from the requirement to be accredited and any conditions applying to that accreditation or exemption) in accordance with Part 3 Division 4 of the RSNL;

Accrued Interest, for a Year, has the meaning given in **clause 8.4(a)(i)(D) of schedule D**;

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

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

Ad Hoc Train Service means any Train Service:

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

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

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

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

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

Alternate Access Applications means the Access Applications of two or more Access Seekers that are seeking Access Rights relating to the same traffic task – that is, where if one of those Access Seekers is granted Access Rights, then the other Access Seekers will no longer need a grant of Access Rights. For Example:

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

Alternate Access Seekers means the Access Seekers whose Access Applications are Alternate Access Applications;

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

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

Operating Requirements Manual means the document set out in **schedule G** as varied or amended by Queensland Rail from time to time in accordance with **clause 4.3**;

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

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

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

Possession means a temporary closure or occupation by Queensland Rail of part of the Network (including closure of Track or isolation of any electrical overhead traction system) for the purpose of carrying out Rail Infrastructure Operations, other work or other activities on or in the proximity of the Network and includes ~~Regular~~ Planned Possessions, ~~Ad Hoc Planned Possessions~~, Emergency Possessions and Urgent Possessions;

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

- (a) confirms the project objectives in relation to the creation of additional Capacity;
- (b) assesses each of the Possible Extensions in respect of:
 - (i) the technical and operating requirements for that Possible Extension;
 - (ii) an indicative assessment of the additional Capacity that might reasonably be expected by implementing that Possible Extension; and
 - (iii) a preliminary risk assessment for that Possible Extension;
- (c) includes preliminary survey and geotechnical investigation to support the level of design and cost accuracy required for the study;
- (d) identifies as the preferred Extension solution to be studied under a Feasibility Study, the Possible Extension that is fit-for-purpose and the most efficient and effective solution; and
- (e) provides:
 - (i) a high level engineering assessment of the preferred Extension solution in respect of the total cost of ownership, after allowing for risk, for the purpose of minimising that total cost of ownership;

(d) the Metropolitan System;

Regional Network User Group means a separate group in relation to each Regional Network established to review, discuss and improve supply chain performance, comprised of each Access Holder, rail transport operator (as defined in the RNSL) and End User Access Seeker relevant to each Regional Network.

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

Regulatory Asset Base means the asset value accepted by the QCA for the purpose of developing a Reference Tariff, as maintained by Queensland Rail in accordance with **clause 3.8**;¹²

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

Relevant Person has the meaning given to that term in **clause 6.1.2(c)**.

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

Renewal Access Seeker means, in relation to an Access Holder's Access Rights (acquired prior to the Approval Date) that are to expire:

- (a) the Access Holder;¹³
- (b) an Access Holder's Rolling Stock Operator; or
- (c) another Rolling Stock Operator competing for the relevant Access Rights

A person may only be a Renewal Access Seeker for Access Rights which were acquired prior to the Approval Date.

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

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

- (a) no later than 20 Business Days after the later of:
 - (i) the date on which Queensland Rail gave the relevant notice under **clause 2.9.3(a)**; and
 - (ii) the date that is three years before the expiry of the relevant Access Agreement; or
- (b) no less than two years before the expiry of the relevant Access Agreement;

Revenue Adjustment Amount, for a Year, has the meaning given in **clause 8.4(a)(i)(E)** of **schedule D**;

¹² Separate Regulatory Asset Bases may be maintained for different Reference Tariff inputs in respect of the same Reference Tariff – with the consequence that each of those Regulatory Asset Bases is relevant to the development of that Reference Tariff.

¹³ For example, the mine operator who uses the Access Rights to transport coal from its mine is the Access Holder.

