

# REFERENCE TARIFF SCHEDULE

## Gregory via Goonyella Cluster

### 1. Scope

This reference tariff schedule has been developed by QR in accordance with Part 5 of QR's Access Undertaking and has been endorsed by the Queensland Competition Authority ("QCA") for application in accordance with the terms and conditions set out in this reference tariff schedule. It stipulates a reference access charge applicable to Train Services that satisfy all of the specifications and requirements of the Reference Train Service, outlined in this reference tariff schedule.

Operators of other Train Services, that vary from the Reference Train Service characteristics specified in clause 2.3 and/or operate under terms and conditions with agreed variations from the requirements of clause 2.4, but otherwise satisfy the Reference Train Service description, may negotiate a Varied Access Charge.

The Reference Train Service does not include Above Rail Services such as carrying out any provisioning, inspection, testing and maintenance of Rollingstock, or marshalling, shunting or other relocation or storage of Rollingstock; however, it does include a Stowage period during which a Railway Operator may carry out Above Rail Services.

This reference tariff schedule will be the basis for access charges negotiated for new Access Agreements for relevant Train Services or for rate review provisions that specifically refer to the reference tariff schedule for the Reference Train Service.

This reference tariff schedule is applicable from 1 January 2001 to 31 December 2003. A revised reference tariff schedule will be submitted to the QCA for endorsement prior to 30 October 2003 for subsequent application (see clause 4.2 for further details).

### 2. Reference Train Service Description

#### 2.1 *Commodity Type*

The Reference Train Service carries bulk coal. In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

#### 2.2 *Geographical Scope*

- 2.2.1 The Reference Train Service operates between any Nominated Loading Facility and Nominated Unloading Facility and includes the empty return journey from the Nominated Unloading Facility to the Nominated Loading Facility.
- 2.2.2 A new coal loading facility may be included as a Nominated Loading Facility in accordance with and subject to the provisions of Part 3 of Attachment 1.
- 2.2.3 Diagrams, showing the location of the Nominated Loading Facilities and Nominated Unloading Facility/ies within the cluster, are included in the Information Pack.

#### 2.3 *Reference Train Service Characteristics*

- 2.3.1 The Reference Train Service:
  - has a maximum length of 2070 metres (including the locomotive/s);

- has a maximum axle load of 26 tonne for a wheel configuration consistent with M220<sup>1</sup> loading, or otherwise generates a loading equivalent to M220<sup>1</sup>;
- complies with the maximum speeds permitted on the Nominated Infrastructure as specified in the Information Pack;
- complies with QR's Rollingstock Interface Standards applicable to the Nominated Infrastructure;
- is otherwise compatible with the Nominated Infrastructure described in the Information Pack;
- operates in accordance with nominated sectional running times specified in the Information Pack;
- complies with the Loading Section occupancy times specified in Part 1 of Attachment 1;
- complies with the Unloading Section occupancy times specified in Part 2 of Attachment 1;
- utilises loading and unloading facilities that each have a balloon loop terminal configuration;
- operates as an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
- has a nominal loaded direction gross tonnage of 13000 tonnes with an allowable variation of +/- 5% (for all Rollingstock comprising the Train) and a nominal unloaded direction gross tonnage of 3100 tonnes with an allowable variation of +/- 5% (for all Rollingstock comprising the Train);
- utilises Rollingstock that has an external noise limit no greater than the noise planning level/s required by the Environmental Protection (Noise) Policy 1997;
- will operate on the configuration of the Nominated Infrastructure existing at the Commencing Date without limiting the ability of existing Train Services to operate in accordance with their Capacity Entitlements;
- having regard to the desire to reduce coal spillage and/or leakage enroute, utilises bottom dump, open top wagons with an adequate side height, having regard to the density of the coal carried, and a positive door operating mechanism equivalent to or of similar reliability to the existing system: "KWIK DROP";
- measured as an average over a monthly timeframe, has a maximum Stowage period for each Train Service of X hours<sup>2</sup>;
- measured as an average over a monthly timeframe, operates within the Transit Times between nodes specified in Part 4 of Attachment 1; and
- utilises electric traction.

### 2.3.2 The Railway Operator of a Reference Train Service will:

- demonstrate, to QR's reasonable satisfaction, a reasonable expectation that the tonnage volume upon which its Capacity Entitlement is based will be hauled;
- be available for operation 24 hours per day and 365 days per year;
- have even loadings throughout each yearly, monthly and weekly period;
- specify within its Capacity Entitlement the number of Train Services required per week; and
- comply with QR's Scheduling & Train Control Protocols, including associated coal corridor scheduling procedures.

