

[\[QRC Mark-Up\]](#)

**QR NETWORK PTY LTD
ABN 78 132 181 116**

and

**[THE PARTY WHOSE NAME AND ADDRESS APPEARS IN ITEM 1
OF SCHEDULE 1]
ABN XX XXX XXX XXX**

**RAIL CONNECTION AGREEMENT
for
[LOCATION THAT APPEARS IN SCHEDULE 2]**

THIS AGREEMENT is made on

BETWEEN QR NETWORK PTY LIMITED of 14th Floor, 305 Edward Street, Brisbane (“QR Network”)
AND THE PARTY WHOSE NAME AND ADDRESS APPEARS IN ITEM 1 OF SCHEDULE 1
 (“OWNER”)

RECITALS

- A** The Owner [‘owns’ or ‘will own’] the Private Infrastructure.
B QR Network owns, and is the Accredited Rail Infrastructure Manager of, the Network.

- C The Owner wishes to [*connect the Private Infrastructure* or *continue having the Private Infrastructure connected*] to the Network, and QR Network agrees to that connection via the Connecting Infrastructure on the terms and conditions set out in this Agreement.

IT IS AGREED

1 INTERPRETATION

1.1 In this Agreement:

Acceptable Credit Rating means a minimum long term credit rating of BBB from Standard & Poors.

Access Rights the Owner's rights of access to a part of the Network which includes the Connecting Infrastructure, which are granted pursuant to an access agreement between QR Network and the Owner (or the Owner's above rail operator) (and which includes an obligation on QR Network to operate and maintain the Network and Connecting Infrastructure).

Accreditation means accreditation in accordance with Part 5 of the TRSA (including a TIA accreditation (as defined under the TRSA)) for railway operations under sections 9(a) and (b) of the TRSA, and Accredited means to have Accreditation.

Annual Service Charge means ~~the amount determined~~ subject to clause 3.2(c), in respect of a Maintenance Year, the reasonable direct and proper costs reasonably and actually incurred by QR Network during that Maintenance Year in connection with performing in accordance with ~~Schedule 4 payable to QR Network by the Owner pursuant to this Agreement and any interest payable~~ its operation and maintenance in relation to ~~such Annual Service Charge pursuant to this Agreement~~ Connection Infrastructure.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Authorities means any:

- (i) government, government department or other governmental or semi-government body or authority including local government;
- (ii) governmental, semi-governmental or judicial person; or
- (iii) person (whether autonomous or not) who is charged with the administration of a Law.

~~**Base Annual Service Charge** means the amount specified in Part 1 of Schedule 4, and varied in accordance with Schedule 4 or clause 14.~~

Business Day means a day that is not a Saturday, Sunday or bank or public holiday in Brisbane.

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

~~**Coal Loss Mitigation Provisions** means Schedule 6.~~

Commencement Date means the date of execution of this Agreement.

Commitment Date means the date specified in Item 4 of **Schedule 1**.

Connecting Infrastructure means infrastructure (including, without limitation, track, signalling and overhead traction electricity (if applicable)) managed, controlled or owned by QR Network, which connects the Network to the Private Infrastructure as shown on the Plan detailed in **Schedule 12**, and as modified or upgraded from time to time.

Connecting Infrastructure Work Notice means the notice referred to in clause 6.3(b)(ii).

Consequential Loss means:

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

but **Consequential Loss** does not include:

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

Construction Agreement is defined in clause 6.4(a).

Design means the design of the Connecting Infrastructure which is to be built by or on behalf of the Owner.

Dispute has the meaning given in **clause 17.1**.

Dispute Notice has the meaning given in **clause 17.1**.

Emergency Response Plan means the plan in **Schedule 5** being the set of procedures developed by the Owner for dealing with an Incident which may impact on the Network or Connecting Infrastructure, including all actions to be taken to minimise or alleviate any threat or danger to any person or property.

Environmental Harm has the meaning given to that term in the *Environmental Protection Act 1994* (Qld).

Expiry Date means the date referred to in Item 2 of **Schedule 1**.

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

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

and which may, if paragraphs (a) and (b) of this definition are satisfied, include:

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

GST means a tax in the nature of a supply or goods and services tax levied or imposed by the Commonwealth of Australia.

GST Inclusive Reimbursement is the amount calculated by the formula:

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

Where:

- A = the GST inclusive amount paid by QR Network for a Reimbursable Item
 B = the rate of GST (expressed as a decimal) applicable at the time the calculation is made
 C = any GST input tax credit that QR Network can claim in respect of that Reimbursable Item

Incident means any rollingstock derailment, rollingstock disablement or breakdown, accident, collision or any other unplanned occurrence which causes or could cause injury to any person, damage to property, or Environmental Harm or a disruption to or cancellation of any Train Service.

Initial Security Amount means the amount specified in Item 3 of **Schedule 1**.

Insolvency Event means the happening of any of the following events in relation to the Owner:

- (a) it is unable to pay all of its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the *Corporations Act 2001* (Cth);
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 14 days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within one month;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the *Corporations Act 2001* (Cth)) of any of its assets if that appointment is not revoked within 14 days after it is made; or
- (e) it proposes to enter into, or enters into, any arrangement or composition with its creditors or any of them within the meaning of the *Corporations Act 2001* (Cth).

Interface Risk Assessment means the assessment jointly undertaken by the Parties of the risks associated with the Owner's operations and the Private Infrastructure insofar as they interface with the Connecting Infrastructure, and the Network.

Interface Risk Management Plan means the plan referred to in **clause 101** and included in **Schedule 56**.

Law means any statute, ordinance, code, law, decree, order, circular, rule, direction or regulation by any Authorities whether now or at any time in the future.

Maintenance Year means each 12 month period (or part thereof) occurring during the term of this Agreement commencing on and from the Commitment Date, and thereafter on each anniversary of the Commitment Date.

Network means that part of the network of rail transport infrastructure (as defined in the *Transport Infrastructure Act 1994* (Qld)) for which QR Network is the Accredited Rail Infrastructure Manager, as modified or upgraded from time to time (but, if QR Network is the Rail Infrastructure Manager for the Private Infrastructure, excluding the Private Infrastructure).

Operator means any party contracted by the Owner to operate Train Services on behalf of the Owner across the Connecting Infrastructure, whether or not that party is an accredited rail transport operator (as defined in the TRSA).

Party means a party to this Agreement, and **Parties** the parties to this Agreement.

Private Infrastructure means track and/or associated rail transport infrastructure owned by the Owner starting at the Connecting Infrastructure as shown on the Plan detailed in **Schedule 12**, and as modified or upgraded from time to time.

QR Network Access Undertaking means the access undertaking approved by the Queensland Competition Authority under the *Queensland Competition Authority Act 1997* (Qld) from time to time.

QR Party means a Related Body Corporate of QR Network.

~~means~~ **Rail Infrastructure Manager** has the meaning given to that term in the TRSA.

Reference Tariff means an Access Charge (within the meaning of the QR Network Access Undertaking) approved by the Queensland Competition Authority as amended, varied or escalated in accordance with the QR Network Access Undertaking from time to time.

Reimbursable Item means an item of expense incurred by QR Network in respect of which QR Network is entitled under this Agreement to be reimbursed by the Owner for the cost of the item.

Related Body Corporate has the meaning ascribed to it in the *Corporations Act 2001* (Cth).

Senior Site Executive means the senior site executive appointed in accordance with the *Mineral Resources Act 1989 (Qld)*.

Train means any configuration of rollingstock operating as a unit on the Network, Connecting Infrastructure and/or Private Infrastructure.

Train Service means the running of a Train between specified origins and destinations.

Train Services Plan means the document of that name developed for or on behalf of the Owner concerning the number, type, cargo and other characteristics of Trains running to and from the Private Infrastructure, in the form set out in **Schedule 4**.

Transfer Facilities means coal loading facilities which form part of the Private Infrastructure and any alterations, additions and replacements of such facilities made by the Owner from time to time.

TRSA means the *Transport (Rail Safety) 2010 Act (Qld)*.

1.2 Unless expressed to the contrary:

- (a) words importing the singular include the plural and vice versa;
- (b) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and permitted assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) "\$" or "dollars" is a reference to the lawful currency of Australia; ~~and~~
 - (v) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties; and
 - (vi) a clause of the QR Network Access Undertaking is a reference to the QR Network Access Undertaking in force at the date of this Agreement and, if that clause is subsequently altered or replaced, the reference will be taken to be to the altered or replacement clause of the QR Network Access Undertaking.
- (c) where any Party comprises more than one person, then all of those persons together as well as each of them individually must comply with that Party's obligations under this Agreement.
- (d) where under this Agreement the Owner is required to reimburse a cost to QR Network, the parties agree that:
- (i) the Owner will not be required to reimburse any profit or overheads payable to a Related Body Corporate of QR Network, other than with the prior written approval of the Owner; and
- (ii) QR Network will not be entitled to reimbursement of any costs incurred as a result of a breach of contract or negligence by QR Network.

2 TERM

This Agreement commences on the Commencement Date and expires on the Expiry Date, subject to earlier termination in accordance with **clause 18**.

3 CHARGES, INVOICING AND PAYMENT

3.1 The Owner must pay to QR Network the following costs, fees and charges at the times and in the manner specified:

- (a) the Annual Service Charge ~~as escalated and reviewed, and any pro-rata payments payable under clause 14;~~
- (b) the reasonable and proper costs of the design, construction and commissioning of modifications to, or upgrade or replacement of, the Connecting Infrastructure in accordance with **clauses 6.5 and 6.6**; (but not, for clarity, any cost incurred by QR Network in the performance of its maintenance and operation obligations under this Agreement in relation to the Connection Infrastructure); and

[Note: The OCR considers that the Owner should not be obliged to pay any amount referred to in the above sub-clause to the extent that the relevant amounts are built into the Reference Tariff and therefore recovered by QR Network as part of the Access Charge.]

- (c) the reasonable and proper costs of decommissioning and removing the Connecting Infrastructure upon the expiry or earlier termination of this Agreement in accordance with **clause 18.3** so as to remove the connection between the Network and the Private Infrastructure and restore the affected section of the Network to a condition consistent with the adjacent sections of the Network; ~~and,~~

~~(d) the costs of providing any other services to the Owner as adjusted in accordance with the terms of this Agreement.~~ clause 3.2.

3.2 ~~(a)~~ ~~(a)~~ The amounts payable by the Owner under **clause 3.1** ~~(a)~~ represent consideration for QR Network meeting all obligations under this Agreement including maintenance and inspection charges for the Connecting Infrastructure and administration of the Agreement. ~~Such amounts will be as escalated and reviewed in accordance with Schedule 5, or as otherwise agreed in writing between the Parties.~~

(b) The amounts payable by the Owner under clause 3.1 will be adjusted where an audit undertaken in accordance with clause 3.6 has identified a manifest error in the levy, allocation or calculation of the reasonable and proper costs which have been invoiced to the Owner in accordance with clause 3.3.

~~(b)~~ ~~If~~ (c) If any amount attributable to the operating and maintenance costs of the Connecting Infrastructure ~~are~~ is included in the cost build up for Reference Tariffs, the Annual Service Charge will be a nominal fee of \$1.00. ~~In the event that the operating and maintenance costs of the Connecting Infrastructure are not included in the cost build up for Reference Tariffs, the Annual Service Charge as set out in Schedule 5 will apply.~~

3.3 ~~3.3~~ The QR Network must issue an invoice to the Owner for the Annual Service Charge ~~is payable annually referable to a Maintenance Year within 30 days of the expiry of that Maintenance Year. The Owner must pay the amount invoiced by QR Network within 14 days after the Commencement Date and each anniversary Owner's receipt of the Commencement Date in invoice.~~ The other costs payable by the Owner under this Agreement ~~(including, without limitation, any pro-rata payments payable under clause 14 in respect of an increase in the Base Annual Service Charge)~~ are payable within 14 days of receipt by the Owner of an invoice from QR Network in respect of such costs.

3.4 ~~3.4~~ If the Owner disputes an amount or amounts claimed by QR Network in an invoice issued to the Owner, the Owner will, within 14 days of the invoice being ~~issued~~ received, give notice of that dispute to QR Network setting out in detail the grounds for the dispute, and the dispute will be resolved in accordance with **clause 17** of this Agreement. The Owner will pay the undisputed portion of the amount claimed in the relevant invoice on or before the due date for payment. Within 14 days after the resolution of the dispute, an appropriate adjustment will be made between the Parties as required.

3.5 ~~3.5~~ (a) If the Owner fails to pay in full any costs, fees or charges payable by the Owner under this Agreement on or before the due date for payment (including any disputed amount which is subsequently determined to be payable by the Owner to QR Network), the Owner will be liable to pay interest on the outstanding amount at a rate of two per cent (2%) above the Commonwealth Bank of Australia's 'Reference Rate' for borrowers with overdrafts of \$100,000 or more as published in the Australian Financial Review from time to time whilst such amounts remain outstanding or, if such 'Reference Rate' is not so published, at a rate reasonably specified by QR Network.