Schedule F – Network Management Principles

1 Application

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

2 Train Planning Principles

2.1 Master Train Plan Principles

- (a) Queensland Rail will:
- (i) indicate in a MTP the Capacity necessary to satisfy all relevant Train Service Entitlements, all of Queensland Rail's passenger Train Services, and time allocated for ~~Regular~~ Planned Possessions;
 - (ii) in addition to the MTP, indicate the timing of any proposed ~~Ad Hoc Planned Possessions or~~ Urgent Possessions (to the extent known), as well as ~~Regular~~ Planned Possessions, in the Supply Chain Calendar; and
 - (iii) update the Supply Chain Calendar at least once per calendar month and notify all Access Holders, Nominated Rolling Stock Operators and other parties whose activities may be affected by the proposed Possession.
- (b) Access Holders' Train Service Entitlements and Queensland Rail's passenger Train Services will be allocated particular Train Paths.
- (c) A MTP will be in a form that sets out the time/distance (location) relationship of the Train Services and other activities on the relevant part of the Network and is readily convertible to a DTP.
- (d) Queensland Rail will notify all Access Holders, Nominated Rolling Stock Operators and any other parties whose activities may be affected (for example, parties that are affected by the availability of access to the Network including operators of rail and port facilities) by any modifications to a MTP, ~~or the scheduling of an Ad Hoc Planned Possession~~, at least three months prior to the commencement of the modification (except in the case of an Urgent Possession or Emergency Possession).²⁸ However, despite the foregoing, Queensland Rail is only required to notify parties (other than Access Holders and Nominated Rolling Stock Operators) who have notified Queensland Rail that they require to be notified in relation to changes.
- (e) Subject to **clause 2.1(f)**, an Access Holder or Nominated Rolling Stock Operator must give Queensland Rail sufficient notice of any requested changes to a MTP to enable Queensland Rail to consider the requested changes and, if Queensland Rail agrees to the making of those modifications, to comply with **clause 2.1(d)**.
- (f) A notice given by an Access Holder of Nominated Rolling Stock Operator under **clause 2.1(e)** must be given no less than:
- (i) six months prior to the date to which the change relates, where the change relates to a passenger Train Service; or

²⁸ Notification to parties other than Access Holders may be done by posting suitable information to Queensland Rail's website. The MTP will be complete and not be redacted in any way.

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

Modifying a MTP/~~Scheduling Ad Hoc Planned Possessions~~

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

2.2 Daily Train Plan Principles

- (a) A DTP will indicate all scheduled Train Services, ~~Regular~~ Planned Possessions, ~~Ad Hoc~~ Planned Possessions, Urgent Possessions and Emergency Possessions (to the extent known) in a form that indicates the time/distance (location) relationship of all activities,
- (b) A DTP represents an expected performance target that, subject to variations to the DTP permitted by this **schedule F**:
 - (i) Queensland Rail must comply with in making available Access to the Network for a particular day of operation; and
 - (ii) each Access Holder and its Nominated Rolling Stock Operator must comply with for its Train Services, for a particular day of operation for a specified part of the Network.

- (c) Queensland Rail will:
- (i) no more than three months prior to the day (commencing at 0000 hours and ending at 2359 hours) to which the DTP relates (**Day of Operation**), prepare an indicative DTP;
 - (ii) At least one Business Day prior to the Day of Operation, Queensland Rail will schedule a DTP and provide all relevant Access Holders, Nominated Rolling Stock Operators and Infrastructure Service Providers and any other parties whose activities are affected (including for example, relevant operators of rail and port facilities) with an extract of the DTP specifying the relevant Train Services. However, despite the foregoing, Queensland Rail is only required to notify parties (other than Access Holders and Nominated Rolling Stock Operators) who have notified Queensland Rail that they require to be notified in relation to changes. For clarity, the DTP provided will be complete and will not be redacted in any way.
- (d) Except as otherwise provided in an Access Agreement, the cancellation of a Train Service does not excuse either Queensland Rail, ~~or an Access Holder~~ or a Nominated Rolling Stock Operator from any relevant obligations under an Access Agreement.

