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VOLUME 2 – STANDARD ACCESS AGREEMENTS

STANDARD ACCESS AGREEMENT (ACCESS HOLDER) FOR COAL CARRYING TRAIN SERVICES

**STANDARD ACCESS AGREEMENT (OPERATOR) FOR COAL CARRYING
TRAIN SERVICES**

PART 1. PREAMBLE

- (a) QR Network has developed this Undertaking to provide a framework to manage negotiations with Access Seekers for Access to Rail Infrastructure for the purpose of operating Train Services.
- (b) This Undertaking has been prepared in accordance with the Act. The intent of the Undertaking is to:
- (i) ensure that Access is negotiated in a competitively neutral environment;
 - (ii) ensure that Access negotiations are conducted expeditiously on a commercial basis between QR Network and Access Seekers;
 - (iii) provide a mechanism for the exchange of information between QR Network and Access Seekers necessary to facilitate the negotiation process;
 - (iv) establish pricing principles to be employed by QR Network in negotiating Access and which provide guidance in the resolution of a pricing dispute;
 - (v) outline the manner in which QR Network will manage the utilisation of Capacity;
 - (vi) outline the interface considerations to be addressed for Access Seekers and Access Holders to obtain and maintain Access;
 - (vii) outline the principles to be incorporated in an Access Agreement;
 - (viii) provide for a binding dispute resolution process to apply during negotiations for Access;
 - (ix) provide that actions pursuant to the Undertaking are consistent with the objectives for rail under s.2(2)(d) of the TIA; and
 - (x) seek to encourage the efficient use of the Rail Transport Infrastructure by establishing an efficient process for obtaining Third Party Access thereby facilitating competition.
- (c) This Undertaking will be consistently applied to Access Applications where those applications are within the scope of this Undertaking as set out in Part 2.
- (d) For further information on the negotiation of Access in accordance with the provisions of this Undertaking, contact:

QR Network Pty Ltd
21st Floor, 127 Creek Street
Brisbane Qld 4000

Phone: (07) 3235 3144
Fax: (07) 3235 3930
Email: network.access@qr.com.au

PART 2. SCOPE AND ADMINISTRATION OF UNDERTAKING

2.1 SCOPE

- (a) This Undertaking provides for the negotiation of Access required for the operation of Train Services by Access Seekers.
- (b) Activities that an Access Seeker may seek to undertake on the Rail Infrastructure as part of the operation of a Train Service include:
- (i) mainline running of a Train from its origin to its destination, including:
 - the use of passing loops to facilitate mainline running of the Train; and
 - Train queuing and staging required to facilitate the running of a Train Service from its origin to its destination, including before and after loading and unloading of a Train;
 - (ii) loading and unloading of a Train at facilities other than Other Rail Infrastructure;
 - (iii) Train marshalling and shunting at the following times:
 - in preparation for running of the Train Service;
 - before or after loading or unloading of the Train; and
 - before or after maintenance and provisioning of the Train; and
 - (iv) Train stowage in the following circumstances:
 - as required for crew changes, meal breaks and on Track maintenance and provisioning of the Train; and
 - where an Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown or other temporary outage of the Access Holder, the loading facility or the unloading facility, and/or the unavailability of the Rail Infrastructure.
- (c) Access will include, in addition to the use of the Rail Infrastructure:
- (i) the benefit of other Below Rail Services essential to the use of the Rail Infrastructure such as:
 - (A) signalling;
 - (B) Train Control Services and associated communication;
 - (C) access to walkways immediately adjacent to, and crew changeover points connecting to, track which is the responsibility of QR Network; and
 - (D) the provision of electric transmission infrastructure on electrified sections of the track so as to permit the acquisition of electric energy for traction;
 - (ii) entry upon land:
 - (A) to the extent that entry upon the land is incidental to and essential for the use of Rail Infrastructure (for example, the entry of land beneath Rail Infrastructure for the purpose of exercising Access Rights in respect of the Rail Infrastructure); or

- (B) for access to the walkways and crew changeover points referred to in Subparagraph 2.1(c)(i)(C) (to the same degree as is available to QR Operational Business Groups),
provided that:
 - (C) the land is owned by QR Network or a Related Party of QR Network; or
 - (D) QR Network or a Related Party of 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 the entry is not inconsistent with the terms of that lease, licence or other arrangement.
- (d) This Undertaking covers the provision of Access to Rail Infrastructure for the purpose of operating Train Services only. Access Holders shall be responsible for the provision of any other services, including Above Rail Services, required for the operation of their Train Services.
- (e) This Undertaking is not applicable to the negotiation of Access to Rail Infrastructure for the purpose of operating Train Services that are used for transportation between Queensland and another state and that utilise Standard Gauge Track and Standard Gauge Rollingstock (referred to as “Interstate Train Services”). Access Seekers may negotiate Access for the operation of Interstate Train Services in accordance with the relevant access regime.
- (f) Where the land upon which the Rail Infrastructure is situated is not owned by QR Network or a Related Party of QR Network and any one of those entities does not, through a lease, licence or other arrangement with the owners of the land (including, for example, a sublease from Queensland Transport) or pursuant to the TIA, have the authority to authorise Access Seekers to access that land, it is the responsibility of the Access Seeker to obtain the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated. In such circumstances, the Preliminary Information provided by QR Network to the Access Seeker will provide information to assist the Access Seeker in obtaining such approval, as specified in Part A of Schedule D.
- (g) This Undertaking, despite anything else contained in it, is subject to QR Network complying with its Passenger Priority Obligations, which shall override the provisions of this Undertaking to the extent of any inconsistency.
- (h) Subject to this Paragraph 2.1(h), to the extent that QR Network or a Related Party of QR Network (“Supplier”) sells or supplies a QR Operational Business Group with electric energy in connection with Access, QR Network cannot refuse to, if QR Network is a Supplier, sell or supply electric energy to another Access Seeker or Access Holder (or, if QR Network is not a Supplier, procure such a sale or supply from a Supplier). However, the sale or supply of electric energy is not part of Access and, except as specifically referred to in this Undertaking, is not subject to the provisions of this Undertaking. Further, despite any other provision of this Undertaking, QR Network will not be obliged to sell or supply electric energy to an Access Holder (or procure such a sale or supply from a Related Party of QR Network), or to agree to sell or supply electric energy to an Access Seeker (or to procure such a sale or supply from a Related Party of QR Network):

- (i) if QR Network or a Related Party of QR Network (who is a Supplier) is not lawfully entitled to sell or supply electricity to the relevant Access Holder or Access Seeker under the *Electricity Act 1994 (Qld)*; or
- (ii) on terms that would be unreasonable or uncommercial.

If a Dispute arises between an Access Holder or Access Seeker and QR Network regarding a refusal by QR Network to sell or supply electric energy (or procure such a sale or supply from a Related Party of QR Network) or the proposed terms and conditions on which QR Network (or a Related Party of QR Network) offers to sell or supply electric energy to the Access Holder or Access Seeker, the Dispute may be referred to Dispute resolution in accordance with Clause 4.7.

- (i) For the avoidance of doubt, if QR Network is required to do or not to do anything in accordance with a transfer notice or a project direction published or given in accordance with the IIARD Act and this Undertaking is inconsistent with QR Network doing or not doing that thing, then this Undertaking does not apply to the extent of that inconsistency.

2.2 REVIEW OF RAIL INFRASTRUCTURE

- (a) The Line Diagrams in Schedule A indicate those parts of the rail network that are not Rail Infrastructure, as at May 2008, for the purpose of this Undertaking.
- (b) Subject to this Clause 2.2, QR Network will review and amend the Line Diagrams immediately after the Commencing Date and, if necessary, thereafter during the Term at intervals of no greater than six (6) months to reflect changes that have been made to the configuration or management of the rail network. QR Network will publish the current version of the Line Diagrams on its website.
- (c) Where, in the QCA's reasonable opinion, a material change may have been made to the configuration or management of the rail network that is not reflected in the Line Diagrams, the QCA may request in writing that QR Network review and, if necessary amend the Line Diagrams in accordance with Paragraph 2.2(b). QR Network will perform such a review and make any necessary amendments to the Line Diagrams within thirty (30) days of receiving the written request from the QCA.
- (d) QR Network will not:
 - (i) assign or transfer existing or new Rail Transport Infrastructure from QR Network to QR or a Related Party of QR; or
 - (ii) remove existing Rail Transport Infrastructure (except where such Rail Transport Infrastructure is already identified in the Line Diagrams for future removal) or amend the Line Diagrams to identify any existing Rail Transport Infrastructure for future removal, except where the change:
 - (A) is minor or administrative in nature;
 - (B) reflects an agreement between Queensland Transport and QR Network to cease Queensland Transport funding for the provision of the relevant Rail Transport Infrastructure through Transport Service Payments and to remove the relevant Rail Transport Infrastructure;or