- (b) Interest payable under this **clause 3.5** will be calculated on daily balances on the amounts outstanding from the date for payment of the amount until such amount, together with interest thereon, has been paid in full. All interest accrued but unpaid at the end of each day (or such longer period as specified by QR Network) will itself bear interest.

3.6 The Owner may at any time (and from time to time) require that an audit is undertaken of the costs, fees and charges referred to in clause 3.1 for the purpose of verifying that the costs, fees and charges have been properly allocated to the Owner. If the Owner does so:

(a) the audit must be carried out by a person who is appropriately skilled and qualified to carry out the audit, is impartial and has undertaken to be bound by reasonable duties of confidence, if so required by either the Owner or QR Network;

(b) the Owner must bear the costs of the audit;

(c) QR Network must make available such information as is reasonably required by the auditor; and

(d) promptly following completion of the audit, the results of the audit will be made available to QR Network and the Owner.

4 GST

4.1 ~~(a) Hidden Text~~

- (a) Unless otherwise stated, all amounts payable or other consideration to be provided under this Agreement are exclusive of GST.
- (b) If QR Network is required to pay GST on any amount payable or other consideration to be provided under this Agreement then, subject to **clause 4.1(e)**, the Owner must pay to QR Network the amount of that GST on the same date as the payment giving rise to the GST.
- (c) If the supply of a Reimbursable Item under this Agreement is subject to GST, the Owner must pay QR Network in respect of that Reimbursable Item the GST Inclusive Reimbursement.
- (d) All invoices prepared pursuant to this Agreement will take the form of a tax invoice.
- (e) If a dispute between QR Network and the Owner arises out of or in connection with this **clause 4.1**, then either Party will give to the other Party a notice of dispute in writing adequately identifying and providing details of the dispute. If the dispute has not been resolved within 14 days after service of a notice of dispute, the dispute must be referred for determination by an expert in accordance with **clause 17.4**.

5 ACCESS TO OPERATE ROLLINGSTOCK ON PRIVATE INFRASTRUCTURE, QR NETWORK AND CONNECTING Infrastructure

5.1 This Agreement does not constitute an agreement between the Parties for:

- (a) access by QR Network or any third party to operate rollingstock on the Private Infrastructure; or
- (b) access by the Owner or any third party to operate rollingstock on the Network or the Connecting Infrastructure.

5.2 Arrangements for access to operate rollingstock on the Private Infrastructure, the Network and/or the Connecting Infrastructure will be the subject of separate agreement or agreements between relevant parties.

6 CONNECTING INFRASTRUCTURE

1. *[Note: This clause sets out 2 alternatives. The election as to which clause applies should be agreed by the parties prior to entering into this Agreement. The unused alternative and corresponding clauses should be removed before the Agreement is signed]*

6.1 Alternative 1 (to apply where the Connection Infrastructure is to be, or has already been, constructed by the Owner. If the Connection Infrastructure has already been constructed by the Owner, clauses 6.1 and 6.2 should be deleted)

- (a) To enable the Owner to plan, design, construct and otherwise carry out the construction of the Connection Infrastructure QR Network must, promptly following a written request from the Owner, provide all assistance reasonably requested by the Owner so that the Connection Infrastructure satisfies the minimum technical, engineering and safety standards required to connect the Private Infrastructure to the Network, including:
 - (i) the provision of technical and engineering information in relation to the Network, including all information relating to the design specifications, infrastructure standards and scope of the rail infrastructure adjacent to the Private Infrastructure or to which the Private Infrastructure will connect;
 - (ii) advice in connection with the design specifications, infrastructure standards and the scope of the rail infrastructure for the coal system which the Owner of the Private Infrastructure is developing;
 - (iii) providing access to planning procedures developed and maintained by QR Network which would reasonably have an impact on the operation of Train Services using the Connecting Infrastructure including any planned or anticipated upgrades or augmentation of the Network;
 - (iv) the provision of information relating to any capacity analysis associated with the Private Infrastructure, including capacity modelling assumptions and modelled simulation outputs required for planning and design purposes;
- (v) the provision of the information set out in Schedule 10; and

- (vi) access to employees, agents or officers of QR Network who have knowledge of the Network, in particular the matters identified in **clauses 6.1(a)(i) to (iv)**.

6.2

- (a) The Owner must submit the Design to QR Network for approval in accordance with this **clause 6.2**.
- (b) Within [10] Business Days of submission of the Design in accordance with **clause 6.2(a)**, QR Network must give written notice to the Owner:
- (i) approving the Design; or
- (ii) rejecting the Design, in which case QR Network:
1. (A) _____ must give reasons for the rejection; and (B) _____ may give details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the **Train Services contemplated in the Train Services Plan**.
- (iii) QR Network must approve the Design of the Connecting Infrastructure where it:
2. (A) _____ meets the technical specifications reasonably required by QR Network for connection to the Network;
 3. (B) _____ has been constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining part of the Network, and there is no adverse impact on safety; and
 4. (C) _____ will not, by virtue of its existence, reduce capacity or supply chain capacity.
- (c) Following receipt of a notice under **clause 6.2(b)(ii)**, the Owner may:
- (i) modify and resubmit the Design, in which case **clause 6.2(b)** will reapply; or
- (ii) dispute any of QR Network's reasons for rejecting the Design in which case the matter will be resolved in accordance with **clause 10.1** of the QR Network Access Undertaking.

6.3

- (a) ~~Prior to the Commitment Date QR Network will inspect the Connecting Infrastructure, to determine whether it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services contemplated in the Train Services Plan. If any modification or upgrade to, or replacement of, the Connecting Infrastructure is required in order to make it suitable for those purposes, QR Network will give to the Owner written details of any work required and QR Network will carry out, or cause to be carried out, those modifications, upgrades or replacement, at the Owner's cost. The Owner may dispute the amount of the costs payable in respect of any modifications, upgrade or replacement, but cannot dispute either the scope of the work determined by QR Network or who QR Network chooses to carry out the work.] or [QR Network will design, construct and commission the Connecting Infrastructure, at the cost of the Owner, in accordance with the terms of the separate construction agreement between the Parties.]~~ The Connecting Infrastructure shall be suitable for these purposes where it:
- (i) meets the technical specifications reasonably required by QR Network for connection to the Network;
- (ii) has been constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining part of the Network, and there is no adverse impact on safety; and
- (iii) will not, by virtue of its existence, reduce capacity or supply chain capacity.

[Note: These are the requirements for connection of infrastructure per 8.3(a)(i) – (iii) of the QR Network Access Undertaking.]

- (b) If QR Network has, in accordance with **clause 6.3(a)**, determined that modification or upgrade to, or replacement of, the Connecting Infrastructure is required in order to make it suitable for those purposes, QR Network will:
- (i) first, consult with the Owner in respect of the work which QR Network believes is required with a view to agreeing the most efficient and effective means of making the Connecting Infrastructure suitable for the purposes set out in **[clause 6.3(a)]**; and
- (ii) second, if QR Network believes that work is still required and having regard to the consultation with the Owner, give to the Owner a written notice setting out comprehensive details of the work required (including a scope of work), comprehensive reasons why QR Network considers that the work is required, details of the party or parties who QR Network proposes to carry out the work and QR Network's procurement strategy (**Connecting Infrastructure Work Notice**).
- (c) The Owner may dispute all or any part of the Connecting Infrastructure Work Notice in accordance with this Agreement.
- (d) Following the expiry of a period of 21 days from the date of receipt by the Owner of the Connecting Infrastructure Work Notice and provided that the Owner has not disputed the Connecting Infrastructure Work Notice, QR Network will carry out, or cause to be carried out, those modifications, upgrades or replacement, at the Owner's cost. If the Owner has disputed the Connecting Infrastructure Work notice and it is determined in dispute resolution carried out in accordance with this Agreement that the work described in the Connecting Infrastructure Work Notice is reasonably required, QR Network shall be entitled to carry out, or cause to be carried out, that work following and in accordance with the determination of the dispute.
- (e) The Owner shall pay to QR Network the reasonable and proper costs of the work carried out by or for QR Network in accordance with **clause 6.3(d)**, provided that the Owner may dispute the amount of those costs in accordance with the procedure set out in **clause 3**.

6.4 Alternative 2 (to apply where QR Network is to construct the Connecting Infrastructure):

- (a) QR Network will design, construct, project manage and commission the Connecting Infrastructure, at the cost of the Owner, in accordance with the terms of the separate construction agreement between the Parties which shall be in accordance with the terms set out at **Schedule 8 (Construction Agreement)**.
- (b) Any dispute arising out of or in relation to the negotiation of the Construction Agreement will be resolved in accordance with clause 10.1 of the QR Network Access Undertaking.
- (c) Subject to the provisions of the Construction Agreement, the Owner shall pay (under and in accordance with the Construction Agreement) to QR Network the reasonable and proper costs of the work carried out by or for QR Network in accordance with **clause 6.4(a)**, provided that the Owner may dispute the amount of those costs in accordance with Construction Agreement or with **clause 3**.

6.5 For the avoidance of doubt, QR Network:

- (a) ~~(b) For the avoidance of doubt, QR Network~~ owns [or, once constructed, will own,] the Connecting Infrastructure-;
- (b) shall not encumber, transfer or dispose of the Connecting Infrastructure except as expressly permitted in this Agreement; and
- (c) shall not remove, relocate or part with possession of the Connecting Infrastructure except as expressly permitted in this Agreement.

6.6 ~~6.2~~ QR Network will inspect the Connecting Infrastructure at least once per year during the term of this Agreement, to assess the state of repair of the Connecting Infrastructure.

6.7 ~~6.3~~ QR Network will maintain and repair the Connecting Infrastructure to the standard required to maintain the connection between the Network and the Private Infrastructure.

~~6.8~~ 6.4-At any time QR Network may (subject to the following terms) require modifications or upgrades to, or replacement of, the Connecting Infrastructure if such modifications, upgrades or replacement are reasonably required so that the Connecting Infrastructure:

- (a) ~~in the interests of safety or operational efficiency;~~ does not have an adverse impact on safety;
- (b) ~~to enable trains to continue to run across the Connecting Infrastructure at the speed for which the Connecting Infrastructure was originally designed;~~ will meet the technical specifications reasonably required by QR Network for connection to the Network;
- (c) ~~to bring the Connecting Infrastructure to a standard consistent with other comparable parts of the Network; or is of a standard appropriate to the nature of the traffic and the current service standards of the adjoining parts of the Network; or~~

~~due to a change in the number, type, cargo or other characteristics of Train Services operating to and from the Private Infrastructure.~~

- (d) does not, by virtue of its existence, reduce Capacity or Supply Chain Capacity (as those terms are defined in the QR Network Access Undertaking),

provided that the Connecting Infrastructure is not required to be of a standard or to be of any condition which exceeds the standards and condition of any other part of the Network.

~~6.9~~ 6.5-QR Network will give to the Owner comprehensive written details of any modifications, upgrades or replacement that it requires to be made to the Connecting Infrastructure under ~~clause 6.5, and QR Network will~~ 8, and thereafter consult with the Owner. If after consulting with the Owner QR Network considers that it is required to carry out, or cause to be carried out, those modifications, upgrades or replacement it will give the Owner a written notice (including full details) and carry out or cause to be carried out that work at the Owner's cost (subject to the Owner's right to dispute). The Owner may dispute the amount of the costs payable in respect of any modifications, upgrade or replacement, ~~but cannot dispute either~~ the scope of ~~the work determined by QR Network and/~~ or who QR Network chooses to carry out the work.

~~6.10~~ 6.6-The Parties acknowledge that the construction and commissioning of modifications or upgrades to, or replacement of, the Network or Connecting Infrastructure, and the maintenance or repair of the Network or Connecting Infrastructure, may cause disruption to Train Services which cannot reasonably be avoided. Except in the case of emergencies, QR Network will ~~endeavour to~~ give the Owner reasonable prior written notice of any ~~expected~~ disruptions.

~~6.11~~ 6.7-QR Network will, upon reasonable notice to the Owner [*and the Rail Infrastructure Manager of the Private Infrastructure*], be entitled to enter and remain upon the Private Infrastructure, with such workmen and machinery as may be reasonably necessary, to the extent necessary to exercise its rights, and fulfil its obligations in relation to maintenance and repair of the Connecting Infrastructure, under this Agreement. QR Network must, and must procure that any persons it authorises to access the Connection Infrastructure, comply with the requirements of clause 26.2 in relation to access to private land.

7 [CONSTRUCTION AND] MAINTENANCE OF AND MODIFICATION OR UPGRADE TO PRIVATE INFRASTRUCTURE

7.1 QR Network may require modifications or upgrades to be made to the Private Infrastructure if such modifications or upgrades are reasonably required: to rectify a non-conformance with the standard described at clause 7.4.