<sup>1</sup> As specified in the ANZRC Railway Bridge Design Manual 1974

<sup>2</sup> Pending further analysis

## **2.4 Conditions of Access**

- 2.4.1** The Reference Train Service will operate in accordance with the terms and conditions of an Access Agreement that will:
- be consistent with the QR standard coal Access Agreement in Attachment 2 (while this Agreement is not yet available it will be consistent with the principles listed in the summary currently at Attachment 2);
  - have a term of 10 years;
  - have incorporated into it an access charge review provision that relates the movement in access charges to the movement in the reference access charge under this reference tariff schedule; and
  - be otherwise consistent with the contents of this reference tariff schedule.

## **3. Access Charge**

### **3.1 Reference Access Charge**

- 3.1.1** Subject to the escalation provisions contained in clause 4.1 the reference access charge will apply to the Train Services fitting the Reference Train Service description, in accordance with the formula specified below in clause 3.3.

- 3.1.2** The reference access charge has two components: a track access charge and an electric traction charge. The electric traction charge includes electric distribution costs and electric energy costs.

The reference access charge at 1 January 2001 is:

- \$5.69 per thousand gross tonne kilometres for track access; plus
- \$1.98 per thousand gross tonne kilometres (electric haul) for electric traction.<sup>3</sup>

**The total reference access charge at 1 January 2001 is \$7.67 per thousand gross tonne kilometres.**

These charges are GST exclusive but include all Tax Savings. An amount for GST will be added to the calculated total access charge when the Railway Operator is invoiced.

- 3.1.3** The first escalation date is 1 April 2001.
- 3.1.4** For the relevant origin – destination haul the total reference access charge will be converted to and applied as a fixed charge per month plus a variable amount per gross tonne. The total annual access charge will be calculated by multiplying the total reference access charge by the gross tonne kilometres that would be achieved in a 12 month period if the Railway Operator utilised its full Capacity Entitlement. The fixed charge per month (“FC”) will be 40% of the calculated total annual access charge, divided by 12. The remaining 60% of the total annual access charge will be converted to an equivalent \$ per gross tonne figure (“VC”) based on the Nominated Haulage Distance between the relevant Nominated Loading Facility and Nominated Unloading Facility.

### **3.2 Varied Access Charge**

- 3.2.1** Varied Access Charges, for the types of variations to the Reference Train Service specified in 3.2.2 and 3.2.3, will be calculated as detailed in these clauses. These clauses assume that there are no other variations from the Reference Train Service other than those specifically

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<sup>3</sup> This electric traction charge is subject to change pending full consideration of the implications of the New Tax System, and in particular, the extension in the application of the diesel fuel excise rebate to rail.

referred to. Varied Access Charges for all other variations to the Reference Train Service will be calculated on a case-by-case basis.

- 3.2.2** Provided that the varied Train Service will operate on the configuration of the Nominated Infrastructure existing at the Commencing Date without limiting the ability of existing Train Services to operate in accordance with their Capacity Entitlements, a variation to the reference access charge, to reflect a variation from the nominated sectional running times specified in the Information Pack, and provided that the Train Service complies with all other characteristics of the Reference Train Service, will be assessed as follows:

*[pending further analysis]*

- 3.2.3** Provided that the varied Train Service will operate on the configuration of the Nominated Infrastructure existing at the Commencing Date without limiting the ability of existing Train Services to operate in accordance with their Capacity Entitlements, a variation to the reference access charge, to reflect a variation from the nominal loaded and/or unloaded gross tonnage for the Reference Train Service specified in clause 2.3.1, and provided that the Train Service complies with all other characteristics of the Reference Train Service, will be assessed as follows:

*[pending further analysis]*

- 3.2.4** Subject to the escalation provisions contained in clause 4.1 the Varied Access Charge will apply to the relevant Train Services, in accordance with the formula specified in clause 3.3.

- 3.2.5** For the relevant origin – destination haul the total Varied Access Charge will be converted to and applied as a fixed charge per month plus a variable amount per gross tonne. The total annual access charge will be calculated by multiplying the total Varied Access Charge by the gross tonne kilometres that would be achieved in a 12 month period if the Railway Operator utilised its full Capacity Entitlement. The fixed charge per month (“FC”) will be 40% of the calculated total annual access charge, divided by 12. The remaining 60% of the total annual access charge will be converted to an equivalent \$ per gross tonne figure (“VC”) based on the Nominated Haulage Distance between the relevant Nominated Loading Facility and Nominated Unloading Facility.