- (C) does not reflect a permanent reduction in Capacity (for example, where level crossings are removed or reconfigurations of track are undertaken without affecting an Access Holder's Access other than in accordance with an Access Agreement or this Undertaking),
- unless the QCA has approved a Draft Amending Undertaking incorporating the corresponding amendment to the Line Diagrams.
- (e) Where an Access Seeker or Access Holder is reasonably of the opinion that amended Line Diagrams prepared and published in accordance with Paragraph 2.2(b) reflect a change to the configuration or management of the rail network that contravenes Paragraph 2.2(d), the Access Seeker or Access Holder may, in writing, request QR Network to review the amendment and amend the Line Diagrams accordingly.
- (f) If an Access Seeker is reasonably of the opinion that access to Rail Transport Infrastructure that is not Rail Infrastructure for the purpose of this Undertaking, is required for the purpose of obtaining access to the Declared Service, then the Access Seeker may make a request in writing that QR Network obtain ownership of the relevant Rail Transport Infrastructure and amend the Line Diagrams accordingly.
- (g) In considering a request made in accordance with Paragraph 2.2(f), QR Network will obtain ownership of the relevant Rail Transport Infrastructure and amend the Line Diagrams accordingly if, in QR Network's reasonable opinion, this is appropriate having regard to the following principles:
- (i) subject to Subparagraphs 2.2(g)(iv) and 2.2(g)(v), the ownership of Rail Transport Infrastructure should be allocated in a way that enables QR Network to operate as a stand alone provider of the Declared Service, except in relation to stations and platforms which are managed in the manner provided in Subparagraph 3.1(c)(iii);
 - (ii) the existing market shares of QR Operational Business Groups should not be a factor in the allocation of ownership of Rail Transport Infrastructure;
 - (iii) subject to Subparagraphs 2.2(g)(iv) and 2.2(g)(v), ownership of Rail Transport Infrastructure should be allocated in a way that reasonably allows for Access Seekers to undertake activities of the type identified in Paragraph 2.1(b);
 - (iv) any Private Infrastructure should connect directly to Rail Infrastructure, except where the agreement between a Related Party of QR Network and the Private Infrastructure manager explicitly accepts that the Private Infrastructure connects to track managed by the Related Party of QR Network;
 - (v) any facility that is owned or leased by a Third Party and is accessible from track managed by a Related Party of QR Network (referred to as a "Private Facility") should be accessible from Rail Infrastructure, except where the agreement between the Related Party of QR Network and the Private Facility manager explicitly accepts that the Private Facility is accessible from track managed by the Related Party of QR Network; and
 - (vi) QR Network is not obliged to agree to obtain ownership of the relevant Rail Transport Infrastructure and amend the Line Diagrams accordingly if

the use of that Rail Transport Infrastructure is outside the scope of the Declared Service.

- (h) QR Network must:
- (i) where QR Network receives a request from an Access Seeker or Access Holder under Paragraph 2.2(e);
 - (A) notify the QCA in writing of the request;
 - (B) review the relevant amendment to the Line Diagrams; and
 - (C) within thirty (30) days of QR Network receiving the request, give the QCA and the Access Seeker or Access Holder written notice of whether QR Network accept that the change to the management or configuration of the network was in contravention of Paragraph 2.2(d) and, if so, the action that QR Network proposes to take to remedy this contravention;
 - (ii) within thirty (30) days of QR Network receiving the Access Seeker's request under Paragraph 2.2(f), give the Access Seeker written notice of whether QR Network will obtain ownership of the relevant Rail Transport Infrastructure and amend the Line Diagrams; and
 - (iii) undertake any required amendments to the Line Diagrams within fourteen (14) days of:
 - (A) where the matter has not been referred to Dispute resolution under Paragraph 2.2(i), the giving of the notice under Subparagraph 2.2(h)(i) or Subparagraph 2.2(h)(ii); or
 - (B) where the matter has been referred to Dispute resolution under Paragraph 2.2(i), the resolution of the Dispute in favour of the Access Seeker or Access Holder.
- (i) If:
- (i) an Access Seeker or Access Holder disagrees with the results of the consideration of the Access Seeker's or Access Holder's request under Paragraph 2.2(e) or, where relevant, the action that is proposed to remedy a contravention of Paragraph 2.2(d); or
 - (ii) an Access Seeker disagrees with the results of the consideration of the Access Seeker's request under Paragraph 2.2(f),
- it may refer the issue to the Dispute resolution process set out in Clause 4.7.

2.3 DURATION OF UNDERTAKING

- (a) This Undertaking comes into operation on the date that it is approved by the QCA.
- (b) This Undertaking will be applied from 1 September 2008 ("Commencing Date") even if this Undertaking is approved by the QCA prior to or after the Commencing Date.
- (c) Subject to Clause 2.5, all Access Applications lodged with QR prior to the Commencing Date, including any negotiations for Access based on an

Indicative Access Proposal provided by QR prior to the Commencing Date, will be dealt with in accordance with the provisions of this Undertaking.

- (d) This Undertaking:
- (i) will apply to QR Network until the earlier of the date on which the QCA approves QR Network's next access undertaking and 30 June 2011; and
 - (ii) if it applies in whole or in part to QR Passenger pursuant to a transfer notice in accordance with the IIARD Act, will apply to QR Passenger until 30 June 2011.
- (e) The Reference Tariffs for the 2009/10 Year apply retrospectively and are effective from and including 1 July 2009.

2.4 CONTRACTUAL ARRANGEMENTS

This Undertaking applies only to the negotiation of new Access Agreements or the negotiation of Access Rights in addition to those already the subject of an Access Agreement. Nothing in this Undertaking can require QR Network or any other party to an existing Access Agreement to vary a term or provision of that agreement.

2.5 TRANSITIONAL PROVISIONS

2.5.1 Access Applications submitted prior to 30 June 2006

- (a) For the purposes of this Clause 2.5, the terms "Access Seeker", "Access Application", "Indicative Access Proposal", "Reference Tariff" and "Negotiation Period" have the meanings given under Clause 10.1 of the 2001 Undertaking unless a contrary intention appears.
- (b) Where:
- (i) an Access Seeker has submitted an Access Application to QR and received an Indicative Access Proposal from QR prior to 30 June 2006;
 - (ii) the Negotiation Period in respect of that Access Application has commenced but has not ceased in accordance with Paragraph 4.5.1(c) of the 2001 Undertaking; and
 - (iii) the Access Seeker gives QR a written notice, within thirty (30) days of 30 June 2006, that the Access Seeker elects to continue negotiating Access under the 2001 Undertaking,

the following will apply:

- (iv) the Access Seeker and QR Network will continue negotiations, in respect of the Access Rights sought, in accordance with the Non-Pricing Provisions, Parts 4 and 6 and Subclauses 7.4.1 and 7.5.1 of this Undertaking and any Reference Tariffs endorsed under that Part 6 and the Standard Access Agreements under this Undertaking;
- (v) the Negotiation Period in respect of the relevant Access Application for the purposes of this Undertaking will be taken to commence when the

- Negotiation Period commenced under the 2001 Undertaking and will cease in accordance with Paragraph 4.5.1(e) of this Undertaking;
- (vi) any reference in the Non-Pricing Provisions to:
 - (A) Parts 4 or 6 or Subclauses 7.4.1 or 7.5.1 of the 2001 Undertaking or any provision thereof shall be a reference to Part 4, Part 6, Subclauses 7.4.1, Subclause 7.5.1 or any equivalent provision respectively of this Undertaking; and
 - (B) a Reference Tariff, Standard Access Agreement or any term defined by reference to a provision of Parts 4 or 6 or Subclauses 7.4.1 or 7.5.1 of the 2001 Undertaking shall be a reference to a Reference Tariff, a Standard Access Agreement or the equivalent term respectively as defined under this Undertaking; and
 - (vii) for the avoidance of doubt, any reference in Parts 4 or 6 or Subclauses 7.4.1 or 7.5.1 of this Undertaking or a Standard Access Agreement under this Undertaking to a Part, Clause, Subclause, Paragraph, Subparagraph or Schedule will be a reference to a Part, Clause, Subclause, Paragraph, Subparagraph or Schedule of this Undertaking.
- (c) Where:
- (i) an Access Seeker has submitted an Access Application to QR prior to 30 June 2006; and
 - (ii) any one or more of Subparagraphs 2.5(b)(i), (ii) or (iii) have not been satisfied,
- the following will apply:
- (iii) the Access Seeker and QR Network will continue negotiations, in respect of the Access Rights sought, in accordance with this Undertaking; and
 - (iv) where the Negotiation Period has commenced but not ceased in accordance with Paragraph 4.5.1(e) of the 2001 Undertaking, the Negotiation Period in respect of the relevant Access Application for the purposes of this Undertaking will be taken to commence when the Negotiation Period commenced under the 2001 Undertaking and will cease in accordance with Paragraph 4.5.1(e) of this Undertaking.
- (d) In addition to Paragraphs 2.5(b) and (c) where an Access Seeker has submitted an Access Application to QR prior to 30 June 2006 and a provision of this Undertaking applicable to the Access Application refers to any act, document or thing provided, given or otherwise done (for example, the providing of an Indicative Access Proposal) and an equivalent act, document or thing has been provided, given or otherwise done under the 2001 Undertaking, the act, document or thing will be deemed to have been provided, given or otherwise done under this Undertaking (even though the date when this occurred is prior to 30 June 2006) but only to the extent that this is reasonably necessary to give meaning and effect to the applicable provisions of this Undertaking and for the continuance of negotiations pursuant to Subparagraphs 2.5(b)(iv) or (c)(iii) as applicable.