- (a) ~~in the interests of safety or operational efficiency;~~
- (b) ~~to enable trains to fully depart the Network and run onto the Private Infrastructure, or to fully depart the Private Infrastructure and run onto the Network, at the speed for which the relevant sections of the Network and Connecting Infrastructure were originally designed;~~
- (c) ~~to bring the connecting sections of the Private Infrastructure to a standard consistent with other comparable parts of the Network or Connecting Infrastructure;~~
- (d) ~~due to a change in the number, type, cargo or other characteristics of Train Services running to and from the Private Infrastructure; or~~
- (e) ~~if Transfer Facilities form, or will form, part of the Private Infrastructure, to comply with the Coal Loss Mitigation Provisions. QR Network will give to the Owner written details of any modifications or upgrades required by QR Network.~~

7.2 Any modifications or upgrades to the Private Infrastructure required by QR Network will be carried out by or on behalf of the Owner at the Owner's cost, and will in all respects comply with the minimum technical, engineering and safety standards that would be expected of a competent Accredited Rail Infrastructure Manager, as determined by an independent appropriately qualified person acceptable to both Parties.

7.3 The Owner will carry out, or cause to be carried out, the construction and commissioning of any modifications or upgrades to the Private Infrastructure in such a way as to minimise the disruption to Train Services insofar as it is reasonably practicable to do so.

7.4 The Owner will, at its cost, ensure that the Private Infrastructure is [*designed, constructed and*] maintained and any future modifications are constructed to a standard which reasonably:

- (a) satisfies the minimum technical, engineering and safety standards that would be expected of a competent Accredited Rail Infrastructure Manager, ~~and~~ in accordance with all applicable laws and standards;
- (b) enables trains to fully depart the Network and run onto the Private Infrastructure, or to fully depart the Private Infrastructure and run onto the Network, at the speed for which the relevant sections of the Network were originally designed;
- (c) maintains the integrity of all electrical, signalling and telecommunications interfaces between the Private Infrastructure and the connecting sections of the Network (including the Connecting Infrastructure);
- (d) maintains the integrity of any weighbridge or overload detector on the Private Infrastructure; and

~~if Transfer Facilities form, or will form, part of the Private Infrastructure, complies with the Coal Loss Mitigation Provisions.~~

- (e) to the extent that a failure to meet this standard would have an adverse impact on the safety or operation of the Connecting Infrastructure or the Network.

~~7.5~~ 7.5 [If the Owner reaches an arrangement with QR Network for QR Network to carry out the design construction and/or maintenance of the Private Infrastructure, that arrangement will be the subject of a separate written agreement between the Parties.]

~~7.6~~ 7.6 The Owner will, if reasonably requested by QR Network at any time from time to time, provide to QR Network in a timely manner all information collected by any weighbridge or overload detector which is located on the Private Infrastructure; where that information is reasonably required in order for QR Network to manage and operate the Network.

~~7.7~~ 7.7 The Owner will, in relation to the Private Infrastructure, provide to QR Network, in a form reasonably requested by QR Network from time to time, all electrical, signalling and telecommunications information required by QR Network to manage and operate the Network (including the Connecting Infrastructure and all Trains entering or running on the Network).

~~7.8~~ 7.8 ~~QR Network~~ QR Network (acting reasonably) may, and the Owner permits QR Network to:

- (a) ~~have reasonable access to~~ inspect (from time to time) the connecting sections of the Private Infrastructure; and any construction or maintenance of those connecting sections of the Private Infrastructure, in relation to the Owner's compliance with this **clause 7**. ~~Except in an emergency, QR Network will give the Owner reasonable notice of any such inspection; and provided that QR Network must at all times comply with the requirements of clause 26.2 in relation to access to private land, including in the event of an emergency.~~
- (b) ~~monitor the Owner's compliance with the Coal Loss Mitigation Provisions in accordance with clause 1.6 of Schedule 7.~~

~~7.9~~ 7.9 The Owner will be responsible for all electrical safety obligations ~~in connection with~~ for the Private Infrastructure.

8 SAFETY TRAINING

The Owner will cause all employees, agents and independent contractors of the Owner who are, or may be, required to work on, or in the immediate vicinity of, the Network or Connecting Infrastructure to attend trackside

safety training and other applicable safety training prior to commencing such work. QR Network will provide such training as and when reasonably required by the Owner, at the cost of the Owner, upon reasonable notice by the Owner to QR Network.

9 ACCREDITATION REQUIREMENTS

9.1 The Owner must be Accredited, or procure another person or entity to be Accredited, as a Rail Infrastructure Manager for the Private Infrastructure prior to the Commitment Date.

9.2 The Owner must, during the term of this Agreement:

- (a) maintain its Accreditation and comply with all conditions of its Accreditation; or
- (b) if the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation and complies with all conditions of its Accreditation.

9.3 ~~If the Owner reaches an agreement with QR Network for QR Network to be the~~ QR Network must be Accredited, or procure another person or entity to be Accredited, as a Rail Infrastructure Manager for the ~~Private~~ Connecting Infrastructure, that arrangement will be subject of a separate written agreement between the Parties, and the Network prior to the Commitment Date and thereafter until the Expiry Date.

9.4 If the Owner requests that QR Network be the Accredited Rail Infrastructure Manager for the Private Infrastructure, QR Network and the Owner must, acting reasonably and in good faith, attempt to agree the terms on which QR Network will perform that function.

10 EXCHANGE OF SAFETY AND INTERFACE INFORMATION

This clause 10 applies where the Owner (or its nominee other than QR Network) is the Rail Infrastructure Manager for the Private Infrastructure.

10.1 QR Network must notify the Owner of all interface standards required by QR Network for the Private infrastructure to connect to the Network and to maintain that connection. [Note: This reflects clause 7.5.3(b)(iii) of the QR Network Access Undertaking cl 7.5.3(b)(iii)]

10.2 The Parties must collaborate for the purpose of the development, management and continuous improvement of all interface matters relating to the Private Infrastructure, the Connecting Infrastructure and the Network, including:

- (a) implementing and maintaining measures for managing risks;
- (b) evaluating, testing and, if necessary, revision of those measures;
- (c) identifying accountabilities, authorities and reporting requirements of each party, including safety requirements, roles and responsibilities of staff; and
- (d) monitoring compliance with obligations of the Parties under this and related interface agreements.

10.3

(a) As required by a Party (Requesting Party), the other Party (Providing Party) must provide the Requesting Party with the latest published versions of, and provide to all those personnel nominated by the Requesting Party, all documents relating to the following interface matters that may occur, or have an impact, on the operation of the Connecting Infrastructure:

- (i) the Providing Party's safety policies, including compliance arrangements with legislative safety requirements;
- (ii) safety documentation associated with all accountabilities, authorities and reporting of safety requirements and relevant competencies for relevant staff and safety audit regimes;
- (iii) procedures for managing notifiable occurrences or reportable incidents;
- (iv) interface risk management plans;
- (v) interface management plans;
- (vi) where QR Network is the Providing Party, changes to rail infrastructure standards of the Network;

- (vii) where QR Network is the Providing Party, Network operating requirements and operating procedures;
- (viii) relevant timetabling and scheduling information/procedures;
- (ix) operational interface procedures;
- (x) emergency response plans;
- (xi) rollingstock standards;
- (xii) train operating protocols;
- (xiii) planning and management of possessions;
- (xiv) communications protocols; and
- (xv) such other procedures and protocols as the Providing Party publishes or develops relating to functions associated with undertaking the role of Railway Infrastructure Manager.
- (b) Each Party must participate in:
 - (i) reviews of the safety management systems and safety assurance matters;
 - (ii) meetings, workshops and forums reasonably requested by the other Party which involve safety and operational interface matters (including general engineering standards and operational safety requirements;
 - (iii) identification of relevant engineering standards and procedures and operational systems safety standards; and
 - (iv) development of interface risk management planning activities reasonably required by the other Party.

11 ~~10~~ INTERFACE RISK ASSESSMENT AND EMERGENCY RESPONSE PLAN

11.1 ~~10.1~~ TheFollowing the Parties ~~have~~ jointly conducted ing an Interface Risk Assessment, the relevant findings of which ~~have been~~ will be incorporated into the Interface Risk Management Plan.

11.2 ~~10.2~~ If at any time during the term of this Agreement either Party has reasonable grounds to believe that the Interface Risk Management Plan is no longer effective in managing the interface risks, the Parties will meet to jointly review the Interface Risk Management Plan to ensure all interface risks, including any new risks, are effectively managed.

11.3 ~~10.3~~ If the Parties are unable to agree to any aspects of the Interface Risk Assessment or the Interface Risk Management Plan, either Party may give a Dispute Notice to the other Party and the Dispute will be referred to an expert for resolution in accordance with **clause 17.4**. The Parties agree that the expert for the purposes of this **clause 10.3** and **clause 17.4(c)(i)** will be the Queensland Rail Safety Regulator. If the Queensland Rail Safety Regulator refuses or is unable (for any reason whatsoever) to determine the Dispute, the expert will be appointed by the President for the time being of the Institute of Engineers Australia, Queensland Division.

11.4 ~~10.4~~ If, after a review pursuant to **clause 10.2** or **10.3**, the Parties agree or an expert determines that the Interface Risk Management Plan requires amendment to effectively manage the interface risks, the plan will be so amended and the amended plan will be taken to be the Interface Risk Management Plan.

11.5 ~~10.5~~ The Owner must prior to the Commitment Date prepare, and thereafter during the term of this Agreement maintain, an Emergency Response Plan reasonably satisfactory to QR Network, relating to Incidents that impact on, or impact operations on, the Connecting Infrastructure and/or the Network. The Owner will incorporate any findings arising from the joint review conducted pursuant to **clause 10.2** or an investigation pursuant to **clause 10.9** into the Emergency Response Plan or Interface Risk Management Plan (as applicable) as soon as possible.

11.6 ~~10.6~~ The Owner must at all times comply with the Emergency Response Plan and the Interface Risk Management Plan, and must ensure that its officers, employees, agents and independent contractors also comply.

11.7 ~~10.7~~ The Owner must not cause or permit any obstructions on the Connecting Infrastructure or the Network except where otherwise agreed with QR Network.

11.8 ~~10.8~~ If an Incident arises on the Private Infrastructure and impacts on the Connecting Infrastructure or the Network, QR Network will be responsible for the overall coordination and management of the response to the Incident (including notifying all relevant emergency services) and the Owner must cooperate with and assist QR Network in responding to the Incident, including action in respect of recovery of rollingstock and repairs to the Connecting

Infrastructure or the Network and, where necessary, permit QR Network to enter and remain upon the Private Infrastructure in accordance with clause 26.2, with such workmen and machinery as may be necessary, to enable prompt commencement of Train movements.

11.9 ~~10.9~~ Where an Incident arising on the Private Infrastructure impacts on the Connecting Infrastructure or the Network:

- (a) an investigation into the Incident will be commenced as soon as practicable unless otherwise agreed;
- (b) such investigation will be conducted in the manner and by the persons prescribed by QR Network from time to time;
- (c) each Party must cooperate and ensure their respective staff cooperate fully with any investigation, and will ensure that any such investigation has ready, full and free access to all relevant files, documents, employees (including the taking of statements), equipment, copies of train graphs, voice recordings, data log recordings, maintenance records and any other information which may be relevant to any investigation. All such information will be treated as confidential; and
- (d) each Party will consult with the other in relation to the implementation of any recommendations arising from an investigation.

~~10.10~~ ~~If the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, then:~~

11.10 If the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, then the Owner must procure the Rail Infrastructure Manager for the Private Infrastructure to enter into an interface agreement (as defined in section 71 of the TRSA) with QR Network in accordance with section 59 of the TRSA; ~~and~~.

~~(a) if the Owner does not or fails to do so prior to the Commitment Date, then:~~

- ~~(i) QR Network may suspend some or all of the Owner's rights under this Agreement and the running of Trains across the Connecting Infrastructure, by giving a notice in writing to the Owner (including of the particular rights which have been suspended) until such time as the Owner has complied with clause 10.9(a); and~~

~~unless the Owner has complied with clause 10.9(a) within 14 days after the Owner is notified of that suspension, QR Network may terminate this agreement by notice to the Owner.~~

~~11~~ **TRAIN CONTROL**

~~11.1 QR Network is responsible for the scheduling and control of all Train movements to and from the Private Infrastructure. QR Network may, in its absolute discretion, not schedule Trains onto the Private Infrastructure if:~~

- ~~(a) QR Network is notified by the Owner under **clause 12.1** that it is unsafe to do so; or~~
- ~~(b) the Owner is in breach of any of its obligations under **clause 7.4**.~~

~~11.2 The Train Services contemplated by the Train Services Plan will not commence operation until on or after the Commitment Date.~~

~~The Owner must comply with the Coal Loss Mitigation Provisions including ensuring that all Trains loaded with coal which run from the Private Infrastructure onto the Network are loaded in accordance with **clause 0** of **Schedule 7**.~~

[Note: Train control and other services to be provided by QR Network under the Access Agreement]

12 ~~12~~ **NOTIFICATION OF MATTERS AFFECTING THE PRIVATE INFRASTRUCTURE**

12.1 ~~12.1~~ The Owner will verbally advise the QR Network contact specified in Item 6 of **Schedule 1** immediately upon becoming aware of any circumstances which:

- (a) make it unsafe to schedule Trains onto the Private Infrastructure, or have affected, or could potentially affect, the security or safety of the Private Infrastructure or persons or property on or near the Private Infrastructure;
- (b) have affected, or could potentially affect, the ability of any Train Service to conform with its scheduled time;
- (c) could cause, or has caused, an Incident or a Claim involving Train Services or an obstruction on the Network, Connecting Infrastructure or Private Infrastructure; or
- (d) constitute, or could constitute, a breach of the Owner's Emergency Response Plan.