Scheduling a DTP in variation from a MTP

- (e) A DTP must be developed by Queensland Rail from, and except as provided in this **schedule F**, be consistent with, the applicable MTP and Supply Chain Calendar. However, a DTP may be scheduled in variation to a MTP by Queensland Rail:
- ~~to accommodate an Ad Hoc Planned Possession scheduled in accordance with the requirements of clauses 2.1(l) and (m); or~~
- (i) at least two Business Days prior to the Day of Operation, and prior to the DTP being scheduled, in circumstances where any of the following apply:
 - (A) an Access Holder or its Nominated Rolling Stock Operator requests a short-term change to the times at which any of its Train Services, as scheduled in the MTP, operate;
 - (B) an Access Holder or its Nominated Rolling Stock Operator requests to run an Ad Hoc Train Service; or
 - (C) Queensland Rail modifies the times at which any of its passenger Train Services, as scheduled in the MTP, operate; and

provided that the variation does not result in any other Access Holder's scheduled Train Services not being met in accordance with the Access Holder's Train Service Entitlement.
 - (f) A DTP may be scheduled by Queensland Rail in variation from a MTP and the Supply Chain Calendar where at least two Business Days prior to the Day of Operation, and prior to the DTP being scheduled, Queensland Rail wishes to make a short-term change to the times at which one or more scheduled Train Services operate, provided that:
 - (i) the change is intended to accommodate:
 - ~~(A) the modification of an existing Ad Hoc Planned Possession;~~
 - ~~(B)~~(A) the modification of an existing Regular Planned Possession;
 - ~~(C)~~(B) the creation of an Urgent Possession or Emergency Possession;

or

- ~~(D)~~(C) _____ any other Operational Constraint affecting the DTP; or
- ~~(E)~~(D) _____ a Special Event; and
- (ii) Queensland Rail has, for changes under **clause 2.2(f)(i)(A), (B) and (D)**, consulted, and made reasonable endeavours to reach agreement in relation to the proposed modifications, with the affected Access Holders;
 - (iii) for changes under **clause 2.2(f)(i)(C) and (E)** Queensland Rail has used its reasonable endeavours to consult with the relevant Access Holders; and
 - (iv) for changes under **clause 2.2(f)(i)(E)**, Queensland Rail has also, where reasonably possible, included the Special Event in the Supply Chain Calendar.
- (g) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the Day of Operation, and prior to the DTP being scheduled, Queensland Rail makes a short-term change to the times at which one or more scheduled Train Service/s operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlement, for the purpose of accommodating an Emergency Possession provided that where the variation would result in an Access Holder's scheduled Train Services not being met, Queensland Rail has consulted with that Access Holder.
- (h) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the Day of Operation, and prior to the DTP being scheduled, Queensland Rail and all affected Access Holders agree to the modification provided that where Queensland Rail seeks such a modification, Queensland Rail:
- (i) invites affected Access Holders to consider the variation in an appropriate forum;²⁹ at least 36 hours prior to the day of operation; and
 - (ii) gives each of those parties a copy of the proposed variation at least 12 hours prior to the scheduled consideration of the variation.
- (i) For clarity, Queensland Rail may schedule a DTP in variation from a MTP under any one of **clauses 2.2(e) to (h)** even if Queensland Rail cannot do so under, or does not comply with, any of the other of those clauses in respect of that modification.

Making modifications to a DTP once scheduled

- (j) Queensland Rail may make modifications to a scheduled DTP on a case by case basis:
- (i) where:
 - (A) before the Day of Operation, Queensland Rail receives a request from an Access Holder or its Nominated Operator to run an Ad Hoc Train Service; or
 - (B) before a Train Service commences operation, the Access Holder or its Nominated Operator requests a change to the time at which its Train Service will operate and that change is within the scope of the Access Holder's Train Service Entitlement,

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

²⁹ This could include a face-to-face meeting, a telephone conference or any other forum that provides the affected parties with the best opportunity to participate.

- (ii) where, before the commencement of a relevant Train Service, Queensland Rail notifies the Access Holder and its Nominated Rolling Stock Operator that an Emergency Possession is required; and
- (iii) Queensland Rail has used reasonable endeavours to notify and consult with any Access Holder whose Train Services may be affected by the modification or any other affected party.