2.5.2 Restructure of QR

Notwithstanding any provision to the contrary in this Undertaking:

- (a) if:
- (i) the 2005 Undertaking referred to a group, division or position of QR;
 - (ii) this Undertaking contains the same reference to that group, division or position; and
 - (iii) that group, division or position no longer exists and is not defined in this Undertaking,
- then that reference is to the successor or replacement group, division or position with substantially the same functions and responsibilities as the group, division or position at the time immediately prior to the Commencing Date;
- (b) all acts, agreements, applications, approvals, approval processes, arrangements, circumstances, conduct, decisions, determinations, dispute resolution processes, events, Force Majeure Events, matters, negotiations, notices, omissions, queues, registers, requests, time periods, votes, warranties or any other process or thing whatsoever (“Matter”) done, arising, given, received, undertaken, commenced or established (“Done”) under the 2005 Undertaking are deemed to be Done and, as applicable, continue under this Undertaking as though this Undertaking commenced on 30 June 2006, the Matter was Done under this Undertaking and anything Done by or in relation to QR was Done by or in relation to QR Network;
- (c) if, had the 2005 Undertaking not been withdrawn, QR would have had rights or obligations (“2005 Requirements”) thereunder in relation to or in connection with a period prior to the Commencing Date, QR Network’s equivalent rights and obligations under this Undertaking are deemed to include those 2005 Requirements and QR Network may exercise and must comply with (as applicable) those 2005 Requirements as if it were QR and the 2005 Undertaking still applied (including, for example, for revenue cap adjustments, the payment, recovery or reimbursement of charges and quarterly and annual reporting obligations);
- (d) if any ambiguity or uncertainty arises as to the meaning of this Undertaking, this Undertaking is intended to have and should be interpreted such that it has the same substantive effect as if:
- (i) the 2005 Undertaking still applied;
 - (ii) QR Network was “Network Access” under the 2005 Undertaking; and
 - (iii) QR business groups and the Related Parties of QR were QR business groups under the 2005 Undertaking;
- (e) for the purposes of this Undertaking and subject to Subparagraph 2.5.2(f), Internal Access Agreements are deemed:
- (i) to continue after the Commencing Date; and
 - (ii) to be arrangements between QR Network and QR;
- (f) QR Network will convert each Internal Access Agreement to an Access Agreement between QR Network and QR or a Related Party of QR by executing an Access Agreement with QR or a Related Party of QR provided

that the terms of the Access Agreement only vary from the Internal Access Agreement:

- (i) to the extent necessary for the conversion from an Internal Access Agreement to an Access Agreement; and
 - (ii) to reflect the restructure of QR;
- (g) for the purposes of this Undertaking:
- (i) the date of execution for an Access Agreement executed in accordance with Subparagraph 2.5.2(f) is deemed to be the date when the Internal Access Agreement it replaces was put in place; and
 - (ii) an Access Agreement executed in accordance with Subparagraph 2.5.2(f) is deemed to not be for new or renewed QR Train Services; and
- (h) if this Undertaking (either in its initially approved form or as amended) provides rights to, or imposes obligations on, QR Network relating to a period prior to the Commencing Date, actions taken by QR relevant to those rights or obligations prior to the Commencing Date are deemed to be the actions of QR Network. For example, if this Undertaking provides for a new Reference Tariff to be retrospectively applied to Train Services operating prior to the Commencing Date and allows adjustment for QR Network's under or over recovery, the Access Charges paid to QR prior to the Commencing Date will be deemed to have been paid to QR Network in calculating the necessary adjustment.

PART 3. RINGFENCING ARRANGEMENTS

3.1 ORGANISATIONAL STRUCTURE

- (a) QR has established its organisational structure to facilitate the separation of the management of Rail Infrastructure from the operation of Train Services. QR Network has been established as a subsidiary of QR, separate from QR Operational Business Groups. In addition, within QR there are service and corporate groups whose purpose is to provide support activities for both QR Network and QR Operational Business Groups, and to provide core corporate functions.
- (b) The primary function of QR Network is to manage the provision of Below Rail Services, with the exception of services associated with stations and platforms. In performing this function, the responsibilities of QR Network include the:
- (i) negotiation of Access Agreements with Access Seekers and management of Access Agreements with Access Holders. Where Access is required for Below Rail Services provided by a facility that is not managed by QR Network, QR Network will negotiate for Access to that facility by the Access Seeker as an agent for the QR business group or the Related Party of QR Network that manages that facility;
 - (ii) development and management of agreements with Queensland Transport regarding the provision of Rail Infrastructure that is supported by Transport Service Payments;
 - (iii) provision and/or procurement of appropriate levels of maintenance and investment for the Rail Infrastructure to ensure that the Rail Infrastructure is provided at the standard required to meet QR Network's obligations to Access Holders and Queensland Transport;
 - (iv) assessment, allocation and management of Capacity and Available Capacity;
 - (v) provision of scheduling and Train Control Services in all areas of the Rail Infrastructure, in accordance with the Network Management Principles;
 - (vi) provision of electric transmission infrastructure on electrified sections of the Track to enable Access Holders to run electric Train Services, and (subject to Paragraph 2.1(h)) the procurement of traction power on electrified sections of the Track, including the management of power supply from other parties, where an Access Seeker or Access Holder requests QR Network to provide that electric energy; and
 - (vii) provision of Yard Control and Field Incident Management, but with the exception of Yard Control services at yards other than Major Yards where these services are performed by a QR Operational Business Group on behalf of QR Network.
- (c) The responsibilities of the QR Operational Business Groups include the:
- (i) operation of Train Services;
 - (ii) provision and/or procurement of appropriate levels of maintenance and investment for Above Rail Services;

- (iii) management of stations and platforms, including the provision or procurement of appropriate levels of maintenance and investment for stations and platforms; and
- (iv) performance of the following Below Rail Services on behalf of QR Network:
 - Field Incident Management; and
 - Yard Control services at yards other than Major Yards.
- (d) If QR wishes to vary its organisational structure during the term of this Undertaking such that QR Operational Business Groups become responsible for the provision of functions, in addition to those specified in Paragraph 3.1(c), integral to the provision of Below Rail Services, QR Network will submit a Draft Amending Undertaking to the QCA. Upon approval of the Draft Amending Undertaking by the QCA, QR may implement the restructure.
- (e) By way of example, the following structural changes, if proposed, would require QR Network to submit a Draft Amending Undertaking to the QCA in accordance with Paragraph 3.1(d):
 - (i) QR wishes to wind up QR Network;
 - (ii) QR Network wishes to assign to a QR Operational Business Group any of QR Network's existing functions, including the performance of scheduling and Train Control Services, other than to the extent already contemplated in Subparagraph 3.1(c)(iv);
 - (iii) if QR Network has arrangements with:
 - (A) QR Services for any construction, maintenance or associated services for the purpose of providing Below Rail Services; or
 - (B) QR for any services (including safety and environmental services) for the purpose of processing Access Applications or providing Below Rail Services,and QR Network seeks to terminate those arrangements and execute an agreement with another QR Operational Business Group for the provision of such services.
- (f) During the Term, QR Network and the QCA may agree to jointly review the appropriateness of Yard Control services at yards other than Major Yards continuing to be performed by a QR Operational Business Group. QR Network will, after first obtaining the approval of the QCA, take whatever reasonable steps are required to implement the findings of any such review.

3.2 ACCOUNTING SEPARATION

3.2.1 Preparation of Financial Statements

- (a) QR Network will develop, on an annual basis:
 - (i) if QR prepares consolidated financial statements for itself and Related Parties of QR (including QR Network), financial statements for Below Rail Services provided by QR Network, as identified in Paragraph 3.1(b); or
 - (ii) if QR does not prepare such consolidated financial statements:
 - (A) audited general purpose financial statements in accordance with relevant legislation and applicable Australian accounting standards; and
 - (B) if necessary, an audited supplementary financial statement, (referred to as the “Financial Statements”) which separately identify the Central Queensland Coal Region from the rest of the network and are otherwise developed in accordance with the methodology and format set out in the Costing Manual.
- (b) The Financial Statements will be certified by the QR Network Chief Executive as being in accordance with the Costing Manual and, for Financial Statements prepared under Subparagraph 3.2.1(a)(i), will be audited in accordance with Subclause 3.2.2.