12.2 Such verbal notification must be confirmed in writing by the Owner as soon as practicable thereafter, ~~where that circumstance is of relevance to QR Network's management and operation of the Network.~~

~~12.2 The Owner must comply with the reporting obligations in the Coal Loss Mitigation Provisions in accordance with clause 1.8 of Schedule 7.~~

13 ~~13~~ NO RESTRICTION ON ROLE AS RAIL INFRASTRUCTURE MANAGER

Nothing in this Agreement will be interpreted as restricting QR Network or the Accredited Rail Infrastructure Manager for the Private Infrastructure (whether or not the Owner) in the performance of their roles as Accredited Rail Infrastructure Managers for the Network/Connecting Infrastructure and Private Infrastructure respectively.

~~14~~ TRAIN SERVICES PLAN

~~14.1 The Owner acknowledges that~~

14 [Not Used]

~~[Note: QRC considers clause 14 is no longer relevant given the Base Annual Service Charge referred to in Part 1 of Schedule 5 was determined by QR Network on the basis of the Train Services Plan contained in Schedule 4.~~

~~14.2 If at any time the number, type, cargo or other characteristics of Trains running to and from the Private Infrastructure changes such that the details contained in the most recent Train Services Plan delivered to QR Network by the Owner are no longer correct, the Owner will deliver to QR Network, within 14 days of such changes, an updated Train Services Plan.~~

~~14.3 Upon receipt of an updated Train Services Plan QR Network will, acting reasonably and after consultation with the Owner, determine the impact (if any) of the changes in the Base Annual Service Charge, and upon making such determination will advise the Owner in writing of the amount of the revised Base Annual Service Charge.~~

~~14.4 The Owner may, within 14 days after receipt of QR Network's advice in writing, dispute the amounts of the revised Annual Service Charge. Such dispute will be resolved in accordance with clause 17 of this Agreement.~~

~~14.5 If a change in the number, type, cargo and/or other characteristics of Trains running to and from the Private Infrastructure results in QR Network (or an expert in the case of a dispute) determining a revised Base Annual Service Charge that is greater than, or less than, the Annual Service Charge applicable immediately prior to the change, then the Owner will pay to QR Network, or QR Network will credit to the Owner, as the case may be, within 14 days after the revised Base Annual Service Charge is determined by QR Network or the expert (as the case may be), an amount calculated in accordance with the formula in Part 2 of Schedule 5 is direct cost reimbursement.~~

15 ~~15~~ FORCE MAJEURE EVENT

15.1 ~~15.1~~ If by reason of a Force Majeure Event either Party is delayed in or prevented from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to make any payment) then the obligations of that Party will be suspended during that time and to the extent that performance of such obligations is prevented or hindered by a Force Majeure Event.

15.2 ~~15.2~~ A Party which is by reason of a Force Majeure Event unable to perform any obligation under this Agreement must:

- (a) notify the other Party;
- (b) use all reasonable diligence to remedy or abate the Force Majeure Event (provided that no Party will be obliged to settle any strike, lockout or other labour dispute on terms not reasonably acceptable to it); and
- (c) resume performance, or partial performance, as soon as reasonably practicable.

16 ~~16~~ INSURANCE

- (a) The Owner must, at its expense, take out and subsequently maintain current at all times during the Term, or procure the Accredited Rail Infrastructure Manager for the Private Infrastructure to take out and subsequently maintain current at all times during the Term, insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in **Schedule 3**.
- (b) Prior to the Commitment Date and then as required the Owner must provide to QR Network evidence of insurance effected pursuant to this **clause 16** and when requested in writing a copy of such policy.
- (c) The Owner must in respect of any Claims by it or any other insured for which it is responsible, pay all excesses/deductibles provided for in any insurances effected in accordance with this **clause 16**.
- (d) The Owner will not do, or suffer to be done, anything whereby any policy of insurance required to be maintained by the Owner will be or become void or voidable.
- (e) Within three months of every third anniversary of the Commencement Date QR Network will review the adequacy of the sum insured specified in **Schedule 3**. If, in QR Network's sole discretion but acting reasonably, QR Network is of the view that the sum insured is not adequate, then QR Network will by notice advise the Owner of that amount which it requires to be the new sum insured, and the Owner will adjust accordingly all policies held pursuant to this **clause 16**.
- (f) QR Network must, at its expense, take out and subsequently maintain current at all times during the Term, insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in Schedule 3.

17 ~~17~~ DISPUTES

17.1 ~~17.1~~ If any claim, dispute, disagreement or question ('**Dispute**') arises between the Parties under this Agreement, then either Party may give to the other Party a notice in writing ('**Dispute Notice**') specifying the Dispute and requiring that it be dealt with in the manner set out in this **clause 17**.

17.2 ~~17.2~~ Within seven days of the date of the Dispute Notice any Dispute will be referred to the Chief Executive Officer of QR Network (or his nominee) and the Chief Executive Officer (or equivalent) of the Owner (or his nominee) for resolution. Failing such resolution within 14 days, the relevant Dispute may be referred by either Party to an expert in accordance with this **clause 17**.

17.3 ~~17.3~~ The Parties will agree on the expert to be appointed, and failing agreement within 14 days of referral of the Dispute to an expert, the expert will be appointed by ~~by~~, in the case of what the Parties agree are financial matters, the President for the time being of CPA Australia Limited, in the case of what the Parties agree are nonfinancial matters, the President for the time being of the Institution of Engineers, Australia and, in the case of what the Parties agree are combined financial and non-financial matters or where the Parties cannot agree on the appropriate categorisation of a matter or where the Parties agree that it is appropriate, by the President for the time being of the Queensland Law Society Incorporated.

17.4 ~~17.4~~ Where a Party refers a Dispute to an expert for resolution, the following provisions will apply:

- (a) The Parties will agree on the expert to be appointed, and failing agreement within 14 days of referral of the Dispute to an expert, the expert will be appointed by the President for the time being of the Queensland Law Society.

- (b) The expert will have appropriate qualifications and practical experience having regard to the nature of the Dispute, have no interest or duty which conflicts or may conflict with his function as expert, and will not be an employee of the Owner or QR Network or a Related Body Corporate of either Party;
- (c) The expert will have regard to the provisions of this Agreement and will:
 - (i) have the power to inform himself independently as to the facts and if necessary technical and/or financial matters to which the Dispute relates;
 - (ii) consult with such other professional qualified persons as he in his absolute discretion thinks fit; and
 - (iii) ~~(A)~~ consider oral and/or written submissions from the Parties as to the subject matter of the Dispute, but not be bound by the rules of evidence;
- (d) The Parties will upon request by the expert, provide or make available to the expert:
 - (i) all information in their possession or control; and
 - (ii) all assistance,
 - that the expert may reasonably require.
- (e) The expert will be required to provide both Parties with a copy of his determination within a reasonable time after his appointment.
- (f) The expert appointed will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties. In any dispute dealt with pursuant to this **clause 17**, any financial records of QR Network required to assist the determination of the dispute must be supplied to the expert only and will not be available to the Customers. The expert's determination must not include details of QR Network's financial records but may contain conclusions based on the expert's assessment of QR Network's financial records
- (g) Any person nominated as an expert hereunder will be deemed to be and will act as an expert and not an arbitrator, and the law relating to arbitration will not apply to him or his determination or the procedures by which he may reach his determination.
- (h) In the absence of manifest error the determination of the expert will be final and binding upon the Parties.
- (i) The costs of the expert and any advisors will be borne by the Parties in such proportion as determined by the expert.

18 ~~18~~ TERMINATION AND SUSPENSION

18.1 ~~18.1~~ Without prejudice to any other rights of QR Network ~~and notwithstanding any previous waiver of, or delay in the exercise of, any rights hereunder,~~ QR Network may terminate this Agreement by notice to the Owner, upon the occurrence of any one or more of the following events or circumstances:

- (a) the Owner abandons, terminates or permanently ceases operation of the whole of the Private Infrastructure;
- (b) the Owner fails to pay when due any amount payable under this Agreement which is not the subject of a bona fide dispute under **clause 17**, and such default continues for ~~430~~ 430 days after notice from QR Network demanding payment of the outstanding amount;
- (c) the Owner is in default of its obligation to establish or to maintain a security as required under **clause 20**, and such default continues for ~~430~~ 430 days after the date on which QR Network gave notice of such default;
- (d) the Owner is in default of its obligation to maintain insurance in accordance with **clause 16** of this Agreement, and such default continues for ~~430~~ 430 days after notice from QR Network to the Owner of the default;
- (e) an Insolvency Event occurs in relation to the Owner;

- (f) the Owner, and if the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, the Rail Infrastructure Manager for the Private Infrastructure, fails, in any material respect, to comply with the Emergency Response Plan, the Interface Risk Management Plan or the interface agreement entered into under **clause 10.10(a)** (as applicable) or any relevant laws, and that default is not remedied within ~~44~~30 days after notice from QR Network to the Owner of the default;
- (g) the Owner fails to comply with:
- (i) **clause 9** (Accreditation Requirements), including, if the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, where the Owner fails to ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation or complies with all conditions of its Accreditation; or
- (ii) **clause 7.4** (Construction and Maintenance Standards),
and such default continues for ~~44~~30 days after notice from QR Network to the Owner of the default;
- (h) ~~QR Network permanently closes the section of the Network to which the Connecting Infrastructure connects; not used;~~
- (i) the Owner conducts activities which cause or contribute to Environmental Harm on the Connecting Infrastructure or the Network and does not remedy the Environmental Harm (to the extent caused by or contributed to the Owner) within 30 days after notice from QR Network to remedy the Environmental Harm;
- (j) the Owner is in default of the due performance of any other material obligation under this Agreement and the Owner has not remedied the default within 30 days after notice from QR Network specifying the nature of such default and requiring such default to be remedied; or
- (k) ~~any other agreement to which QR Network and the Owner are parties that is incidental to this Agreement, the Connecting Infrastructure or Private Infrastructure~~the Construction Agreement is terminated ~~for any reason whatsoever; or (other than by agreement or expiry).~~
- (i) ~~QR Network has given the Owner a 'Suspension Notice' in accordance with clause 1.7(e) of Schedule 7.~~

18.2 ~~18.2~~ Without prejudice to any other rights of the Owner, the Owner may terminate this Agreement by notice to QR Network if QR Network is in default of the due performance of any ~~material~~ obligation under this Agreement and QR Network has not remedied the default within 30 days after notice from the Owner specifying the nature of such default and requiring such default to be remedied.

18.3 ~~(a)~~ Upon expiry or earlier termination of this Agreement for any reason whatsoever, QR Network ~~may, at its election, forthwith remove the Connecting Infrastructure;~~

(a) will, if requested by the Owner, do all things required to transfer ownership and possession of the Connecting Infrastructure to the Owner; and

(b) if clause 18.3(a) does not apply, may, at its election, forthwith remove the Connecting Infrastructure.

18.4 ~~18.3~~ Upon termination of this Agreement QR Network and the Owner will be released from all further obligations or liabilities under this Agreement except in respect of any antecedent breach of this Agreement on their respective parts or obligations intended to survive termination (including, without limitation, the Owner's obligations under **clause 3.1(c)**). Any liability in respect of such antecedent breach will be limited in the manner provided in this Agreement.

18.5 ~~18.4~~ Upon the occurrence of an event or circumstance which would entitle QR Network to terminate this Agreement under **clause 18.1** either immediately or upon the expiration of a remedy period, QR Network may immediately, and prior to the expiration of any applicable remedy period under **clause 18.1**, suspend some or all of the Owner's rights under this Agreement, including the running of Trains across the Connecting Infrastructure, by giving a notice in writing to the Owner. QR Network must include in the notice details of the proposed or likely period of suspension, the reasons for the suspension, the actions the Owner must take to have the suspension lifted, and the particular rights which have been suspended.

18.6 ~~18.5~~ If the Connecting Infrastructure or the Network is damaged or destroyed by a Force Majeure Event and, in QR Network's reasonable opinion, the cost of repairing such damage or replacing the Connecting Infrastructure or the Network is not economic and the Owner is not willing to pay such rectification costs, QR Network may by written notice advise the Owner of its intention to not repair or replace the relevant part of the Connecting Infrastructure or the Network and thereupon terminate this Agreement unless the Owner elects to pay, and does in fact pay, the cost of repairing or replacing the relevant part of the Connecting Infrastructure or the Network.

18.7 ~~18.6~~ If the Private Infrastructure is damaged or destroyed by a Force Majeure Event and, in the Owner's reasonable opinion, the cost of repairing such damage or replacing the Private Infrastructure is not economic, the Owner may by written notice advise QR Network of its intention to not repair or replace the Private Infrastructure and thereupon terminate this Agreement.