### **3.3 Access Charge Payable**

The total reference access charge or total Varied Access Charge will be applied in the following manner:

\$FC per month plus \$VC per gross tonne.

The applicable total monthly access charge for a relevant origin – destination haul is calculated as follows:

Total monthly charge = (FC x ATS/MTS) + (VC x GT)

Where:

- FC is the relevant fixed monthly charge calculated as detailed in clauses 3.1.4 or 3.2.5;
- ATS is the greater of the number of actual Train Services operated during the relevant month or the MTS;
- MTS is the number of Train Services contracted in the relevant month as defined by the Capacity Entitlement in the relevant Access Agreement;
- VC is the relevant charge per gross tonne calculated as detailed in clauses 3.1.4 or 3.2.5; and
- GT is the total gross tonnes for the particular Train Service for the relevant month. Gross tonnes shall be the sum of all tonnage including net tonnage hauled, wagon tare and locomotive mass (including fuel and sand). This shall be summed for each relevant Train Service and the totals for all relevant Train Services operating during the month shall be

aggregated to arrive at the value “GT”. Note that empty Train Services on the return journey are to be included in this total.

The standard coal Access Agreement will specify adjustments to be made to the application of this formula for any inability on QR’s part to make the Nominated Infrastructure available for Train Services in accordance with an applicable Railway Operator’s Capacity Entitlement.

### **3.4 Varied Components of Applicable Access Charge**

- 3.4.1** Nothing in this reference tariff schedule will preclude QR requiring, in accordance with the provisions of its Access Undertaking, or QR and the Railway Operator agreeing to, access charges that have varied cash flows but the same net present value as the reference access charge or Varied Access Charge as applied in accordance with the other provisions of this reference tariff schedule.
- 3.4.2** Varied cash flows could be achieved by variations to the structure of the charges (for example, as identified in clause 5.4 of the Access Undertaking) and/or variations to the escalation arrangements. In any case the variation from the specified application of the reference access charge or Varied Access Charge will be assessed on the basis of the risks and costs, including opportunity cost, associated with the timing of the resultant cash flows.

## **4. Variation to Access Charge**

### **4.1 Escalation**

Unless otherwise agreed between the parties, the applicable reference access charge or Varied Access Charge will escalate on each Escalation Date following the Commencing Date, in accordance with the following formula.

Where the access charge has a component for electric traction as well as for track access, each component will be escalated separately as provided below:

$$RAC_n = [(1-X_1) * TAC + X_1 * TAC * CPI_n / CPI] + [(1-X_2) * ETC + X_2 * ETC * CPI_n / CPI]$$

Where:

$RAC_n$	means the new total reference access charge, or where applicable total Varied Access Charge, to apply after the escalation;
TAC	means the relevant track access charge identified in clause 3.1.2, or where applicable the track access charge identified for a Varied Access Charge in accordance with clause 3.2;
ETC	means the relevant electric traction charge identified in clause 3.1.2, or where applicable the electric traction charge identified for a Varied Access Charge in accordance with clause 3.2;
$X_1$	is a percentage of the relevant track access charge to be escalated, as agreed between QR and the QCA <sup>4</sup> ;
$X_2$	is a percentage of the relevant electric traction charge to be escalated, as agreed between QR and the QCA <sup>4</sup> ;
$CPI_n$	means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 6 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable $RAC_n$ is being determined;
CPI	means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which

<sup>4</sup> The percentage to be escalated is subject to finalisation of the incentive regulation formula.

	is 9 months prior to the midpoint of the Quarter commencing on the First Escalation Date;
Quarter	means each period of 3 consecutive months commencing 1 January, 1 April, 1 July or 1 October in each year;
Escalation Date	means the date 1 January, 1 April, 1 July and 1 October in each year on which the reference access charges or Varied Access Charges are to be escalated in accordance with this reference tariff schedule; and
First Escalation Date	means that date identified as the first escalation date in clause 3.1.3.