3.2.2 Audit of Financial Statements

- (a) A qualified auditor will conduct the audit of the Financial Statements within six (6) months of the end of the Year to which the Financial Statements relate, or such longer time as agreed by the QCA. The auditor should be, or have the assistance of, a person with expertise and experience in the area of costing of railway activities.
- (b) QR Network acknowledges that, in order to facilitate finalisation of the audit within the required timeframe, certain aspects of the audit may be undertaken by the auditor at different times throughout the relevant Year.
- (c) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA’s approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Paragraph 3.2.2(d).
- (d) If, following completion of an audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may advise QR Network that its approval of that auditor in relation to the next audit of the Financial Statements is withdrawn, such advice to be provided in writing and within three (3) months of completion of the audit.
- (e) The auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the auditor’s obligations to QR Network and

its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence.

- (f) The auditor will examine whether the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, and will prepare an audit certificate that specifies:
 - (i) the scope of the audit;
 - (ii) the level of access that the auditor was provided to QR Network's financial information, including the relevant information systems;
 - (iii) whether or not the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual; and
 - (iv) if the auditor identifies that the Financial Statements have not been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, information regarding the relevant non-compliance or inconsistency.
- (g) Prior to commencing the audit, the auditor must agree an audit plan with QR Network, document that audit plan and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR Network), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise.
- (h) QR Network will provide the auditor with access to QR Network's financial records and information systems necessary for the purpose of conducting the audit, as well as providing any relevant information the auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network.
- (i) The auditor will be required to enter into a confidentiality deed in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit certificate.
- (j) Upon completion of the audit, the auditor must provide a copy of the audit certificate, and any accompanying letter to management explaining the audit findings in greater detail, to both QR Network and the QCA.

3.3 MANAGEMENT OF CONFIDENTIAL INFORMATION

- (a) For the purpose of Clause 3.3:
 - (i) "Confidential Information", in addition to the meaning as defined in Clause 10.1, includes information or data collected by QR Network or an Access Holder in the performance of an Access Agreement where the disclosure

- of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement; and
- (ii) that other party shall be deemed to be the owner of such Confidential Information.
- (b) The provisions in this Clause 3.3 apply in relation to the handling of Confidential Information:
- (i) disclosed by Third Party Access Seekers or Third Party Access Holders to QR Network, or disclosed by QR Network to Third Party Access Seekers or Third Party Access Holders, as part of an Access Application or Indicative Access Proposal (including any related discussions or disclosures of information), negotiations for Access and, unless otherwise agreed, as provided under, in accordance with or for the purpose of, an Access Agreement; or
- (ii) collected by an Access Holder or QR Network in the performance of an Access Agreement,
- except that they do not apply to the handling of Confidential Information which relates solely in all material respects to services other than the provision of Access to Rail Infrastructure for the purpose of operating Train Services. Where a document or discussion is comprised of information only some of which would be information to which Clause 3.3 applies, Clause 3.3 will not apply to the remainder of the information in the document or discussion to the extent that QR Network can clearly separate this information from the information to which Clause 3.3 applies.
- (c) At any time during the negotiation process, including prior to the submission of an Access Application by a Third Party Access Seeker in accordance with Clause 4.1, a Third Party Access Seeker may require QR Network to enter into a confidentiality deed with the Third Party Access Seeker. Similarly, at any time during the negotiation process, QR Network may require a Third Party Access Seeker to enter into a confidentiality deed with QR Network. The confidentiality deed will be in the form specified in Schedule B, unless otherwise agreed between QR Network and the Third Party Access Seeker.
- (d) QR Network, Third Party Access Seekers, and Third Party Access Holders undertake at all times to keep confidential and not disclose any Confidential Information of the other party or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed by or engaged by a party) except in accordance with this Undertaking or a confidentiality deed entered into between the parties, and to use Confidential Information of the other party only for the purpose for which it is disclosed or collected, unless:
- (i) the owner of the Confidential Information provides its prior written approval, with such approval not to be unreasonably withheld; or
- (ii) the disclosure and/or use is:
- required or compelled by any law;
 - required or compelled by any order of a court;
 - required or compelled by notice validly issued by any Authority;

- necessary for the conduct of any legal proceedings, including any dispute resolution process under this Undertaking or the Act;
- required under any stock exchange listing requirement or rule;
- to the Safety Regulator;
- to the recipient's solicitors, barristers, or accountants under a duty of confidentiality;
- to the recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the owner of the Confidential Information;
- requested by QR's shareholding ministers;
- for the purpose of facilitating Train Control directions where the disclosure of information is by QR Network in the usual course of undertaking Train Control Services;
- by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure;
- if the party disclosing the Confidential Information is QR Network, to another Railway Manager for rail transport infrastructure as defined in the TIA but only to the extent required for the purpose of QR Network negotiating or providing Access or that other Railway Manager negotiating or providing access to that Railway Manager's rail transport infrastructure (as defined in the TIA), as applicable, in relation to that Third Party Access Seeker or Third Party Access Holder provided that the other Railway Manager has undertaken to keep the Confidential Information disclosed to it by QR Network confidential; or
- subject to Paragraph 3.3.2(a), to a Related Party of QR Network ("QR Party") provided that the disclosure is in accordance with Paragraphs 3.3.2(b) to (i) and subject to a legally enforceable agreement between QR Network and the QR Party with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that QR Party to disclose) Confidential Information disclosed to the QR Party by QR Network (provided that QR Network must notify the QCA of any breach of such provisions of which QR Network becomes aware, and the actions QR Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure).

3.3.1 External Flows of Confidential Information

- (a) QR Network will not, where reasonably practicable, appoint an external consultant or independent advisor to provide advice in relation to Confidential Information, where that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter.

- (b) In the context of Subparagraph 3.3(d)(i), it would be unreasonable for QR Network to refuse to approve the disclosure of its Confidential Information by a Third Party Access Seeker or Third Party Access Holder to that Third Party Access Seeker's or Third Party Access Holder's external consultant/s, independent adviser/s or Customer/s where the Third Party Access Seeker or Third Party Access Holder enters into a contract with the recipient of the Confidential Information on the following terms:
- (i) specifying the individual/s employed by the recipient who may have access to any QR Network Confidential Information provided under the contract;
 - (ii) specifying that those individual/s must not disclose any QR Network Confidential Information provided under the contract to any other person unless otherwise agreed by QR Network; and
 - (iii) if required by QR Network, requiring the recipient to execute a confidentiality deed in favour of QR Network on terms and conditions reasonably satisfactory to QR Network.
- (c) Also in the context of Subparagraph 3.3(d)(i), it would be unreasonable for a Third Party Access Seeker or Third Party Access Holder to refuse to approve the disclosure of its Confidential Information by QR Network to QR Network's external consultant/s or independent adviser/s where QR Network enters into a contract with the recipient of the Confidential Information on the following terms:
- (i) advising the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a QR Operational Business Group;
 - (ii) specifying the individual/s employed by the recipient who may have access to any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract and, where QR Network has not been able to reasonably avoid appointing an external consultant or independent advisor to review and provide advice in relation to such Confidential Information and that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter in accordance with Paragraph 3.3.1(a), after receiving the recipient's assurance that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a QR Operational Business Group on the same or a related matter;
 - (iii) specifying that those individual/s must not disclose any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract to any person outside of QR Network; and
 - (iv) if required by the Third Party Access Seeker or Third Party Access Holder in question, requiring the recipient to execute a confidentiality deed in favour of the Third Party Access Seeker or Third Party Access Holder on terms and conditions reasonably satisfactory to that Third Party Access Seeker or Third Party Access Holder.
- (d) For the purposes of this Undertaking, a person who has been a consultant or contractor to either QR Network or a Third Party Access Seeker or Third Party Access Holder for a continuous period of at least three (3) months, who works at least an average of thirty (30) hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if

they were an employee of that party rather than an external consultant or independent adviser of that party.