19 ~~19~~ ASSIGNMENT

19.1 ~~19.1~~ ~~The~~ Neither QR Network nor the Owner will not assign or transfer or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of ~~QR Network~~ the other party, which will not be unreasonably withheld where the assignee is:

- (a) financially sound having regard to the obligations which are to be assumed; and
- (b) otherwise capable of performing the obligations of QR Network or the Owner (as the case may be) under this Agreement.

~~19.2~~ ~~Except where the Owner is a publicly listed company, any change in the shareholding of the Owner effectively altering the control of the Owner will be regarded as a proposed assignment of this Agreement. The Owner will not:~~

- ~~(a) register, record or enter in its books any transfer of any share or shares in the capital of the Owner;~~
- ~~(b) deal with any beneficial interest in any such share or shares;~~
- ~~(c) issue any new share or shares; or~~
- ~~(d) take or attempt to take action,~~
~~having the effect:~~
- ~~(e) of altering the control of the Owner; or~~

~~that the shareholders of the Owner at the date of this Agreement together beneficially hold or control less than 51% of the voting rights or share capital in the Owner, until the requirements of this clause have been complied with.~~

~~19.3~~ ~~QR Network may assign or transfer or otherwise dispose of the whole or any part of its rights or obligations under this Agreement without the prior consent of the Owner, provided that QR Network procures the assignee to covenant with the Owner by deed to be bound by and perform the obligations of QR Network under this Agreement to the extent of the rights and obligations assigned, transferred or disposed of.~~

20 ~~20~~ SECURITY

20.1 If at any time after the Commencement Date, the Owner does not have an Acceptable Credit Rating, then QR Network may request the Owner to deliver to QR Network security in the amount of \$[insert] for the due and proper performance by the Owner of its obligations under this Agreement in the form of:

- (a) ~~The Owner must deliver to QR Network on or before the Commencement Date the Initial Security Amount in the form of an unconditional and irrevocable bank guarantee as security for the due and proper performance by the Owner of its obligations under this Agreement. The bank guarantee will be a bank guarantee~~ from a trading bank holding a current Australian banking licence and ~~contain such other terms and conditions as are reasonably acceptable to QR Network~~ with a credit rating acceptable to QR Network (acting reasonably) and in the form set out in Schedule 9; or

~~20.2~~ ~~On or about each anniversary of the Commencement Date QR Network will review the amount of the bank guarantee, taking into consideration the financial performance of the Owner, the Owner's past payment~~

~~performance and expected future payment obligations under this Agreement. QR Network may, in its absolute discretion, determine that the amount of the bank guarantee will be increased or decreased (provided that the amount of the new bank guarantee will not be unreasonable), and the Owner must increase or decrease the bank guarantee accordingly within 10 days after QR Network gives notice of its determination.~~

(b) any other security reasonably acceptable to QR Network,

and QR Network shall not unreasonably withhold or delay its acceptance of any security delivered under this clause 20.1.

20.2 [Not used].

20.3 ~~20.3~~ If QR Network calls up any amount from the ~~bank guarantee~~security provided by the Owner, the Owner will deliver to QR Network, within 10 days of QR Network making such call up, a further ~~bank guarantee~~security in favour of QR Network, in the form required by this clause 20, undertaking to pay QR Network on demand an amount equal to the amount called up. Such further ~~bank guarantee~~security will form part of the security provided by the Owner under this Agreement from the date on which the Owner provides such further ~~bank guarantee~~security.

20.4 ~~20.4~~ QR Network must, subject to the rights of recourse to the ~~bank guarantee~~security under this clause 20, account to the Owner for the ~~bank guarantee~~security within six months after the expiration or termination of this Agreement.

20.5 QR Network must give the Owner not less than 5 days written notice (including reasons) before calling upon any security provided under this Agreement.

21 ~~21~~ **LIABILITY**

21.1 ~~21.1~~ Despite any other provision in this Agreement, neither Party will in any circumstances be liable to the other for any Consequential Loss arising from, under or in connection with this Agreement.

21.2 ~~21.2 Neither Party will have or make any Claim against the other in respect of a failure to perform its obligations under this Agreement except as provided for in this Agreement.~~ Neither Party will make any Claim against the other in respect of the neglect or default of that other Party under this Agreement unless notice of the Claim has been given to the other Party within six months of the ~~occurrence~~later of the ~~event or circumstance out of which such Claim arises~~Claim arising or becoming reasonably apparent to the relevant Party.

21.3 ~~21.3~~ To the extent permitted by law, the liability of QR Network to the Owner at common law, under the Australian Consumer Law or otherwise, in respect of any matters arising out of, or in any way related to, this Agreement or the subject matter thereof, will in no event exceed in aggregate the amount specified in Item 5 of **Schedule 1**. [Note: The QRC's view is that the Schedule should provide a range within which the limit of liability will be set, to avoid delay or dispute in agreeing the Connection Agreement].

21.4 ~~21.4~~ Nothing in this Agreement creates or constitutes any contract between QR Network and the Operator.

~~21.5~~ ~~The Owner is responsible for all conduct of the Operator under this Agreement. Any act or omission of the Operator will be deemed to be an act or omission by the Owner for the purposes of this Agreement. The Owner will indemnify and will keep indemnified QR Network, its directors and staff against any additional liability to the Operator.~~

22 ~~22~~ **INDEMNITIES**

22.1 ~~22.1~~ The Owner indemnifies and releases, and agrees to keep indemnified, QR Network, its officers, employees, agents and contractors from and against all Claims arising out of, or which in any way relate to, the Private Infrastructure and/or Connecting Infrastructure or operations thereon, which may be made or brought against QR Network, its officers, employees, agents and/or contractors or which QR Network, its officers, employees, agents and/or contractors may pay, incur, sustain or be put to, by reason of, in consequence of, ~~or in connection with, either directly or indirectly,~~ any act or omission of the Owner and/or its officers, employees, agents or contractors which is negligent or is a breach of the Agreement, except to the extent such Claims occur as the result of a negligent or wilful act or omission of QR Network and/or its officers, employees, agents or contractors.

22.2 ~~22.2~~ QR Network indemnifies and releases, and agrees to keep indemnified, the Owner, its officers, employees, agents and contractors from and against all Claims arising out of, or which in any way relate to, the Network or

operations thereon, which may be made or brought against the Owner, its officers, employees, agents and/or contractors or which the Owner, its officers, employees, agents and/or contractors may pay, incur, sustain or be put to, by reason of, in consequence of, ~~or in connection with, either directly or indirectly,~~ any act or omission of QR Network and/or its officers, employees, agents or contractors which is negligent or is a breach of this Agreement, except to the extent such Claims occur as the result of a negligent or wilful act or omission of the Owner and/or its officers, employees, agents or contractors.

22.3 ~~22.3~~ The indemnities provided in this **clause 22** will not extend to and neither QR Network nor the Owner will be liable for, any Consequential Loss suffered by the other or for which the other becomes liable.

23 ~~23~~ NOTICES

23.1 ~~23.1~~ Any notice, invoice, or other communication under this document will be given in writing and may be given by an authorised representative of the sender.

23.2 ~~23.2~~ Any communication may be given by:

- (a) being personally served on a Party;
- (b) being left at the Party's current address for service;
- (c) being sent to the Party's current address for service by pre-paid ordinary mail;
- (d) being sent by facsimile to the Party's current number for service; or
- (e) if at any time agreed by the Parties, being sent by email or other agreed electronic form.

23.3 ~~23.3 (a)~~ ~~(a)~~ The addresses and numbers for service are initially:

QR Network Pty Ltd:

Address: Level 14, 305 Edward Street, Brisbane QLD 4000

Facsimile: 07 3235 3637

Attention: Chief Executive Officer, QR Network Pty Ltd

The Owner:

Address: as set out in Item 1 of **Schedule 1**

Facsimile: as set out in Item 1 of **Schedule 1**

Attention:

- (b) A Party may from time to time change its address or number for service by notice to the other Party.

23.4 ~~23.4~~ A communication given by post will be deemed received on the third Business Day after posting. A communication sent by facsimile will be deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number. If a communication to a party is received by it after 5.00 pm or on a day which is not a business day, it will be deemed to have been received on the next business day.

24 ~~24~~ CONFIDENTIALITY

24.1 Each Party will keep the terms of this Agreement confidential, and will not disclose the terms of this Agreement to any third party without the prior written consent of the other Party, such consent not to be unreasonably withheld.

24.2 If a Party does not comply with clause 24.1 and the other Party suffers detriment as a result of or in connection with that non-compliance, that Party shall be entitled to bring a Claim against the non-complying Party for breach of confidence.

25 ~~25~~ COMPLIANCE WITH LAWS

~~The Owner~~ Each party must comply with all relevant laws relating to the subject matter of this Agreement including, without limitation, laws relating to the environment.

26 ~~26 LAND ISSUES NOT PART OF THIS AGREEMENT~~ ACCESS TO LAND

~~26.1 To the extent that some part of the Private Infrastructure has been, or will be, constructed upon land owned or controlled by QR Network, the rights and obligations of the Owner in respect of such land will be the subject of a separate agreement between the Parties.~~

~~26.2 To the extent that some part of~~(a) To the extent that some part of the Private Infrastructure or the Connecting Infrastructure has been, or will be, constructed upon land owned or controlled by the Owner and/or some third party, the Parties will enter into a separate agreement pursuant to which QR Network secures such rights in respect of such land as QR Network may reasonably require. QR Network or a QR Party, then QR Network will provide reasonable access to the relevant land for the Owner, its employees, officers, agents and contractors to the extent that access to the relevant land is reasonably required for construction of the relevant infrastructure and/or ongoing operation of the Private Infrastructure, provided that:

- (i) the land is owned by QR Network or a QR Party or QR Network has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
- (ii) the access is not inconsistent with the terms of any lease, license or other arrangement to which QR Network is party in respect of the land.
- (b) If QR Network does not have authority to authorise the Owner to access land as provided by clause 26.1(a)(ii), then QR Network will provide the following in relation to access to that land within 14 days of receiving a written request from the Owner to access the relevant land:
 - (i) details of the relevant party (including that party's name, address and contact details) that the Owner would need to obtain approval from to gain access to that land, where this information is reasonably available to QR Network;
 - (ii) advice as to the nature and extent of the rights, if any, that QR Network holds in relation to the relevant land; and
 - (iii) a notice to be provided to that party identifying that QR Network has no objection to the Owner negotiating for access to that land.
- (c) If QR Network does not have authority to authorise the Owner to access land as provided by clause 26.1(a)(ii), then QR Network must, if requested by the Owner, use its reasonable endeavours to procure for the benefit of the Owner all necessary approvals from the owners of the relevant land.

[Note: The QRC considers that these terms should be set out in a schedule to the agreement. Without these terms agreed upfront there is scope for delay]

26.2 If QR Network requires access to any land on which the Private Infrastructure or Connection Infrastructure is or will be constructed (Private Land), QR Network must, and must procure that its representatives and contractors who access the Private Land, comply with all site and safety rules applicable to the Private Land and any direction given by the nominated Senior Site Executive for the Private Land.

27 ~~27 MISCELLANEOUS~~

~~27.1 (a)~~ (a) The Owner will, as between the Parties, be liable for and duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under it.

- (b) Each Party will bear its own legal and other costs and expenses relating directly or indirectly to the negotiation, preparation and execution of this Agreement.

~~27.2 (a)~~ (a) A single or partial exercise or waiver of a right relating to this Agreement, or a failure or delay in exercise a right, will not prevent any other exercise of that right or the exercise of any other right.

- (b) No waiver of any provision of this Agreement will be effective unless the same will be in writing and then such waiver will be effective only in the specific instance and for the purpose for which it is given.

27.3 ~~27.3~~ Each Party will promptly execute all documents and do all things that any other Party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

27.4 ~~27.4~~ This Agreement is governed by and is to be construed in accordance with the laws in force in Queensland. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

~~27.5 — This Agreement embodies the entire understanding and agreement between the Parties as to the subject matter of this Agreement and, to the extent that this Agreement is inconsistent with any prior agreement between the Parties, this Agreement will prevail over, and will replace, the inconsistent terms of the prior agreement.~~

27.5 ~~27.6~~ All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and will be of no force or effect whatever and no Party will be liable to any other Party in respect of those matters.

27.6 ~~27.7~~ Each provision of this Agreement will be deemed to be separate and separable from the others of them.