## **4.2 Reference Tariff Review**

- 4.2.1** Except as provided for in this clause 4.2, this reference tariff schedule is effective for 3 years from the Commencing Date. Prior to the expiration of the 3 year period, the QCA will review a revised reference tariff schedule prepared and submitted to it by QR for application after the expiration of the 3 year period.
- 4.2.2** The reference tariff schedule will be reviewed, subject to subclauses 4.2.4 and 4.2.5, if:
- a) the review trigger, relating to the annual gross tonne kilometres per year for coal Train Services, specified in paragraph 4.2.2 a) of the Gregory via Blackwater Cluster reference tariff schedule is triggered; or
  - b) a Material Change Event occurs that could reasonably be expected to result in QR materially exceeding its Revenue Limit.
- 4.2.3** In addition, the reference tariff may be reviewed, subject to subclause 4.2.6, if a Material Change Event, that does not fall within the scope of paragraph 4.2.2 b), occurs.
- 4.2.4** If the review trigger provided for in paragraph 4.2.2 a) occurs, QR will review and revise this reference tariff schedule only to the extent that the deviation, from the midpoint of the relevant traffic volume range specified in the Gregory via Blackwater Cluster reference tariff schedule, impacts upon QR's below rail financial position. Such a review will have regard to the sustainability of the annual gross tonne kilometres figure and the tonnage growth profile assumed in the derivation of the reference access charge.
- 4.2.5** If a Material Change Event occurs that could reasonably be expected to result in QR materially exceeding its Revenue Limit, QR will review and revise this reference tariff schedule to the extent that the Material Change Event impacts upon QR's below rail financial position.
- 4.2.6** If a Material Change Event occurs, that falls within the scope of subclause 4.2.3, QR may review and revise this reference tariff schedule, but only to the extent that the Material Change Event impacts upon QR's below rail financial position.
- 4.2.7** Any variation to this reference tariff schedule occurring as a result of subclauses 4.2.2 or 4.2.3, is effective only if endorsed by the QCA and only until the next scheduled review under subclause 4.2.1.
- 4.2.8** Any variation to this reference tariff schedule occurring as a result of subclauses 4.2.2 or 4.2.3 will be deemed applicable when QR alters this reference tariff schedule, but in any event, will be applied no later than 3 months after the occurrence of the trigger event or resultant impact upon QR's below rail financial position, whichever is the later. If the trigger event is not identified until more than 3 months after its occurrence, the resulting variation will apply retrospectively from the point in time that is 3 months after the occurrence of the trigger event or resultant impact upon QR's below rail financial position, whichever is the later.



- 4.2.9** Nothing in this reference tariff schedule prevents QR from reducing:
- the track access charge and/or the electric traction charge components of the reference access charge, or where applicable, these components of a Varied Access Charge; and
  - the total reference access charge, or where applicable, the total Varied Access Charge; at any time.

## 5. Definitions

**In addition to the definitions below, Part 8 of QR's Access Undertaking sets out the definitions of other defined terms used in this reference tariff schedule.**

**Access Undertaking** means QR's undertaking specifying the manner in which QR will negotiate with Third Parties seeking access to its Rail Infrastructure, submitted voluntarily by QR to the QCA in accordance with section 136 of the Act, and as approved by the QCA from time to time.

**Commencing Date** means 1 January 2001.

**Common Rail Infrastructure** means the Rail Infrastructure over which all coal carrying Trains from all Nominated Loading Facilities travel in order to get to the Nominated Unloading Facility/ies and in the event that the inclusion of a new coal loading facility is being considered under Part 3 of Attachment 1, Trains expected to operate from the new coal loading facility will be considered in assessing what the relevant Rail Infrastructure is.

**Distance** means the distance, comprising one or more Line Sections, from the relevant coal loading facility to the point on the Common Rail Infrastructure nearest to the Nominated Unloading Facility/ies, and where there is only one Nominated Unloading Facility, the distance will extend to that Nominated Unloading Facility.

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

**Information Pack** means the document produced by QR for the purpose of collating the technical and operational information specified in the Preliminary Information and relevant to the Nominated Infrastructure.

**Line Section** means a portion of QR's Rail Infrastructure, between 2 specified locations. As a general rule, the locations are stations, crossing loops, balloon loops or junctions. Line Sections are identified by a unique line code number.

**Line Section Weighted Tonnes** means, for the purposes of assessing the Total Weighted Tonnes, the product of the annual estimated net tonnage of all coal carrying Train Services operating on a Line Section and the percentage proportion that the length of that Line Section is of the Distance.

**Loading Section** means a Line Section within which a Nominated Loading Facility is situated.

**Nominated Haulage Distances** means the aggregate of those distances specified in the relevant Information Pack for the Line Sections connecting a Nominated Loading Facility to a Nominated Unloading Facility.