3.3.2 Internal Flows of Confidential Information

- (a) QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to:
- (i) individuals within QR Network (including the QR Network Chief Executive, QR Network Board and their respective Support Staff); and
 - (ii) the Chief Executive Officer of QR, the Chief Financial Officer of QR, the QR Board and their respective Support Staff.
- (b) Subject to Paragraph 3.3.2(c), QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to those groups within QR specified in this Paragraph 3.3.2(b), provided that disclosure to each recipient is limited to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement:
- (i) Rollingstock Engineering Division within QR Services in relation to Rollingstock or Rollingstock interface issues;
 - (ii) Property Division within QR in relation to real property issues; and
 - (iii) QR Services employees in management level 2, 3 and 4 in relation to Rail Infrastructure issues.
- (c) A Third Party Access Seeker may, in an Access Application, give notice to QR Network that it does not wish QR Network to disclose its Confidential Information to any one or more of the groups listed in paragraph 3.3.2(b). If a Third Party Access Seeker gives such a notice to QR Network, then:
- (i) upon receipt of such notice QR Network may not disclose Confidential Information to the groups so noted;
 - (ii) QR Network will make reasonable efforts to suggest a reasonable alternate mechanism whereby QR Network can obtain the information it requires to respond to the Access Application and the Third Party Access Seeker will not unreasonably withhold its agreement to this alternate mechanism. If the parties fail to agree on an alternate mechanism, either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7;
 - (iii) all reasonable costs incurred by QR Network in obtaining information by means of an alternate mechanism agreed in accordance with Subparagraph 3.3.2(c)(ii) may be recovered by QR Network from the Third Party Access Seeker as a debt due and owing. All relevant timeframes applicable to QR Network under this Undertaking will be extended by the same number of days as equals the number of days from QR Network's receipt of the Access Application to QR Network's receipt of the information it requires to respond to the Access Application; and

- (iv) if:
- the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR Network can obtain the information it requires to respond to the Access Application; or
 - the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process;
- QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(b).
- (d) QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR Operational Business Group where:
- (i) the Third Party Access Seeker or Third Party Access Holder approves such disclosure;
 - (ii) such disclosure is required for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement in respect of Access to a station or platform, provided that any disclosure is limited to the extent required for this purpose;
 - (iii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management and Yard Control services, provided that any disclosure is limited to the extent required for this purpose; or
 - (iv) such disclosure is required for the purpose of facilitating the performance of scheduling and Train Control Services in the Metropolitan Region, provided that any disclosure is limited to the extent required for this purpose.
- (e) If, for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement, QR Network wishes to disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR employee or group (or an employee or group of a Related Party of QR other than QR Network) not specified in Paragraphs 3.3.2(a), (b) or (d), or to a group specified in Paragraph 3.3.2(b) on an issue not specified in that Paragraph, QR Network must:
- (i) obtain the consent of the owner of the Confidential Information prior to making the disclosure; and
 - (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.
- (f) QR Network will not, where reasonably practicable, disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR employee (or an employee of a Related Party of QR) where that person is advising one of the QR Operational Business Groups in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Paragraph 3.3.2(b), QR Network must obtain the consent of the owner of the Confidential Information prior to making the disclosure.
- (g) If, during the process of responding to an Access Application or negotiating an Access Agreement, QR Network seeks the consent of an Access Seeker for

the disclosure of Confidential Information pursuant to Paragraph 3.3.2 (e) or (f) and:

- (i) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(b) ; or
- (ii) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR Network's request for consent within five (5) days of its receipt of QR Network's written request (referred to as the "Consent Response Date"), then all relevant timeframes applicable to QR Network will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date.

This Paragraph does not apply where QR Network has requested consent to disclose the information to a QR Operational Business Group.

- (h) If, during the process of administering an Access Agreement, QR Network seeks the consent of an Access Holder for the disclosure of Confidential Information pursuant to Paragraph 3.3.2(e) or (f), such consent shall not be unreasonably withheld. If the owner of the Confidential Information fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, consent shall be deemed to have been given. This Paragraph does not apply where QR Network has requested consent to disclose the information to a QR Operational Business Group.
- (i) The Ringfencing Compliance Officer, and QR employees in the Internal Audit Division within QR and the Information Services Division within QR will from time to time, in the course of performing their duties, have access to a Third Party Access Seeker's or Third Party Access Holder's Confidential Information. QR Network is permitted to disclose Confidential Information to these employees, to the extent necessary for these employees to perform their duties, without obtaining the consent of the Third Party Access Seeker or Third Party Access Holder.
- (j) QR Network will establish and maintain a ring fencing register for the purpose of recording the names of those persons, within QR or a Related Party of QR other than QR Network (excluding those persons gaining access to Confidential Information in accordance with Paragraph 3.3.2(i)) to whom QR Network discloses Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder. This register will record the acknowledgement of receipt of the Confidential Information by the recipient. Such acknowledgement will be by way of facsimile, hard copy of an electronic message, or the original signature of the recipient. A Third Party Access Seeker or Third Party Access Holder may, upon request, view the register relating to its Confidential Information.
- (k) [Not used]

- (l) QR Network will ensure that all QR employees (and all employees of a Related Party of QR) receiving, or having access to in the course of performing their duties, a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, are aware of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.3, and have undergone a ring fencing training and awareness session.
- (m) Where QR Network employees leave QR Network to work elsewhere in QR (or a Related Party of QR), they will undergo a debriefing process to remind them of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.3 and will be asked to sign an acknowledgement of having undergone such a debriefing process.
- (n) Where QR Network employees in management levels 2, 3 and 4, leave QR Network to work:
 - (i) in a QR Operational Business Group, they will not, for a period of three (3) months, work on a matter in respect of which they have had access to Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder in their position in QR Network; or
 - (ii) in QR (or a Related Party of QR other than a QR Operational Business Group), they will not, for a period of three (3) months, work for a QR Operational Business Group on a matter in respect of which they have had access to Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder in their position in QR Network.
- (o) A QR Network employee must not concurrently work in a working group on a project with staff from a QR Operational Business Group:
 - (i) if the activities of the working group affect or could affect the operations of Third Party Access Holders or Third Party Access Seekers on the Queensland network; and
 - (ii) unless QR Network is satisfied the employee has not had access, as an employee of QR Network, to any Confidential Information regarding the operations of a Third Party Access Holder or Third Party Access Seeker referred to under Subparagraph 3.3.2(o)(i) on the Queensland network which, if disclosed to the QR Operational Business Group, could provide the QR Operational Business Group with an advantage over the Third Party Access Holder or Third Party Access Seeker.
- (p) QR Network must not temporarily transfer a QR Network employee to a role in a QR Operational Business Group:
 - (i) if the activities of the QR Operational Business Group affect or could affect the operations of Third Party Access Holders or Third Party Access Seekers on the Queensland network; and
 - (ii) unless QR Network is satisfied the employee has not had access, as an employee of QR Network, to any Confidential Information regarding the operations of a Third Party Access Holder or Third Party Access Seeker referred to under Subparagraph 3.3.2(p)(i) on the Queensland network which, if disclosed to the QR Operational Business Group, could provide the QR Operational Business Group with an advantage over the Third Party Access Holder or Third Party Access Seeker.

- (q) In making all decisions in relation to the temporary transfer of QR Network employees to roles in QR (or a Related Party of QR other than QR Network), QR Network must have regard to the potential implications of any such transfer on QR Network's obligations under this Undertaking to manage Confidential Information to avoid as far as practicable, the risk that Confidential Information will be disclosed that could affect Third Parties Access Holders' or Third Party Access Seekers' operations on the Queensland network.

3.4 DECISION MAKING

- (a) Subject to Paragraph 3.4(b), QR Network will comply with the following decision making principles when making a decision under this Undertaking that will, or has the potential to, materially and adversely affect an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access:
- (i) the decision is made by an identified decision maker responsible for the relevant type of decision;
 - (ii) the decision is made in a manner that is consistent between Access Seekers and/or Access Holders in the same circumstances; and
 - (iii) either:
 - (A) the decision is required in order to comply with:
 - a law;
 - a lawful direction of an Authority;
 - this Undertaking;
 - the Access Agreements of adversely affected Access Holders;
 - an access code made under the Act;
 - (B) the decision is made in accordance with QR Network's documented policies and procedures; or
 - (C) the reasons for the decision are documented by QR Network.
- (b) Decisions made in relation to a reasonable act done in, and for, or to prevent an emergency (including an emergency that involves, or may involve, injury to persons or damage to property) are exempt from the decision making process prescribed by Paragraph 3.4(a).

3.5 COMPLIANCE AND ENFORCEMENT

The following compliance and enforcement obligations apply to QR Network's conduct in meeting its obligations under Clause 3.3 and Clause 3.4.

3.5.1 Complaint Handling

- (a) If a Third Party Access Seeker or Third Party Access Holder considers that QR Network has breached one or more of its obligations under Clause 3.3 or Clause 3.4, or that a Related Party of QR Network has breached a

confidentiality deed or confidentiality provisions contained in another arrangement with QR Network pursuant to which the Confidential Information was disclosed to it, they may lodge a written complaint with QR Network.

- (b) QR Network will advise the QCA, as soon as practicable, of any complaints it receives from Third Party Access Seekers and Third Party Access Holders pursuant to Paragraph 3.5.1(a).
- (c) QR Network will conduct an investigation of those complaints referred to in Paragraph 3.5.1(a), and advise the complainant and the QCA in writing of the outcome of the investigation and QR Network's proposed response, if any. QR Network will use reasonable endeavours to complete its investigation and advise the complainant and the QCA of the results of its investigation within twenty-eight (28) days of receiving the complaint in question.
- (d) Where a complaint relates to an alleged breach by QR Network of obligations under Clause 3.4 and the complainant is not satisfied with the outcome of QR Network's investigation, the complainant can apply to the QCA seeking an audit of the relevant QR Network decision(s) the subject of the complaint.