2.3 Minimising the adverse effects of Possessions

- (a) To the extent that:
 - (i) a MTP is to be modified under **clause 2.1**;
 - ~~(ii) an Ad Hoc Planned Possession is to be scheduled under clause 2.1; or~~
 - ~~(iii)~~(ii) a DTP is to be scheduled in variation from a MTP under clause 2.2,

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

2.4 Disputes

- (a) ~~Subject to clause 2.4(b) and except in relation to Emergency Possessions and Urgent Possessions, if there is a bona fide dispute between an Access Holder, Rolling Stock Operators and Queensland Rail in relation to any proposed changes or modifications to the MTP or the scheduling of an Ad Hoc Planned Possession, the proposed change will not take effect until the dispute has been resolved using the dispute resolution provisions of the Undertaking.~~
- (b) ~~A dispute in relation to a Regular Planned Possession or an Ad Hoc Planned Possession must be commenced in accordance with the dispute resolution provisions of the Undertaking within 30 days of:~~

- (c) ~~In the case of a Regular Planned Possession, the date of the publication of the MTP which includes that Possession; and~~
- (d) ~~In the case of an Ad Hoc Planned Possession, the date of notification of the Possession in accordance with clause 2.1(a) of this schedule F.~~

3 Network Control Principles

Objective

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

Access Holders

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

Provision of Network Control information

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

Traffic Management Decision Making Matrix

- (f) Where the operation of a Train Service differs from a DTP, the ~~Network Controller~~ Network Control Officer will apply the Traffic Management Decision Making Matrix in **clause 3(h)**, for the purposes of giving a Network Control Direction.
- (g) In the context of the Traffic Management Decision Making Matrix the meaning of "On Time", "Ahead" and "Late" are determined by the scheduling of paths in the relevant DTP. A Train Service will be running "On Time" if:
 - (i) in the case of Train Services outside the Metropolitan System, it is travelling in accordance with the schedule for the path allocated to it in the relevant DTP, plus or minus 15 minutes; and

- (ii) in all other cases; it is travelling in accordance with the schedule for the path allocated to it in the relevant DTP.
- (h) The Traffic Management Decision Making Matrix is as follows:

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

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

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

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

Principles for managing deviations from a DTP

- (i) It is necessary for [Network Controllers Network Control Officers](#) to have sufficient discretion to take into account the varying objectives of different traffic types, and the circumstances of a particular part of the Network, in assessing the priority to be given to Train Services and other activities on the Network. [Network Controllers Network Control Officers](#) will apply the following principles in managing deviations from a DTP:
 - (i) a Train Service may be given priority over other Train Services if it is reasonably necessary to do so:
 - (A) due to, or to avoid, an accident, emergency or incident relating to any part of the Network;
 - (B) to remedy, or to mitigate or avoid, the operation of Train Services on any part of the Network being congested, prevented or otherwise materially adversely affected;
 - (C) to remedy, or to mitigate or avoid, any Emergency Possession or Urgent Possession on any part of the Network being prevented or otherwise materially adversely affected; or
 - (D) to ensure the safe operation of any part of the Network;
 - (ii) subject to **clause 3(i)(i)**, passenger Train Services may be given priority over other Train Services if the [Network Controller Network Control Officer](#) reasonably believes that this is necessary to seek:
 - (A) to bring a "Late" passenger Train Service back to being "On Time" or closer to being "On Time";

- (B) to prevent that "Late" passenger Train Service becoming "Later"; or
 - (C) to avoid an "On Time" or "Ahead" passenger Train Service that is operating, is scheduled to operate, or will be scheduled to operate in the Metropolitan System during any peak period³⁰ from becoming a "Late" passenger Train Service;
- (iii) subject to **clause 3(i)(i)**, livestock Train Services may be given priority over other Train Services if the ~~Network Controller~~ [Network Control Officer](#) believes that this is desirable taking into consideration the livestock being transported (including, for example, the welfare of the livestock);
 - (iv) subject to **clauses 3(i)(i) to (iii)**, a Train Service may be given priority over other Train Services if it is necessary to do so to remedy, or to mitigate or avoid, any Planned Possession on any part of the Network being prevented or otherwise materially adversely affected; and
 - (v) subject to **clauses 3(i)(i) to (iv)**, where a Train Service is running "Late" due to a Below Rail Delay, it may be given preference over other Train Services if the ~~Network Controller~~ [Network Control Officer](#) believes that this is consistent with the critical objectives of the Train Services in question, and that it will result in less aggregated consequential delays to other Train Services than otherwise would be the case.

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