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

**Nominated Loading Facility** means a loading facility specified in Part 1 of Attachment 1 to this reference tariff schedule, and Nominated Loading Facilities has a corresponding meaning.

**Nominated Unloading Facility** means an unloading facility specified in Part 2 of Attachment 1 to this reference tariff schedule, and Nominated Unloading Facilities has a corresponding meaning.

**Reference Train Service** means a Train Service that satisfies all of the specifications of the Reference Train Service outlined in this reference tariff schedule.



**Stowage** means the short-term storage of Trains on QR's Rail Transport Infrastructure, at locations specified by QR exercising its reasonable discretion, for the purpose of:

- (a) enabling a Railway Operator to carry out scheduled Above Rail Services normally carried out during a scheduled operational cycle (such as crew changes, meal breaks, and provisioning); and/or
- (b) providing a Railway Operator with a place to temporarily store its Train/s:
  - i. between scheduled Train Services in accordance with the terms of the relevant Railway Operators' Capacity Entitlement; or
  - ii. when the Railway Operator cannot operate its Train Service in accordance with the terms of its Capacity Entitlement as the result of a breakdown situation or temporary outage of the Railway Operator, the loading facility or the unloading facility, and/or unavailability of the Nominated Infrastructure.

Stowage does not include storage of individual items of Rollingstock, long-term storage of Trains, or short-term storage of Trains where the Railway Operator does not operate Train Services in accordance with its Capacity Entitlement.

**Tax Saving** means the amount obtained by QR during the New Tax System transition period as a result of the New Tax System changes (as those expressions are defined in Part VB of the Trade Practices Act 1974 in respect of any supplies) and Tax Savings has a corresponding meaning.

**Total Weighted Tonnes** means the aggregate of the Line Section Weighted Tonnes for each Line Section from the relevant coal loading facility to the point on the Common Rail Infrastructure nearest to the Nominated Unloading Facilities (and where there is only one Nominated Unloading Facility, to the Nominated Unloading Facility).

**Train Path** means the occupation of a specified portion of Rail Infrastructure that may include multiple Line Sections in sequential order, for a specified time, so as to allow the passage of one Train.

**Transit Time** means the total time it takes for the Reference Train Service to travel between specified nodes without making an allowance for Force Majeure, Stowage or above rail delays, including but not limited to crew changes, meal breaks, failure to meet sectional running times, or the inability of a Nominated Loading Facility or Nominated Unloading Facility to perform on time.

**Unloading Section** means a Line Section within which a Nominated Unloading Facility is situated.

**Varied Access Charge** means an access charge determined on cost or risk based variations from the reference access charge for individual access arrangements on the basis of the extent of variation from the characteristics or terms and conditions specified in clauses 2.3 and 2.4 of this reference tariff schedule.

## **6. Contact**

For further clarification of this reference tariff schedule please contact:

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## Attachment 1

### Part 1

#### *Nominated Loading Facilities*

*Loading Section occupancy time<sup>5</sup> (hours) measured as an average over a monthly timeframe*

- Ensham
- Yongala
- Kestrel (Gordonstone)
- Gregory

### Part 2

#### *Nominated Unloading Facility/ies*

*Unloading Section occupancy time<sup>6</sup> (hours) measured as an average over a monthly timeframe*