3.5.2 Audits

- (a) Where:
 - (i) the QCA has a reasonable basis for believing that a decision(s) of QR Network ("Identified Decision(s)") has resulted, or may result in a material adverse effect on an Access Seeker's or Access Holder's rights under this Undertaking or an Access Holder's Access; and
 - (ii) the Identified Decision(s) was made since the completion of the last annual audit under this Subclause 3.5.2 or the audit is being undertaken as part of resolving a Dispute,the QCA may require QR Network to undertake an audit of the Identified Decision(s) to determine whether QR Network has complied with its obligations in Clause 3.4. Paragraphs 3.5.2(c) to (i) will apply in respect to the audit as if a reference to an annual audit is a reference to an audit required under this Paragraph 3.5.2(a).
- (b) QR Network's compliance with its obligations under Clauses 3.3 and 3.4 and Subclause 3.5.1 will be audited annually.
- (c) In considering QR Network's compliance with the above obligations, the auditor may take into account QR Network's compliance with any relevant internal procedures.
- (d) The QCA may require the annual audit, referred to in Paragraph 3.5.2(b), to be conducted by an external party, and if it does, the following process will apply:
 - (i) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA's approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Subparagraph 3.5.2(d)(ii);

- (ii) if, following completion of an audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may advise QR Network that its approval of that auditor in relation to the next external audit of QR Network's compliance with its obligations under Clauses 3.3 and 3.4 and Subclause 3.5.1 is withdrawn, such advice to be provided in writing and within three (3) months of completion of the audit;
 - (iii) the auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the auditor's obligations to QR Network and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence; and
 - (iv) prior to commencing the audit the auditor must agree an audit plan with QR Network, document that audit plan, and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR Network), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise.
- (e) QR Network will provide any relevant information the auditor reasonably requires for the purpose of conducting the annual audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network.
- (f) The auditor will be required to enter into a confidentiality deed with QR Network in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the annual audit and completing the audit report detailed below.
- (g) The auditor will compile an audit report identifying:
- (i) whether QR Network has complied in all material respects with its obligations under Clauses 3.3 and 3.4 and Subclause 3.5.1;
 - (ii) if the auditor identifies that QR Network has not complied in all material respects with the obligations specified above, details on the relevant non-compliance; and
 - (iii) the process adopted for the conduct of the audit.
- (h) The auditor will provide a copy of the annual audit report to QR Network and the QCA upon completion of the audit.
- (i) The QCA may publish the annual audit report referred to in Paragraph 3.5.2(g).

PART 4. NEGOTIATION FRAMEWORK

4.1 ACCESS APPLICATION

- (a) Requests for Access are to be submitted to QR Network in the form of an Access Application.
- (b) Subject to Paragraph 4.2(d), Access Seekers must provide as part of their Access Application all information reasonably necessary for QR Network to evaluate their Access Application and prepare an Indicative Access Proposal. Schedule C provides the information required to be included in Access Applications. Prior to submitting the Access Application, the Access Seeker may seek initial meetings with QR Network to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and in particular the information requirements set out in Schedule C.
- (c) Upon request by the Access Seeker at any time (including prior to the lodging of an Access Application), QR Network will provide to the Access Seeker Preliminary Information relative to the corridor of interest.
- (d) QR Network will use reasonable efforts to make the Preliminary Information available to the Access Seeker within fourteen (14) days of QR Network receiving the Access Seeker's request if the information contained in the Preliminary Information has been previously compiled, otherwise within thirty (30) days of QR Network receiving the request. QR Network will advise the Access Seeker if the Preliminary Information is expected to take longer than fourteen (14) days to provide and, if so, will advise the Access Seeker of its estimate of the time required to deliver the Preliminary Information and the reasons for the additional time required.
- (e) QR Network will use reasonable efforts to ensure that any Preliminary Information provided under Paragraph 4.1(c) will reflect the most current information available to QR Network. QR Network will identify the currency of the Preliminary Information provided.
- (f) For the provision of Preliminary Information under this Clause 4.1, QR Network will be entitled to levy the charge specified in Schedule D for the relevant information.

4.2 ACKNOWLEDGMENT OF ACCESS APPLICATION

- (a) Upon receiving an Access Application from an Access Seeker, QR Network must, subject to Paragraph 4.2(b), acknowledge the receipt of the Access Application by giving a notice in writing to the Access Seeker within five (5) Business Days of its receipt.
- (b) Prior to acknowledging an Access Application, QR Network may seek:
 - (i) additional information where QR Network can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal (either because the Access Application did not include the information contained in Schedule C, or because there are special

circumstances of the Access Application which result in the additional information being reasonably necessary for QR Network to prepare an Indicative Access Proposal); or

- (ii) clarification of the information that has been provided in the Access Application.

In such circumstances, QR Network will advise the Access Seeker of the additional information or the clarification required within five (5) Business Days of receipt of the Access Application. Upon receiving the additional information or clarification from the Access Seeker, the additional information or clarification forms part of the Access Application and QR Network must give the Access Seeker a written notice acknowledging the receipt of the Access Application within five (5) Business Days.

- (c) QR Network will use reasonable efforts to provide an Indicative Access Proposal to an Access Seeker within thirty (30) days of the date on which QR Network gives an Acknowledgement Notice to the Access Seeker. However, in assessing an Access Application, QR Network may consider that, due to the complexity of the Access Application or due to other extenuating circumstances, it is not reasonable to provide an Indicative Access Proposal within that thirty (30) day period. In these circumstances:
 - (i) the Acknowledgment Notice given must state that the Indicative Access Proposal will not be provided within the thirty (30) day period and the reasons for this; and
 - (ii) within five (5) Business Days of the date on which QR Network gives an Acknowledgement Notice to the Access Seeker, QR Network must advise the Access Seeker of its estimate of the time required to deliver the Indicative Access Proposal.

Where the Access Seeker is of the view that the time estimated for preparation of the Indicative Access Proposal is excessive, then the Access Seeker may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4. QR Network will use reasonable efforts to provide the Indicative Access Proposal within the estimated time period provided by QR Network or as otherwise determined by the QCA pursuant to this Paragraph 4.2(c).

- (d) QR Network recognises that there may be circumstances where an Access Seeker is able to provide a reasonable description of its proposed Train Service taking into account the information requirements set out in Schedule C or requested by QR Network in accordance with Paragraph 4.2(b), but is not able to provide all of the detailed information requirements set out in Schedule C or requested by QR Network in accordance with Paragraph 4.2(b). In such circumstances, QR Network will acknowledge the Access Application and prepare an Indicative Access Proposal, conditional upon assumptions made by QR Network relating to the detailed information not provided by the Access Seeker.
- (e) For the purpose of clarity, in the circumstances covered by Paragraphs 4.2(b) and 4.2(d) QR Network will be deemed to have received an Access Application on the date it received the first request for Access notwithstanding such request does not include all of the information specified in Paragraph 4.1(b) or the additional information or clarification requested by QR Network in accordance with Paragraph 4.2(b), provided that QR Network reasonably considers the first request provides a reasonable description of the Access Seeker's proposed

Train Services sufficient for QR Network to prepare an Indicative Access Proposal conditional upon certain assumptions made by QR Network relating to the detailed information not provided by the Access Seeker. If QR Network reasonably considers that the first request does not provide a reasonable description of the Access Seeker's proposed Train Services sufficient for the above purpose, QR Network will not be deemed to have received an Access Application unless and until the Access Seeker provides QR Network with all information specified in Schedule C and requested by QR Network in accordance with Paragraph 4.2(b).

4.3 INDICATIVE ACCESS PROPOSAL

- (a) The Indicative Access Proposal will set out:
- (i) the Rollingstock and Rollingstock Configurations to which the Indicative Access Proposal applies;
 - (ii) a summary of the applicable operating characteristics (e.g. frequency, transit time, commodity carried);
 - (iii) an indicative assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights and, if not, either an outline of the works, and an indicative estimate of the cost of such works, required to provide the additional Capacity necessary to accommodate the requested Access Rights, or an outline of the requirements for an investigation into the provision of sufficient Capacity for the requested Access Rights;
 - (iv) advice in respect of the existence of other Access Seekers who have submitted an Access Application in respect of Access which, if it were to be provided, would limit the ability of QR Network to provide Access in accordance with the Indicative Access Proposal;
 - (v) an initial estimate of the Access Charge for the requested Access Rights, based on the pricing principles set out in Part 6, including advice as to whether QR Network has applied Subparagraph 6.1.1(b)(i), Subparagraph 6.1.1(c)(i) or Subparagraph 6.1.1(c)(ii) in determining the estimate of the Access Charge and if so:
 - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
 - (B) the impact that the factor has on the Access Charge; and
 - (C) how that impact on the Access Charge was determined;
 - (vi) details of the additional information required for QR Network to progress the proposal and develop the Access Charge and terms and conditions for acceptance. Typical information requirements to be addressed are outlined in Paragraph 4.5.2(a); and
 - (vii) the expiry date of the Indicative Access Proposal, which will be ninety (90) days following the date that QR Network dispatches the Indicative Access Proposal to the Access Seeker, or such later date as QR Network specifies provided that this later date is acceptable to the Access Seeker.
- (b) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige QR Network

to provide Access in accordance with the specific terms and conditions, including Access Charge, contained within it.