Schedule 1

Reference Schedule

Item 1	Name of Owner: Address of Owner: ABN: Facsimile No. of Owner: Telephone No. Of Owner
Item 2	Expiry Date <u>The date which is XX years after the Commencement Date <i>[The Owner may nominate this date, however QR Network requires that it is equal to or earlier than the date of the end of QR Network's lease in respect of the land on which Connecting Infrastructure is or is to be located.]</i></u>
Item 3	Initial Security Amount \$
Item 4	Commitment Date (clause 11.2) <u>XXXXXXXX, 201X <i>or where the Connection Infrastructure is to be constructed by the Owner in accordance with clauses 6.1 and 6.2, [insert] days after the Owner gives notice to QR Network that the construction of the Connection Infrastructure is complete.</i></u>
Item 5	Cap on liability (clause 21.3) \$ XXX per annum
Item 6	QR Network Train Control contact (clause 12.1)

Schedule 2

Plan showing Connecting Infrastructure, Private Infrastructure and the Network

[This plan must identify the boundaries between the Connecting Infrastructure, Private Infrastructure and the Network, so that it is clear where one ends and the next begins, and should include a description and/or address of the location of the **p**Private **i**nfrastructure.]

Schedule 3

Insurance

Required Owner Insurances

~~[TO BE INSERTED AS APPROPRIATE]~~

- Public liability insurance in respect of the legal liability of the Owner in relation to the Private Infrastructure and the Connecting Infrastructure, providing coverage of not less than \$20 million per claim and in the aggregate
- Third party property damage insurance in respect of the Private Infrastructure
- Any insurance which is required by law to be maintained by the Owner

Required QR Network Insurances

- Public liability insurance in respect of the legal liability of QR Network in relation to the Connecting Infrastructure, providing coverage of not less than \$20 million per claim and in the aggregate
- Third party property damage insurance in respect of the Connecting Infrastructure
- Any insurance which is required by law to be maintained by QR Network

**Schedule 4
Train Services Plan**

SAMPLE ONLY

1.1 Transportation Method

Please identify the method to be used for transporting the freight, for example, containers, open wagons, box wagons, bottom dump wagons, tippler wagons, etc. (forward and return).

Forward **Return**

1.2 Freight Description

Generally describe the freight to be carried, for example, fertiliser, wheat, or empty wagons/containers, etc. (forward and return).

Forward **Return**

1.3 Gross tonnes per annum over the Connecting Infrastructure

Detail gross tonnes per annum for years 1 to 0, plus year 5 and onwards.

	Year 1	Year 2	Year 3	Year 4	Year 5 Onwards
Forward					
Return					

2 REQUIREMENTS

2.1 Service Frequency

Please note – a train service is a one way service. One return journey = two train services.

	No. of forward services per week	No. of return services per week	Weeks per year	Total no. of services per year
Year 1				
Year 2				
Year 3				
Year 4				
Year 5 and onwards				

4 ROLLINGSTOCK DETAILS

Please note – a train service is a one way service. One return journey = two train services.

	Operator/Consist 1	Operator/Consist 2
Type of locomotive/s		
Mass of locomotive/s (t)*		
Number of locomotive/s per train		
Type of wagons		
Number of wagons per train		
Nominal gross mass per wagon (t)		
Average proposed load (of product) per wagon (t)		

Designed gross tonnage of wagon (t)

Tare mass per wagon (t)

Tare mass per container (t)

Average number of containers per wagon

Maximum axle loading

Gross tonnes per train service – forward **

Gross tonnes per train service – return **

Max. operation speed of forward train service

Max. operation speed of return train service

Total length of train (including locomotives)

* Maximum mass includes the gross weight of full sand and fuel load

** Includes weight of locomotive(s)

Schedule 5

Charges Schedule

~~PART 1 ANNUAL SERVICE CHARGE~~

~~Item 1 Base Annual Service Charge : \$ XX,XXX~~

~~Item 2 First Escalation Date : XX XXXXX, 200X~~

~~PART 2 ANNUAL SERVICE CHARGE ADJUSTMENT~~

~~2.1 Annual Service Charge Adjustment Calculation (clause 14.5)~~

~~Adjustment A~~

~~Amount = B x C~~

~~where:~~

~~A = the number of days from the date of the relevant change to the next anniversary of the Commencement Date.~~

~~B = the number of days from the Commencement Date or last anniversary of the Commencement Date (as applicable) to the next anniversary of the Commencement Date (ie. 365 or 366)~~

~~C = the amount by which the revised Base Annual Service Charge is greater than, or less than, as the case may be, the Annual Service Charge applicable immediately prior to the relevant change.~~

~~PART 3 REVIEW DATE~~

~~3.1 In this Schedule 'Review Date' means the third anniversary of the Commencement Date, and every third anniversary thereafter.~~

~~3.2 Review of Charges~~

~~3.2.1 The Base Annual Service Charge will be reviewed on each Review Date. The new Base Annual Service Charge to apply after each Review Date will be the amount agreed by the Parties and failing such agreement within 30 days after the Review Date, either Party may give notice of its requirement to refer the Base Annual Service Charge most recently proposed by QR Network to an expert for review in accordance with clause 17 of the Agreement. In making his determination with respect to the amount of the new Base Annual Service Charge, the Expert will have regards to the provisions of this Agreement and the reasonable costs to QR Network of meeting its obligations under the Agreement.~~

~~3.2.2 Unless and until agreement is reached or a determination is made pursuant to clause 17 of the Agreement, the Base Annual Service Charge prevailing as at the Review Date will continue to be utilised to determine the Annual Service Charge payable by the Owner. If any change in Base Annual Service Charge is agreed or determined then the amended Base Annual Service Charge will apply from the relevant Review Date and the Parties will account to one another accordingly.~~

~~PART 4 ESCALATION FORMULA~~

~~4.1 In this Part 'Escalation Date' means each anniversary of the Commencement Date, but excluding each Review Date and 'First Escalation Date' is that date specified in Part 1 of this Schedule 5.~~

~~4.2 The Base Annual Service Charge will be escalated on each Escalation Date from and including the First Escalation Date, in accordance with the following formula:~~

$$~~A_n = A_1 \times (CPI_n / CPI_1)~~$$

~~Where~~

~~A_n is the Annual Service Charge payable under the Agreement for the relevant period;~~

~~A₁ means the Base Annual Service Charge specified in Part 1 of Schedule 5 of this Agreement;~~

~~CPI_n is the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is six Months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable A_n is being determined; and~~

~~CPI₁ is the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication NO.6401.0), as first published, for the Quarter the midpoint of which is six Months prior to the midpoint of the Quarter commencing on the First Escalation Date.~~

~~**4.3 Review of Consumer Price Index**~~

~~4.3.1 If in the reasonable opinion of QR Network or the Owner the Consumer Price Index used for the purposes of the escalation formula specified in clause 4.2 of this Schedule 5:~~

- ~~(a) is altered in a material way;~~
- ~~(b) ceases to be published; or~~
- ~~(c) ceases to be published at sufficiently regular intervals~~

~~then QR Network or the Owner (as the case may be) will notify the other Party in writing of such opinion.~~

~~4.3.2 Upon such notice being given, the Parties will negotiate with a view to agreeing to vary the application of the Consumer Price Index or to adopting an alternative or alternatives to the Consumer Price Index and failing agreement within 90 days of such notice being given then the matter will be referred to an expert pursuant to clause 17 of the Agreement for resolution of the dispute.~~

[Not Used]

Schedule 6

Emergency Response Plan and Interface Risk Management Plan

Schedule 7

Coal Loss Mitigation Provisions

~~1 Coal Loss Mitigation – general coal loading, unloading, profiling and veneering obligations~~

~~1.1 Background to Coal Loss Mitigation Provisions~~

- ~~(a) The principal objective of the Coal Loss Mitigation Provisions is the Prevention of Coal Loss.~~
- ~~(b) The significant strategies to achieve the Prevention of Coal Loss are the loading, profiling and veneering of wagons in accordance with the Standards, and implementation timeframes, provided under the Coal Loss Mitigation Provisions. This includes, without limitation:~~
- ~~(i) meeting the Queensland Department of Environment and Resource Management’s targets for coal dust emissions from wagons;~~
 - ~~(ii) no parasitic or fugitive coal (other than coal dust to standard) falling from wagons; and~~
 - ~~(iii) meeting height and weight requirements in relation to the loading of wagons to protect below rail assets.~~
- ~~(c) The Owner as the loading practitioner has primary responsibility to ensure wagons are loaded, profiled and veneered in a manner that achieves the Prevention of Coal Loss, and this is reflected in the Coal Loss Mitigation Provisions.~~

~~1.2 Definitions~~

~~In this Schedule 7:~~

~~**CDMP** means QR Network’s Coal Dust Management Plan dated 22 February 2010 as approved by the Department of Environment and Resource Management in May 2010.~~

~~**Loading Breach** means in respect of a train, a breach of clause 1 of this Schedule 7 relating to the loading of coal into the train, the veneering and profiling of coal loaded into the train and the unloading of coal from the train at the Transfer Facilities.~~

~~**Owner’s Land** means land owned, leased, licensed, occupied or otherwise controlled by the Owner.~~

~~**Preventing Coal Loss** has the meaning given in clause 1.3 of this Schedule 7.~~

~~**Quality Management System** includes the system by which the Owner manages the quality of its coal loading operations at the Transfer Facilities.~~

~~Quarter means each three month period commencing on 1 January, 1 April, 1 July and 1 October.~~

~~**Rectification Notice** has the meaning given in clause 1.7 of this Schedule 7.~~

~~**Standards** has the meaning given in clause 1.3(a) of this Schedule 7.~~

~~Suspension Notice has the meaning given in clause 1.7(c) of this Schedule 7.~~

~~**Veneering Agent Testing Obligations** means the obligations in respect of veneering agents specified in clause 2.3 of this Schedule 7.~~

~~Veneering Equipment means the veneering equipment specified in clause 2 of this Schedule 7.~~

~~1.3 Meaning of ‘Preventing Coal Loss’~~

- ~~(a) In the Coal Loss Mitigation Provisions, ‘Preventing Coal Loss’ means taking all reasonable and practicable measures during the handling and loading of coal at the Transfer Facilities to prevent coal loss (including emissions of coal dust and spillage from wagons) during the transport of such coal by rail on the Connecting Infrastructure~~

~~or the Network to satisfy (subject to clause 1.3(b) of this Schedule 7) the standards, targets, levels or other measures (Standards) set for coal loss:~~

- ~~(i) in accordance with all applicable Laws;~~
- ~~(ii) in accordance with all requirements, instructions, guidelines, standards or other directions whether now or at any time in the future in effect issued or published by an Authority responsible for the administration of environmental Laws in Queensland; and~~

[Not Used]

Schedule 8

[Terms for Construction Agreement / Not used where Alternative 1 in clause 6 applies]

The Construction Agreement between the Parties pursuant to which QR Network will design, construct and commission the Connecting Infrastructure (or procure the design, construction, project management and commissioning of the Connecting Infrastructure) must be on the terms set out below and any other terms which is customary or usual in an agreement of this type (but not any other term which is inconsistent with or contrary to the spirit of any of the terms set out below):

- the standard of design and construction of the Connecting Infrastructure must meet, but shall not exceed (unless otherwise agreed by the Parties) the standard set out at clause 8.3(a) of the QR Network Access Undertaking;
 - QR Network shall expeditiously progress and complete the works within a reasonable timeframe agreed by the Parties;
 - QR Network must perform the work under the Construction Contract:
 - in accordance with the requirements of the Construction Agreement, with the professional skill, care and diligence expected of a professional contractor; and
 - in a way that ensures that any interruption to the operation of the Owner's adjacent and connecting infrastructure is minimised;
 - QR Network must, in performing the work under the Construction Agreement:
 - comply with all applicable laws, authorisations, approvals, and standards, including all applicable laws relating to health and safety and the environment;
 - take all necessary steps to ensure the safety and health of all persons performing the work and otherwise maintain a safe and healthy working environment; and
 - do all things necessary to assist the Owner in discharging its obligations under any occupational, safety and health laws;
 - QR Network must not sub-contract the performance of the works under the Construction Agreement without the prior written approval of the Owner. QR Network's liability under the Construction Agreement is not lessened for any sub-contract approved by the Owner and QR Network is liable to the Owner for the acts or omissions of sub-contractors as if they were acts or omissions of QR Network;
 - the Owner shall pay QR Network the reasonable and actual costs of designing, constructing, project managing and commissioning the Connecting Infrastructure incurred by QR Network, provided that:
 - QR Network may not recover costs which it is otherwise reimbursed for (or entitled to reimbursement under another agreement);
 - QR Network may not recover any profit or overhead payable to a Related Body Corporate of QR Network, other than with the prior written approval of the Owner;
 - (iii) as specified by QR Network, acting reasonably, from time to time (but only to the extent that QR Network applies, as far as reasonably practical, those standards, targets, levels or other measures to similar coal loading facilities), and references to 'Prevents Coal Loss', 'Prevent Coal Loss' and 'Prevention of Coal Loss' must be interpreted in a corresponding way to the extent that QR Network are entitled to reimbursement of a cost, such cost will be claimed in arrears;
- ~~(b) If any one or more of the Standards referred to in clause 1.3(a) of this Schedule 7 cannot be complied with without failing to comply with another applicable Standard, then as between those mutually inconsistent Standards:~~
- ~~(i) Standards referred to in clause 1.3(a)(i) of this Schedule 7 prevail over Standards referred to in Clauses 1.3(a)(ii) and (a)(iii) of this Schedule 7; and~~