- Dalrymple Bay
- Hay Point

### Part 3

- a) This Part of Attachment 1 is subject to the following proviso:
- A new coal loading facility may only be considered for addition to Part 1 of this Attachment 1 if its direct connection to the QR network is to the corridor between Burngrove and Gregory junction or to any of the branch lines to any Nominated Loading Facility.
- b) Except as provided in paragraph c), QR may add a new coal loading facility to Part 1 as a Nominated Loading Facility where the **Total Weighted Tonnes/Distance ratio**, for the annual net tonnages for all coal carrying Trains operating on the Rail Infrastructure connecting the new coal loading facility to the point on the Common Rail Infrastructure nearest to the Nominated Unloading Facility/ies, is greater than the lowest such ratio for any existing Nominated Loading Facility. [*\*NB the ratios for the existing Nominated Loading Facilities are calculated on the basis that Train Services from the new loading facility are operating on the Nominated Infrastructure.*]
- c) Except as provided for in paragraph d) where a new coal loading facility is located in an area where the terrain or other physical constraints means the cost per kilometre of providing Rail Infrastructure connecting the Nominated Rail Infrastructure to the new coal loading facility is greater than 20% higher than the average replacement cost per kilometre of providing Rail Infrastructure to existing Nominated Loading Facilities, the new loading facility will not be added to the Nominated Loading Facilities notwithstanding it satisfies the **Total Weighted Tonnes/Distance ratio** test.
- d) Where a new coal loading facility does not satisfy the criteria specified in paragraph b) or falls within the circumstances in paragraph c), but all of the Railway Operators of existing coal Train Services operating between the Nominated Loading Facilities and Nominated Unloading Facility/ies agree to the new loading facility being added to Part 1 of this Attachment, QR may add the new loading facility to Part 1 as a Nominated Loading Facility.
- e) In the event that paragraphs b), c) and d) above are not applicable, QR and/or all of the Railway Operators of existing coal Train Services operating between the Nominated Loading Facilities and Nominated Unloading Facility/ies, may ask the QCA to determine whether the new coal loading facility should nonetheless be added to Part 1 of this Attachment. In making such a determination

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<sup>5</sup> Pending further analysis



the QCA will consider the consequent impacts upon QR's below rail functions and the operations of those Railway Operators of existing coal Train Services on the Nominated Infrastructure.

## **Part 4**

Transit Times between specified nodes (hours)<sup>6</sup>

Ensham to Dalrymple Bay:

Ensham to Hay Point:

Yongala to Dalrymple Bay:

Yongala to Hay Point:

Kestrel (Gordonstone) to Dalrymple Bay:

Kestrel (Gordonstone) to Hay Point:

Gregory to Dalrymple Bay:

Gregory to Hay Point:

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<sup>6</sup> Pending further analysis

## **Attachment 2**

### **Access Agreement Principles (will be replaced by Agreement in due course)**

#### **1. Access Rights**

- The Agreement will provide for non-exclusive Train Service entitlements for the operation of Train Services in terms of agreed service levels over the nominated network. Long term Train Service entitlements can be varied only in accordance with agreed scheduling procedures specified in the Agreement or as otherwise agreed between the parties.
- It is the responsibility of the Third Party entering into an Access Agreement with QR to ensure that the operator of Train Services utilising the Access Rights is Accredited.
- Access Agreements will be for a specified term and include a good faith negotiation process for renewal.

#### **2. Access Charges**

- Access Charges are to be agreed between the parties and payable in accordance with the Agreement. Late payments or credits by either party will bear interest at an agreed default rate.
- The Agreement will provide for a fair and reasonable mechanism for dealing with bona fide disputed invoices.
- The Agreement may provide for periodic review of Access Charges.
- Unless otherwise stated, all amounts payable under the Agreement are exclusive of GST.
- In appropriate cases QR may require lodgement of a security deposit to secure performance by the Third Party of its obligations under the Agreement having regard to QR's reasonable assessment of the creditworthiness of the Third Party.

#### **3. Train Service Entitlements**

- The Third Party shall not be entitled to commence Train Services unless and until all provisions of the Agreement required to be completed or complied with prior to the commencement of Train Services have been completed or complied with by the due date specified in the Agreement. QR will cooperate with the Third Party to the extent reasonably necessary to facilitate the Third Party's completion or compliance with such requirements.
- The Third Party must only operate Trains of the nominated specification for the transport of the nominated product type over the nominated network.
- Train Service entitlements can be reduced by QR upon reasonable notice to prevent the hoarding of capacity and appropriate adjustments will be made to the Access Charges payable.

#### **4. Day to Day Train Movements**

- QR is to have responsibility for Train control and shall exercise Train control having regard to the safe conduct of rail operations on the nominated network. Operations Protocols will as far as practicable be consistent for all railway operators on the nominated network.
- The parties shall use all reasonable endeavours to ensure that the operation of Train Services is in accordance with the timetable developed in accordance with the Train Service entitlements or applicable under the Train Service entitlements and the agreed scheduling procedures. Timetables applicable to the day to day operation of the Train Services may be varied in the circumstances specified in the Agreement (which normally include safety considerations, Force Majeure, incidents or emergencies, track possessions in accordance with the Agreement or as otherwise agreed between the parties, such agreement not to be unreasonably withheld).
- The Third Party is required to comply with all QR Train control directions and ensure all Trains and Rollingstock are equipped with appropriate communication systems to comply with the Rollingstock Interface Standards.