- (c) If, after thirty (30) days following QR Network's giving of an Acknowledgment Notice to an Access Seeker, or if applicable after expiration of the time estimated by QR Network or determined by the QCA in accordance with Paragraph 4.2(c), the Access Seeker believes that QR Network is not making reasonable progress in the preparation of the Indicative Access Proposal, then the Access Seeker may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4.
- (d) If the Access Seeker believes that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, the Access Seeker will notify QR Network of its concerns in writing within thirty (30) days of receipt of the Indicative Access Proposal, or such other timeframe as QR Network and the Access Seeker agree at their discretion.
- (e) QR Network will use reasonable efforts to respond to these concerns including, where appropriate, making revisions to the Indicative Access Proposal, within fourteen (14) days of the notification of the concerns in accordance with Paragraph 4.3(d). QR Network may consider that due to the complexity of the concerns or due to other extenuating circumstances, it is not reasonable to provide a response within fourteen (14) days of notification of those concerns. In these circumstances QR Network will advise the Access Seeker within five (5) Business Days of the Access Seeker's notification to QR Network, of QR Network's estimate of the time required to deliver the response. Where the Access Seeker is of the view that the time estimated for preparation of the response pursuant to this Paragraph is excessive, they may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4. QR Network will use reasonable efforts to provide the response within the estimated time period provided by QR Network or as otherwise determined by the QCA pursuant to this Paragraph.
- (f) If the Access Seeker is satisfied with the response received from QR Network in accordance with Paragraph 4.3(e), including any revision to the Indicative Access Proposal, it must notify QR Network of its intention to proceed with negotiations before the expiry of the Indicative Access Proposal, or such other timeframe as QR Network and the Access Seeker agree at their discretion. In the event that the Access Seeker is not satisfied with the response from QR Network, including any revision to the Indicative Access Proposal, the Access Seeker may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7. The Access Seeker must commence this Dispute resolution process within 30 (thirty) days of receiving QR Network's response or such other timeframe as QR Network and the Access Seeker agree at their discretion.
- (g) Where a Dispute is referred for resolution in accordance with Paragraph 4.3(f) the Access Seeker must notify QR Network in writing within fourteen (14) days of resolution of the Dispute, or such other timeframe that QR Network and the Access Seeker agree at their discretion, whether the Access Seeker wishes to proceed further with its Access Application, on the basis of the arrangements outlined in the Indicative Access Proposal including any amendments made as a result of the resolution of the Dispute.

4.4 NOTIFICATION OF INTENT

- (a) Except as provided in Paragraphs 4.3(f) and 4.3(g), if the Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the Indicative Access Proposal.
- (b) Except as provided in Paragraphs 4.3(f) and 4.3(g), if the Access Seeker gives a notification of its intention to progress its Access Application after the expiry date of the Indicative Access Proposal but not later than six (6) months after that date, QR Network will review the Indicative Access Proposal and, if considered necessary by QR Network, prepare a revised Indicative Access Proposal in accordance with Clause 4.3. Where:
- (i) a revised Indicative Access Proposal is prepared and the Access Seeker intends to progress its Access Application on the basis of the arrangements outlined in the revised Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the revised Indicative Access Proposal; or
 - (ii) a revised Indicative Access Proposal is not considered necessary by QR Network, the Access Seeker's notification of its intention is taken to be validly given even though it is given after the expiry date of the Indicative Access Proposal,

Provided that in either case, if a queue has been established, or is subsequently established, for the Access Rights in accordance with Paragraph 7.4.1(c) the date on which QR Network received the Access Application will be deemed to be the date on which the Access Seeker gave QR Network its notification of intent under this Paragraph 4.4(b).

4.5 NEGOTIATION PROCESS

4.5.1 Negotiation Period

- (a) Once the Negotiation Period has commenced both parties shall commence negotiations as soon as reasonably possible to progress towards an Access Agreement. Subject to Paragraph 4.5.1(b), the Negotiation Period shall commence upon the Access Seeker providing a notification of intent in accordance with Clause 4.4.
- (b) If QR Network has established a queue in accordance with Paragraph 7.4.1(c), QR Network has no obligation to negotiate with an Access Seeker other than the Access Seeker whose Access Application is first in the queue and only in respect of the Access sought by that Access Application. In this instance, the Negotiation Period will commence from the time the Access Seeker is notified by QR Network that it is first in the queue, unless QR Network and the Access Seeker had commenced negotiating towards an Access Agreement prior to the formation of the queue in which case:
- (i) if the Access Seeker is first in the queue once it is formed the Negotiation Period will commence from the time the Access Seeker provided QR Network notification of its intent pursuant to Clause 4.4; and

- (ii) if the Access Seeker is not first in the queue once it is formed the Negotiation Period will commence from the time the Access Seeker provided QR Network notification of its intent pursuant to Clause 4.4 but the Negotiation Period will be put on hold until the Access Seeker is notified by QR Network that it is first in the queue.
- (c) Where negotiations have commenced with one or more Access Seeker while a queue does not exist, and QR Network subsequently forms a queue in accordance with Paragraph 7.4.1(c), QR Network will:
 - (i) cease negotiations with all Access Seekers who have Access Applications in the newly formed queue except for the Access Seeker whose Access Application is first in the queue; and
 - (ii) notify all Access Seekers seeking the mutually exclusive Access Rights of the formation of the queue and their respective positions in the queue.
- (d) Where negotiations have commenced and progressed to a significant extent with the first Access Seeker in a queue and QR Network subsequently changes the order of the queue in accordance with Paragraphs 7.4.1(e) – (h) such that the Access Seeker is no longer first in the queue QR Network will:
 - (i) notify the Access Seeker of this fact in accordance with Paragraph 7.4.1(i), and give the Access Seeker thirty (30) days within which to demonstrate to QR Network's satisfaction that it should regain first position in the queue; and
 - (ii) advise the Access Seeker who is first in the queue following the reordering of the queue that their Negotiation Period has been put on hold pending the other Access Seeker's attempt to satisfy the requirements of Paragraph (i) above.
- (e) The Negotiation Period will cease upon any of the following events:
 - (i) execution of an Access Agreement in respect of the Access sought by the Access Seeker;
 - (ii) written notification by the Access Seeker that it no longer wishes to proceed with its Access Application;
 - (iii) QR Network issuing a Negotiation Cessation Notice to the Access Seeker pursuant to Paragraph 4.6(b); or
 - (iv) the expiration of nine (9) months from the commencement of the Negotiation Period unless:
 - (A) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiration of the agreed extended period, provided that agreement to extend the Negotiation Period is not unreasonably withheld by either party; or
 - (B) a Dispute arises between the parties that either party has sought to resolve in accordance with the Dispute resolution process outlined in Clause 4.7, in which case the Negotiation Period will continue until the resolution of the Dispute and for any further time agreed by the parties or determined during the Dispute resolution process.

- (f) If the Negotiation Period ceases and the Access Seeker was in a queue established by QR Network in accordance with Paragraph 7.4.1(c), the Access Seeker will be removed from the queue.

4.5.2 Issues to be addressed during Negotiation

- (a) During the Negotiation Period, QR Network and the Access Seeker will negotiate and endeavour to agree on the elements comprising the Access Agreement. In order to facilitate this process:
- (i) QR Network will provide Additional Information relevant to the corridor of interest to the Access Seeker, to the extent required either by the Access Seeker or as part of the Access Agreement, which may include any information outlined in Part A of Schedule D not provided as part of the Preliminary Information and the information outlined in Part B of Schedule D;
 - (ii) an Operating Plan is to be prepared by the Access Seeker in accordance with Subclause 8.1.4;
 - (iii) an Interface Risk Assessment is to be undertaken by the Access Seeker, jointly with QR Network, in accordance with Subclause 8.1.2 and an Interface Risk Management Plan is to be developed and agreed in accordance with Subclause 8.1.3;
 - (iv) an Environmental Investigation and Risk Management Report must be undertaken and prepared by the Access Seeker in accordance with Subclause 8.2.1;
 - (v) an Access Charge, determined in accordance with the pricing principles set out in Part 6, is to be provided by QR Network including advice as to whether QR Network has applied Subparagraph 6.1.1(b)(i), Subparagraph 6.1.1(c)(i) or Subparagraph 6.1.1(c)(ii) in determining the Access Charge and if so:
 - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
 - (B) the impact that the factor has on the Access Charge; and
 - (C) how that impact on the Access Charge was determined;
 - (vi) a Capacity Analysis and an investigation of operational impacts are to be undertaken by QR Network and any necessary Capacity enhancements to accommodate Access by the Access Seeker are to be advised by QR Network;
 - (vii) the definition of the relevant Train Service Entitlement and, where applicable, advice of the initial timetable is to be provided by QR Network, consistent with Clause 7.2;
 - (viii) the Access Seeker is to demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are consistent with the Rollingstock Interface Standards incorporated in the IRMP in accordance with Subclause 8.1.6; and
 - (ix) other terms and conditions comprising the Access Agreement are to be provided by QR Network consistent with Clause 5.1.