- ~~(ii) Standards referred to in clause 1.3(a)(ii) of this Schedule 7 prevail over Standards referred to in clause 1.3(a)(iii) of this Schedule 7.~~

~~1.4 General obligation~~

- ~~(a) Notwithstanding any other provision in the Coal Loss Mitigation Provisions, the Owner must, at all times, Prevent Coal Loss.~~
- ~~(b) For the avoidance of doubt, the Owner will not be taken to have failed to Prevent Coal Loss in respect of the spillage of coal from a wagon during the transport of the coal by rail if the spillage is caused by the malfunction of the wagon's kwik drop doors.~~
- ~~(c) Without limiting any other obligation of the Owner under the Agreement, the Owner must comply with:~~
- ~~(i) all applicable Laws relating to coal loss (including the emission of coal dust);~~
 - ~~(ii) all requirements, instructions, guidelines, standards or other directions relating to coal loss (including the emission of coal dust) whether now or at any time in the future in effect which are binding on or which would customarily be observed by a reasonable and prudent owner or operator of facilities such as the Transfer Facilities (including any such things issued or published by an Authority responsible for the administration of environmental Laws in Queensland); and~~
 - ~~(iii) the Owner's obligations and the standards and requirements set out in this Schedule 7 (including the rail asset restrictions specified by QR Network from time to time), during the handling, loading and unloading of coal using the Transfer Facilities.~~
- ~~(d) The Owner must supply any labour, materials, plant, equipment and facilities required to enable it to properly perform its obligations under the Coal Loss Mitigation Provisions.~~

~~1.5 Obligation to install and operate Veneering Equipment~~

- ~~(a) Without limiting any other obligation of the Owner under this clause 0 of Schedule 7, the Owner must, at its cost:~~
- ~~(i) install (or procure the installation of) suitable Veneering Equipment as part of the Transfer Facilities; and~~
 - ~~(ii) after the Veneering Equipment is installed:

 - ~~(A) operate (or procure the operation of) the Veneering Equipment; and~~
 - ~~(B) ensure an effective veneering agent is applied onto the exposed surface of coal loaded into wagons at the Transfer Facilities,~~~~
- ~~for the purpose of Preventing Coal Loss during transport.~~
- ~~(b) Without limitation to clause 1.5(a)(ii)(B) of this Schedule 7, the Owner must comply with the Veneering Agent Testing Obligations.~~
- ~~(c) Compliance with the Veneering Agent Testing Obligations by the Owner does not limit or restrict the Owner's obligations under any other provision of this Agreement and does not excuse any noncompliance by the Owner with its obligations under the Agreement.~~

~~1.6 Monitoring~~

- ~~(a) Without limiting any other provisions of the Agreement, QR Network is entitled:~~
- ~~(i) to enter and be upon the Owner's Land; and~~

- ~~(ii) to access the Transfer Facilities (including the Veneering Equipment), to enable QR Network, from time to time;~~
- ~~(iii) to verify compliance by the Owner with its obligations under this Clause 0 of Schedule 7; and~~
- ~~(iv) to investigate the effectiveness of the Veneering Equipment (and its operation) or any other measures (including the veneering agent) used by the Owner in connection with any matters referred to in Clauses 1.4 or 1.5 of this Schedule 7, and the Owner must also provide any reasonable assistance requested by QR Network in respect of such matters (including, if requested by QR Network, providing evidence from the Owner's Quality Management System or other similar system verifying the Owner's compliance with the Coal Loss Mitigation Provisions).~~
- ~~(b) For the avoidance of doubt, a reference to QR Network in clause 1.6(a) of this Schedule 7 includes a reference to the employees, agents and contractors of QR Network and any third party authorised by QR Network.~~
- ~~(c) If QR Network accesses the Owner's Land under clause 1.6(a) of this Schedule 7, QR Network must comply with the Owner's reasonable health and safety requirements in relation to such access as notified by the Owner to QR Network.~~
- ~~(d) QR Network will monitor the Owner's compliance with its obligations under this clause 0 of Schedule 7 through, without limitation:

 - ~~(i) the installation of coal dust monitoring equipment at various locations on the Network;~~
 - ~~(ii) periodic assessment of the Owner's impact on coal fouling across the Network; and~~
 - ~~(iii) the periodic observation of:

 - ~~(A) the Owner's coal loading, profiling, veneering and other operations at the Transfer Facilities; and~~
 - ~~(B) trains loaded at the Transfer Facilities during transport.~~~~~~
- ~~(e) QR Network must ensure that any coal dust monitoring equipment used by QR Network to monitor the Owner's compliance with its obligations under this clause 0 of Schedule 7 are in proper working order and calibrated.~~
- ~~(f) Within 10 Business Days after end of each month, QR Network will provide the Owner with a written report in respect of QR Network's monitoring of Owner's compliance with its obligations under this clause 0 of Schedule 7 during that month (together with supporting information in respect of any non-compliance detected by QR Network).~~

~~1.7 Suspension of rights~~

- ~~(a) Subject to clause 1.7(b) of this Schedule 7, if the Owner fails to carry out an obligation under the Coal Loss Mitigation Provisions, QR Network may give the Owner a notice (Rectification Notice) requiring the Owner to:

 - ~~(i) in the case of any default which is capable of remedy:

 - ~~(A) remedy the default or provide to QR Network a program which is reasonably satisfactory to QR Network setting out the activities, and a timetable for undertaking those activities, required to remedy the default; and~~
 - ~~(B) provide to QR Network a program which is reasonably satisfactory to QR Network setting out the activities, and a timetable for~~~~~~

~~undertaking those activities, required to prevent the recurrence of the event or circumstance that resulted in default; and~~

- ~~(ii) in the case of a default which is not capable of remedy, provide to QR Network a program which is reasonably satisfactory to QR Network setting out the activities, and a timetable for undertaking those activities, required to prevent the reoccurrence of the event or circumstance that resulted in the default,~~

~~within the period (which must be at least 30 days) specified in the Rectification Notice.~~

- ~~(b) QR Network must not give the Owner a Rectification Notice:~~

- ~~(i) in respect of a Loading Breach in respect of a train unless the train is the second (or subsequent) train in any ten consecutive trains loaded with coal at the Loading Facilities in respect of which Loading Breaches have occurred; or~~
- ~~(ii) in respect of a failure to comply with an obligation under the Coal Loss Mitigation Provisions if the failure was caused by an~~

- QR Network will not be entitled to any profit or recovery of corporate overheads;
- the Owner may require an audit of costs from time to time in accordance with clause 3.6 of this Agreement and, where an audit identifies a manifest error in costs allocated to the Owner, the Owner will not be required to pay the amounts allocated to it in error;
- QR Network will not be entitled to recover costs which have arisen as a result of a breach of contract, negligence or unreasonable delay by QR Network;

- QR Network shall:

- keep the Owner fully informed about the development of the Connecting Infrastructure (including providing the Owner with regular updates and reasonable advance notice of any tests to be conducted in respect of the works the subject of the Construction Agreement) and permitting the Owner to attend any tests and otherwise visit the site from time to time as required by the Owner);
- consult with the Owner in relation to all substantial design, construction, project management and commissioning decisions, including at hold points agreed by the Parties; and
- allow the Owner opportunity to object to matters relating to QR Network's proposed design, construction, project management and commissioning decisions that the Owner considers will result in unreasonable costs or delays being incurred provided that the Owner may not object to QR Network designing and or constructing the Connection Infrastructure to the standard described in the first bullet point above;

- QR Network must either repair or make good, or reimburse the Owner the cost of repairing or making good, any damage (including environmental damage) to the Owner's property (real or personal) arising out of or in connection with the performance of the work under the Construction Agreement to at least the standard of the relevant property as at the date of the Construction Agreement;

- QR Network must indemnify the Owner and its employees and officers for all loss, liability, damages, costs and expenses (including legal costs and expenses on a full indemnity basis) suffered or incurred by an indemnified person arising out of or in connection with a negligent act or omission of QR Network, its employees, ~~agents and contractors.~~

- ~~(e) If the Owner does not comply with:~~

- ~~(i) a Rectification Notice within the time required by the Rectification Notice; or~~
- ~~(ii) a program provided by the Owner in compliance with a Rectification Notice,~~

~~then QR Network may give the Owner a notice (Suspension Notice), suspending the Owner's rights under the Agreement and any other agreement to utilise, and to authorise or allow others to utilise, the Connecting Infrastructure for the passage of loaded coal trains.~~

- ~~(d) A Suspension Notice must specify that it is a notice given under clause 1.7(c) of this Schedule 7.~~
- ~~(e) A suspension of the Owner's rights in accordance with clause 1.7(c) of this Schedule 7 will continue until the earlier of the following dates:~~
- ~~(i) if the relevant default is capable of remedy, the date that the Owner does the things specified in clause 1.7(a)(i) of this Schedule 7;~~
 - ~~(ii) if the relevant default is not capable of remedy, the date that the Owner does the things specified in clause 1.7(a)(ii) of this Schedule 7;~~
 - ~~(iii) if QR Network notifies the Owner of the cessation of the suspension, the date which QR Network notifies the Owner as the date on which the suspension will cease.~~
- ~~(f) If:~~
- ~~(i) QR Network exercises its right of suspension under clause 1.7(c) of this Schedule 7;~~
 - ~~(ii) and~~
 - ~~(iii) the Owner disputes the exercise of that right by QR Network, the suspension will not take effect unless:~~
 - ~~(A) the Dispute is resolved in favour of QR Network during the period of the Dispute resolution process under clause 17 of the Agreement (at which time, the suspension will take effect); or~~
 - ~~(B) the Dispute remains unresolved 30 days after the day the Owner gives QR Network a Dispute Notice under clause 17.1 of the Agreement (at which time, the suspension will take effect despite the Dispute being unresolved).~~
- ~~(g) The exercise by QR Network of its rights and remedies under this clause 1.7 of Schedule 7 does not limit or restrict QR Network from exercising, at any time, any other rights or remedies of QR Network in respect of the relevant default (including its rights of termination under clause 18 of the Agreement).~~

~~1.8 Reporting~~

- ~~(a) Within 15 Business Days after the end of each Quarter, the Owner must submit a written report (in the form reasonably required by QR Network) to QR Network in respect of any material noncompliance by the Owner with an obligation of Owner under the Coal Loss Mitigation Provisions.~~
- ~~(b) Without limiting clause 1.8(a) of this Schedule 7, as soon as reasonably practicable (and in any event, within one Business Day) after the occurrence of any of the following events, the Owner must submit a written report to QR Network providing reasonable details in respect of the event:~~
- ~~(i) the breakdown of, or the inability to operate, any Veneering Equipment;~~
 - ~~(ii) any damage to the Network in connection with any non compliance by the Owner with its obligations under the Coal Loss Mitigation Provisions;~~
 - ~~(iii) any event arising in connection with any non compliance by the Owner with its obligations under the Coal Loss Mitigation Provisions which interferes, or may interfere, with the proper functioning or operation of the Network;~~

- (iv) ~~any event that results, or is likely to result, in the Owner being unable to perform a material obligation under the Coal Loss Mitigation Provisions.~~

~~1.9 Continuous improvement~~

~~The Parties must meet at least once each Quarter to discuss:~~

- (a) ~~the effectiveness of the then current practices for preventing coal loss; and~~
- (b) ~~new or modified practices which could be implemented to improve the prevention of coal loss.~~

~~2 VENEERING EQUIPMENT~~

~~2.1 Description of Veneering Equipment~~

~~Veneering Equipment is equipment for the application of a veneering agent to the exposed coal surface of loaded wagons at the Transfer Facilities to suppress coal dust and consisting of, inter alia:~~

- (a) ~~water and veneering agent storage tanks and associated pumping systems;~~
- (b) ~~a dosing system with adjustable control to achieve the desired solution strength;~~
- (c) ~~a shower bar to apply veneering agent to the coal profile;~~
- (d) ~~a control system facilitating autonomous operation including sensors for locomotive and wagon identification and movement thereof; and~~
- (e) ~~a connection point for connection to the load out control system to ensure it functions only during loading operations;~~

~~and which complies with the specifications in clause 2.2 of this Schedule 7.~~

~~2.2 Specification for Veneering Equipment~~

- (a) ~~The Owner is required to ensure that the Veneering Equipment is installed such that it integrates effectively with Owner's loading methodology and operations at the Transfer Facilities.~~
- (b) ~~The Veneering Equipment will be able to function in all weather conditions and be connected to the 240 Volt power service at the Transfer Facilities. The Veneering Equipment will not be sheltered (unless the supplier of the Veneering Equipment requests and provides this) and will be open to all conditions experienced at Transfer Facilities. The Veneering Equipment is to be a stand alone system that requires no input from the train load out console operator except, if necessary, to turn on or off the Veneering Equipment, prior to or after loading. The Veneering Equipment is to also ensure locomotives, locomotive windscreens, other ancillary equipment and wagon components are not sprayed.~~
- (c) ~~The Veneering Equipment must:~~
- (i) ~~be fully automatic in its operation including start up and shutdown sequences/process;~~
- (ii) ~~be capable of being fully integrated within the Owner's loading methodology;~~
- (iii) ~~recognise when a train is about to commence loading;~~
- (iv) ~~spray / treat all loaded coal wagons loaded at the Transfer Facilities;~~
- (v) ~~not spray any locomotive or remote control unit, regardless of its position in a train consist;~~
- (vi) ~~not spray the space between the loaded wagons in a train consist;~~
- (vii) ~~not spray once a train has finished loading, or no coal train is present;~~