#### **5. Train Operations**

- The Agreement will specify all reasonable operational, communication and procedural requirements for Train Services.
- The Third Party is to comply with all laws, Safeworking Procedures and Safety Standards and all other Train operations requirements in the Agreement. QR will comply with its Safeworking Procedures and Safety Standards and may, acting reasonably, vary the Safeworking Procedures and Safety Standards at any time following consultation with, and reasonable notice to, the Third Party. Subject to such variations being on safety grounds, each party is responsible for its costs (including the costs of additional or modified equipment) in complying with the Safeworking Procedures and Safety Standards. Safeworking Procedures and Safety Standards will as far as practicable be consistent for all railway operators on the nominated network.
- The parties may agree specific performance levels and measurement criteria as a basis for creating effective performance management and incentives. This may involve financially based incentives and sanctions. The performance levels may also be reviewed periodically.
- The Agreement will specify relevant Rollingstock Interface Standards. The Third Party must obtain certification from an appropriately qualified person (both certification and person to be subject to the reasonable satisfaction of QR) that its Rollingstock and Rollingstock configurations comply with such Rollingstock Interface Standards. Rollingstock and Rollingstock configurations which are so certified will be included in the Rollingstock Specification as being authorised to operate on the nominated network subject to continuing compliance with the Rollingstock Interface Standards and Rollingstock Specification.
- The Third Party is responsible for the safe operation of its Rollingstock on the nominated network and must ensure that at all times its Rollingstock and Rollingstock configurations comply with all applicable laws, the Rollingstock Specification and the Rollingstock Interface Standards specified in the Agreement. The operation of Rollingstock and Trains may be suspended by QR, acting reasonably, for non-compliance until such non-compliance is rectified.
- The Third Party must ensure all loadings of Rollingstock are secure.
- QR may, acting reasonably, vary the Rollingstock Interface Standards at any time and where this necessitates modification of the Third Party's Rollingstock, the costs of such

modifications are to be borne in the manner agreed by the parties or, failing agreement, as determined by an expert.

## **6. Infrastructure Management**

- QR is responsible for the management and control of the nominated network.
- QR will carry out maintenance work on the nominated network such that, subject to applicable operational constraints and any other agreed criteria, the infrastructure is consistent with the Rollingstock Interface Standards and the Third Party can operate Train Services in accordance with its Train Service entitlements.
- QR may impose operational constraints (such as speed or load restrictions) for the protection of persons or property or to facilitate maintenance work or enhancements and has reasonable entitlements to take possession of the track for the purpose of maintenance work, emergency repairs and enhancements. In carrying out such work QR will use its reasonable endeavours to minimise disruption to Train Services so that the Third Party can operate Train Services substantially in accordance with its Train Service entitlements.
- The Agreement will contain principles for consultation with the Third Party regarding maintenance which will impact on the Third Party's schedule.
- The Agreement will contain provisions requiring the parties to provide advice to each other in relation to factors that could affect the Third Party's operation of Train Services or the integrity of the nominated network.
- The Third Party may inspect the nominated network for the purposes of assessing the operational, environmental and safety risks with respect to the infrastructure as well as the standard of the infrastructure comprising the nominated network including, but not limited to, fencing and at grade crossing protection. QR will not be liable for claims in relation to, or arising out of, the standard of the infrastructure except where QR fails to maintain the infrastructure such that, subject to applicable operational constraints and any other agreed criteria, it is consistent with the Rollingstock Interface Standards and the Third Party can operate Train Services in accordance with its Train Service entitlements.
- The Agreement will specify the reasonable terms and conditions on which the Third Party will have access to the nominated network for the purpose of inspecting the standard of the infrastructure comprising the nominated network.

## **7. Incident Management**

- Prior to the commencement of Train Services the Third Party is required to develop an Emergency Response Plan containing procedures for dealing with incidents which must be consistent with QR's emergency procedures.
- In the event of an incident QR is responsible for the overall coordination and management of incident responses and may, subject to using reasonable efforts to consult with the Third Party, take any action it considers reasonably necessary to recommence services as soon as possible. The Third Party is responsible for recovery of Rollingstock and to cooperate and assist with the restoration of Train movements.
- Investigations into incidents are to be commenced as soon as practicable after an incident and carried out in accordance with the process specified in the Agreement. The parties must cooperate in any investigation and consult in good faith in relation to the implementation of any recommendations.

## **8. Environmental Protection and Other Issues**

- All environmental laws, regulations and relevant guidelines must be complied with.
- Environmental management must be approached on a risk identification and risk management basis with respect to operations on the nominated network and independent audits of a Third Party's compliance with its Environmental Management System will be required in the absence of certification of the third Party's Environmental Management System in accordance with Standard ISO14001.

## **9. Accreditation**

- QR must have and maintain Accreditation as a Railway Manager under the *Transport Infrastructure Act 1994* to the extent required to perform its obligations under the Agreement.
- Train Services must be operated by an operator Accredited as a Railway Operator under the *Transport Infrastructure Act 1994* and the operator must maintain such Accreditation to the extent required to perform its obligations under the Agreement.

## **10. Third Party's Staff**

- The Third Party is responsible for demonstrating through the Safety Risk Assessment process the competence of all of its staff performing safety related work. QR may temporarily suspend the right of the Third Party's staff to operate on the nominated network in the event of breach or likely breach of any laws, QR Train control directions, Safeworking Procedures or Safety Standards.

## **11. Safety Risk Management**

- Safety risk management must be addressed by risk identification through a joint Safety Risk Assessment process and the formulation of a Safety Risk Management Plan. The parties will be required to comply with the Safety Risk Management Plan.

## **12. Inspection and Audit Rights**

- Rights of inspection and audit in relation to the Third Party's compliance with the Agreement and inspection of Trains and Rollingstock shall be included in the Agreement. The Agreement will specify the terms and conditions on which QR can carry out such inspections and audits. Except in emergencies QR will, in carrying out any inspection or audit, give the Third Party reasonable notice and use reasonable endeavours to minimise disruption to the Third Party's Train Services.

## **13. Insurance**

- The Agreement will provide for insurances to be effected by the parties to appropriately provide for the relevant insurance risks.

## **14. Indemnities and Liabilities**

- Each party is liable for and is required to release and indemnify each other for all claims in respect of personal injury, death or property damage caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of that party or its staff.

- The Third Party is solely liable for and is required to release and indemnify QR for any damage to property or personal injury or death of any person being transported on Train Services.

#### **15. Limitation of Liability**

- The liabilities of the parties for default shall be limited as specified in the Agreement.
- Neither party has any liability for consequential loss or damage or loss of profits in any circumstances.
- Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim.

#### **16. Material Change**

- Access Charges will be adjusted to reflect the net impact of any material change where such material change results in a variation to the net cost to QR of performing its obligations under the Agreement.
- A material change shall be limited to changes in taxes, laws or reduction in available funding from QR's Government Infrastructure Payments (i.e. a reduction in the amount of funding available from such payments in respect to the nominated network shall be considered as an increase in the net cost to QR of performing its obligations under this Agreement).
- Any dispute regarding the impact on Access Charges as a result of a material change will be determined by an independent expert.

#### **17. Disputes**

- Any dispute between the parties is to be firstly referred in writing to the respective chief executives for resolution. If the dispute is not resolved then the parties may agree to refer the dispute for resolution by an expert or arbitration. If there is no agreement to resolve the dispute in this manner then the dispute is to be determined by a court.

#### **18. Default, Suspension and Termination**

- The Agreement will specify events of default and rights of suspension and termination.

#### **19. Force Majeure Event**

- The obligations of either party (other than an obligation to pay monies due) will be suspended where by reason of a Force Majeure event that party is delayed in or prevented from carrying out its obligations under the Agreement. The Agreement will provide for relief in respect of the payment of Access Charges to the extent that QR is unable to provide Access Rights because of a Force Majeure event affecting QR.
- In the event that infrastructure on specified lightly trafficked corridors of the nominated network is damaged by a Force Majeure event and in QR's reasonable opinion the cost of repairing the damage is not economic, QR may elect not to proceed with repairs or replacement unless the parties agree as to the funding of the cost of that work.



- The Access Agreement will provide for a process which might result in termination of the Agreement in the event that circumstances of prolonged Force Majeure prevents the performance by a party of its obligations.

## **20. Assignment**

- The Third Party may assign the whole of its rights and obligations under the Agreement to a related body corporate provided that the assignor remains liable for the performance of obligations under the Agreement or to a non-related body corporate with the prior written consent of QR (such consent not to be unreasonably withheld).
- A change in control of a Third Party not a publicly listed corporation will be deemed to be an assignment of the Agreement.

## **21. QR's Access Undertaking**

- QR will comply with all applicable laws and the terms of QR's Access Undertaking in effect from time to time.