- ~~(viii) not come into contact with any piece of rolling stock during the loading and spraying operations;~~
- ~~(ix) have a spray apparatus built from Poly pipe;~~
- ~~(x) have a spray apparatus that is at all times at least 4.2m above rail level;~~
- ~~(xi) be able to spray wagons moving at varying train speeds, but typically at a train speed of between 0.6km/h and 0.8km/h;~~
- ~~(xii) if a train is required to stop during the loading operation, have 120 second timeout capability and the spray system will re-commence normal operation on the next wagon, and the partly sprayed wagon will be counted as treated; and~~
- ~~(xiii) be capable of regular maintenance to maintain its operating capability.~~

~~2.3 Veneering Agent Testing Obligations~~

- ~~(a) The Owner must only use a veneering agent that achieves nil measured dust lift off for the coal loaded at the Transfer Facilities when subjected to the following testing requirements:

 - ~~(i) test coal samples must be prepared with a moisture content equivalent to the typical 'as loaded' moisture for the relevant coal type;~~
 - ~~(ii) test coal samples must be placed in a test tray and then surface sprayed at the rate of one litre per square metre with the veneer agent in water solution and at the supplier's nominated product:water ratio;~~
 - ~~(iii) test coal samples must then be subjected to simulated rail transport travel time and summer weather conditions (that is, each treated sample tray must:

 - ~~(A) be weighed;~~
 - ~~(B) then placed for four hours in an oven preheated at 30–35 degrees Celsius;~~
 - ~~(C) then placed in the wind tunnel at an angle of 35 degrees; and~~
 - ~~(D) then exposed to a wind speed of 20 metres per second (72 km/hour) for eight hours));~~
 and then weighed to determine the mass of dust removed.~~~~
- ~~(b) The Owner must provide product performance documentation from a NATA accredited laboratory or from another laboratory acceptable to QR Network that independently assesses the effectiveness of the Owner's proposed veneer agent to prevent emissions from coal loaded at and transported on trains from the Transfer Facilities including details of the testing methodology and the test results for the Owner's proposed veneer agent.~~
- ~~(c) The Parties acknowledge and agree that a veneering agent that achieves nil measured dust lift off during testing may not behave in the same manner when used in practice.~~

~~3 COAL LOADING, UNLOADING, PROFILING AND VENEERING~~

~~3.1 Coal Loss Management~~

- ~~(a) The significant strategies to achieve this obligation are loading, profiling and veneering wagons in accordance with the Standards, and implementation timeframes, provided under the Coal Loss Mitigation Provisions. This includes, without limitation:

 - ~~(i) meeting Queensland Department of Environment and Resource Management's targets for coal dust emissions;~~~~

- ~~(ii) no parasitic or fugitive coal (other than coal dust to standard) escaping from wagons; and~~
- ~~(iii) meeting height and weight requirements to protect below rail assets.~~
- ~~(b) The Owner as the loading practitioner has the primary responsibility to ensure that wagons are loaded, profiled and veneered in a manner that Prevents Coal Loss.~~
- ~~(c) The Owner must be able to demonstrate its compliance with its obligations through its Quality Management System.~~
- ~~(d) The Owner must consider current best industry practice with respect to Preventing Coal Loss when choosing an appropriate loading methodology. Best industry practice at this date of this Agreement includes matters such as:~~
 - ~~(i) operating procedure review and training to reduce the sources of coal loss;~~
 - ~~(ii) Quality Management System procedures and reporting to enable a 'lessons learnt' approach;~~
 - ~~(iii) inbound wagon identification system to determine class of wagon about to be loaded;~~
 - ~~(iv) inbound overload detection devices to measure the tare weight of each incoming wagon;~~
 - ~~(v) batch weighing system to load the correct amount of coal into each wagon;~~
 - ~~(vi) telescopic loading chute to profile the load in each wagon or, as an interim measure until such a chute is operating effectively, a suitable profiling blade on the exit side of the load out;~~
 - ~~(vii) outbound overload detection devices to measure the gross and bogey weights of each outgoing wagon;~~
 - ~~(viii) volumetric scanning to measure the profile of each outgoing wagon; and~~
 - ~~(ix) veneering spray stations on exit side of load out (after profiling has been achieved).~~

~~Management of coal loading~~

~~3.2 General Management of Coal Loading~~

- ~~(a) The Owner, in loading wagons at the Transfer Facilities, must comply with:~~
 - ~~(i) the wagon design maximum load and volume for wagons loaded at the Transfer Facilities;~~
 - ~~(ii) the requirements for Preventing Coal Loss specified by QR Network from time to time; and~~
 - ~~(iii) the rail asset restrictions specified by QR Network from time to time.~~
- ~~(b) The Owner must ensure the design of the Transfer Facilities and its adoption of suitable loading and unloading methodologies each achieve the following:~~
 - ~~(i) loading to an appropriate profile and clearance to Prevent Coal Loss en route to the unloading facilities; and~~
 - ~~(ii) Prevent Coal Loss from the wagons after exiting the Transfer Facilities.~~
- ~~(c) The Owner must ensure that coal is loaded into wagons in a manner which ensures that the coal (including coal dust) cannot leave the wagon until it is unloaded from the wagon at an unloading facility.~~

~~3.3 Loading Overhead Bins and coal profiling~~

- ~~(a) The Owner must ensure the loading methodology (including the approach to coal profiling) chosen by the Owner Prevents Coal Loss. The Owner must demonstrate to QR Network that its adopted loading methodology Prevents Coal Loss and complies with the rail asset restrictions specified by QR Network from time to time.~~
- ~~(b) Without limitation to the Owner's obligations regarding the loading methodology, the Owner must (unless agreed by QR Network in its absolute discretion) comply with the following requirements:~~
- ~~(i) Prevent the loading of coal to the very edges and ends of the wagons leaving sufficient 'freeboard' (i.e. not loaded to top of wagon side) at the sides and ends of loaded wagons to Prevent Coal Loss. See Figure 1 below.~~
- ~~(ii) The method of loading must ensure that loading is even over the length and width of each wagon up to the maximum allowable height as specified by QR Network from time to time (currently 3950mm above rail level). However, achieving loading to this height and shape is ultimately dependant on the density of coal being transported. officers or subcontractors (or any subcontractor employee or officer).~~
- the general liability of QR Network under the Construction Agreement must not be less than an amount equal to the aggregate of all amounts payable by the Owner under the Construction Agreement. QR Network must not exclude or limit its liability:
- in respect of death or personal injury of any person;
 - in respect of the breach of any third party intellectual property rights;
 - in respect of an amount QR Network is entitled to recover from an insurer;
 - for a repudiatory or wilful breach of the Construction Contract;
 - to rectify a defect in the works the subject of the Construction Agreement; or
 - in respect of any other events which a contractor under a construction contract customarily accepts unlimited liability in respect of;
- neither Party will be liable under the Construction Contract for consequential loss;
- disputes under or in relation to the Construction Agreement shall be resolved in accordance with clause 10.1 of the QR Network Access Undertaking.

Schedule 9

Pro forma bank guarantee

[On bank letterhead]

To: QR Network Pty Ltd ACN 132 181 116 (QR Network)

At the request of [insert Owner details] (ACN [TBC]) (“the Owner”) and in consideration of QR Network accepting this undertaking in respect of the agreement dated on or about the date of this undertaking in respect of rail infrastructure connecting rail owned or controlled by the Owner and rail infrastructure for which QR Network is the accredited rail infrastructure (within the meaning of that term in the *Transport Infrastructure Act 1994 (Old)* (**Agreement**) [insert details of bank (ABN)] (**Guarantor**) unconditionally undertakes to pay on written demand any sum or sums which may from time to time be demanded by QR Network under and in accordance with the Agreement to a maximum aggregate sum of \$10 million (ten million dollars).

QR Network may not transfer, assign or novate its rights, benefits or obligations under this undertaking except to such persons, and to the extent that, QR Network transfers, assigns or novates its rights, benefits or obligations under the Agreement to those people in accordance with the Agreement.

The undertaking is to continue until:

- (a) notification has been received from QR Network that the sum is no longer required by QR Network;
- (b) this undertaking is returned to the Guarantor by QR Network; or
- (c) payment by the Guarantor to QR Network of the whole of the sum,

whichever occurs first.

Notwithstanding the preceding paragraph, this undertaking will cease to be effective on [insert].

Should the Guarantor be notified in writing purporting to be signed by or on behalf of QR Network that QR Network desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Guarantor will make payment or payments to QR Network of that part or those parts without reference to the Owner or the Agreement and notwithstanding any notice given by the Owner not to pay same.

This undertaking is governed by the laws of Queensland.

Signed, Sealed and Dated this _____ day of _____ 2011.

~~Figure 1— End View of Wagon showing maximum allowable loading profile requirements.~~

- ~~(c) — A suitable profiler must be used to profile the coal so as to result in a loaded wagon with a coal profile that optimises the effectiveness of veneering agents applied in order to Prevent Coal Loss. Without limiting the type of profile that the Owner may adopt, an appropriately designed and maintained telescopic loading chute can achieve a ‘garden-bed’ profile (standard loading profile as shown in Figure 2 below.) to mitigate the risk of coal lift-off and to optimise the effectiveness of veneering agents applied in order to Prevent Coal Loss.~~

[Bank Details]

~~Figure 2— Top of loaded coal wagon showing ‘Garden-Bed’ style profile.~~

- ~~(d) — The loading chute and associated skirts must achieve a slope on the side of the load less than the natural angle of repose of the coal and must ensure the product is not left on the wagon sills (side and end).~~

PROTECTIVE MEASURES

~~3.4 — General Protective Measures~~

The Owner must ensure that the following protective measures are integrated into the operation of Transfer Facilities including:

- (a) ~~venereing agent application (or other similar dust control measures) must be managed so as not to damage electrical contractors or the like and suitable QR Network endorsed shields may have to be installed on nearby overhead traction equipment to ensure this is achieved;~~
- (b) ~~suitable storage capacity of product and water to ensure the availability of veneering agent application with a suitable safety factor;~~
- (c) ~~suitable bunding and other risk mitigation of storage tanks to comply with environmental regulations to ensure no loss of product during filling or possible leakage situations, and no interruption to veneering operations; and~~
- (d) ~~suitable maintenance and cleaning procedures to ensure reliable operation and cleanliness of all equipment and assets in or adjacent to or passing through the Transfer Facilities.~~

~~3.5 Power Supply~~

~~The Owner must ensure the design of the Transfer Facilities provides for the supply of power adjacent to the loading facilities, including where applicable, the provision of a power supply on the departure side of the load out suitable for use by an overload removal system, the Veneering Equipment and a load profiling system consistent with this Agreement and Schedule 7.~~

~~3.6 Loading from End Loaders (or similar)~~

~~The CDMP stipulates targets and deadlines for front end loading phase out. The front end loading of coal is not to occur after those deadlines. The Owner must not permit the loading of coal onto wagons from front end loaders. But if a target or deadline is applicable to the Owner for the phase out of front end loading as specified in the CDMP, then the Owner is obliged to phase out front end loading of coal by no later than that target or deadline.~~

~~WAGON OVERLOAD AND PROFILE MANAGEMENT~~

~~3.7 Overload Detection and Overload Removal Devices~~

~~The Owner must comply with the requirements not to overload and to remove any overloaded coal, including the prevention of spillage and clearance of excess coal from wagons, as set out in the QR Network Transfer Facilities Requirements.~~

~~3.8 Clam shell style loading~~

~~Clam shell style loading operations are not acceptable for new coal loading facilities.~~

~~3.9 Parasitic and fugitive coal removed from wagons~~

~~Unless otherwise agreed by QR Network, the Owner must use reasonable endeavours to remove any visible coal that has fallen onto wagon sills and surfaces or running gear immediately after the coal is loaded, in order to avoid the risk of coal falling off the wagon during transit.~~

~~3.10 Kwik Drop Doors (KDDs)~~

~~The Owner is responsible for the type of coal loaded into the wagons. The Owner must also ensure that coal fineness and moisture content will not facilitate coal loss via the KDDs during transportation from the Transfer Facilities to the unloading facility.~~

~~;~~

~~;~~

Schedule 10

Owner's Network Information Requirements

Signing page

Executed as an agreement

Signed for
QR Network Pty Limited
by its representative

*sign
here* ▶

Representative

*print
name*

*sign
here* ▶

Witness

*print
name*

Signed for
The Party whose name and address appears in Item 1 of Schedule 1
by its representative

*sign
here* ▶

Representative

*print
name*

*sign
here* ▶

Witness

*print
name*