- (b) During the Negotiation Period, the Access Seeker may review and revise the information provided to QR Network in the Access Application, provided that such revision does not substantially alter the nature of the Access Rights sought by the Access Seeker. If QR Network is reasonably of the view that an Access Seeker's revision of information provided to QR Network in the Access Application has substantially altered the nature of the Access Rights sought by the Access Seeker, QR Network will notify the Access Seeker in writing of QR Network's view. If, within five (5) Business Days of QR Network giving the notice:
- (i) the Access Seeker gives QR Network a notice in writing that it wishes to continue negotiating on the original Access Application without the proposed changes, the negotiation process under this Undertaking will continue; or
 - (ii) the notice in Paragraph 4.5.2(b)(i) is not given:
 - (A) the provision of the revised information will be deemed to be a written notice referred to and given under Subparagraph 4.5.1(e)(ii) in respect of the original Access Application; and
 - (B) the original Access Application and revised information will together comprise a new Access Application deemed to have been received by QR Network on the date five (5) Business Days after QR Network gave the notice under this Paragraph 4.5.2(b).
- (c) Where Additional Information is required to be provided in accordance with Subparagraph 4.5.2(a)(i), QR Network will use reasonable endeavours to supply the relevant Additional Information to the Access Seeker within a reasonable timeframe. QR Network will use reasonable endeavours to ensure that any information provided will reflect the most current information available to QR Network. QR Network will identify the currency of the information provided.
- (d) QR Network will be entitled to levy an appropriate charge for the provision of Additional Information commensurate with the cost of preparation and supply of the information.
- (e) In respect of the details required to be developed by the parties in accordance with Paragraph 4.5.2(a), subject to Paragraph 4.5.2(f) below, the parties may agree to finalise certain aspects after the execution of the Access Agreement. In such circumstances the parties may choose to address the issue in question in a preliminary manner only during the Negotiation Period and then provide a mechanism to address any subsequently identified cost or operating impact after execution of the Access Agreement.
- (f) Where an Access Agreement is executed but the obligations of the parties are conditional upon the completion of schedules to the Access Agreement, the securing of port capacity or the satisfaction of some other condition:
- (i) the parties must act reasonably and in good faith to comply with those conditions within an agreed timeframe specified in the Access Agreement that is sufficient for QR Network to prepare for the proposed Train Services to commence on the nominated start date; and
 - (ii) following the satisfaction of all conditions, QR Network may, acting reasonably, adjust Access Charges under the Access Agreement to reflect the extent that QR Network's costs or risks, when considered after

those conditions have been satisfied, are increased or decreased beyond what was anticipated at the date of the Access Agreement.

Any disputes in relation to any matter referred to in this Paragraph 4.5.2(f) shall be determined by the dispute resolution process under the Access Agreement or, if there is none, under Clause 4.7 of this Undertaking.

- (g) QR Network will be responsible for the investigation and design of any necessary enhancements to the Rail Infrastructure. However, if prior to entering into an Access Agreement, the Access Seeker requires detailed scoping of the enhancements that are required directly to facilitate the Access Rights under negotiation, QR Network will be entitled to require that the Access Seeker pay QR Network's reasonable costs for such investigation and design.
- (h) If at any time prior to the execution of an Access Agreement with the Access Seeker, another Access Seeker (other than an Access Seeker that was the subject of advice provided in the Indicative Access Proposal pursuant to Subparagraph 4.3(a)(iv)) submits an Access Application where that Access would limit the ability of QR Network to provide Access in accordance with the Access Rights being negotiated, QR Network will notify the Access Seeker of the existence of the Access Application as soon as reasonably practicable but no later than prior to the provision of an Indicative Access Proposal to the other Access Seeker. The provisions of Subclause 7.4.1 detail how QR Network will deal with each of the Access Seekers in the event that they both notify QR Network, in accordance with Clause 4.4, that they intend to progress their Access Applications and QR Network is unable to provide both parties with the Access Rights they seek.
- (i) If at any time during the Negotiation Period, a Dispute arises between the parties that, after reasonable negotiation, the parties are unable to resolve to their mutual satisfaction, either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7.

4.6 NEGOTIATION CONDITIONS

- (a) At any time during the Negotiation Period an Access Seeker may give QR Network written notification that it no longer wishes to proceed with its Access Application.
- (b) At any time during the Negotiation Period, QR Network may, within fourteen (14) days of deciding that it will not enter into an Access Agreement with the Access Seeker, give notice to an Access Seeker of that decision and identify the reasons for the decision (referred to as a "Negotiation Cessation Notice") if:
 - (i) the Access Seeker does not comply with the relevant obligations and processes contained in this Undertaking, and QR Network considers on reasonable grounds that such noncompliance is material;
 - (ii) QR Network is of the reasonable opinion that there is no reasonable likelihood that the Access Seeker will comply with the terms and conditions of an Access Agreement in a material way;

- (iii) QR Network is of the reasonable opinion that the Access Seeker has no genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;
 - (iv) QR Network gives a Negotiation Cessation Notice under Subparagraph 3.3.2(c)(iv) or 3.3.2(g)(i);
 - (v) except in the circumstances outlined in Paragraph 4.7.3(i), an Access Seeker does not comply with a determination of an expert pursuant to Subclause 4.7.3 in relation to a dispute about the Access Seeker's Access Application; or
 - (vi) an Access Seeker does not comply with a determination of the QCA pursuant to Subclause 4.7.4 in relation to a dispute about the Access Seeker's Access Application.
- (c) Without limitation, it will be reasonable for QR Network to form the opinion that the circumstances in Subparagraph 4.6(b)(ii) apply, if:
- (i) the Access Seeker is Insolvent; or
 - (ii) the Access Seeker, or a Related Party of the Access Seeker, is currently, or has in the previous two (2) years been, in Material Default of any Access Agreement or any other agreement and where its performance under that agreement is relevant to its likely performance under an Access Agreement.
- (d) Without limitation, when QR Network is forming an opinion as to whether the circumstances in Subparagraph 4.6(b)(iii) apply, QR Network may consider any one or more of the following factors:
- (i) whether the Access Seeker has secured or is reasonably likely to secure the rights required to leave the QR Network network in order to unload at its destination, for instance, port capacity or capacity to unload at a power station;
 - (ii) whether the Access Seeker (if they are seeking to be an Access Holder and not an operator) has secured or is reasonably likely to secure a rail haulage agreement required to operate the Train Services the subject of the Access Application; and
 - (iii) the speed and timeliness of the Access Seeker in conducting its negotiations, including whether QR Network has determined under Paragraph 4.6(e) that an Access Seeker first in a queue has taken an unreasonable or excessive amount of time negotiating an Access Agreement.
- (e) An Access Seeker who is in a queue but not first in that queue may notify QR Network that it considers that the time taken by the Access Seeker first in the queue to negotiate an Access Agreement with QR Network is unreasonable or excessive. QR Network will determine whether the time taken by the Access Seeker first in the queue is unreasonable or excessive having regard to the complexity of the Access Application and Indicative Access Proposal or the existence of other extenuating circumstances. QR Network will make its

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

- (f) If an Access Seeker disputes that QR Network was entitled to give it a Negotiation Cessation Notice, then the Access Seeker may refer the matter to Dispute resolution in accordance with Clause 4.7. In such circumstances, for the purposes of Paragraph 4.6(b), the Negotiation Cessation Notice will be deemed to have been issued only if and when the Dispute is resolved in QR Network's favour. If the resolution of the Dispute identifies that QR Network was not entitled to give the Access Seeker a Negotiation Cessation Notice, QR Network will recommence negotiations with that Access Seeker immediately.
- (g) QR Network shall have the right at its option to recover its costs incurred in negotiations with the Access Seeker where it ceases negotiations in accordance with Subparagraph 4.6(b)(iii). QR Network may seek acknowledgement of the Access Seeker's liability for costs as part of the negotiation for Access.

4.7 DISPUTE RESOLUTION

4.7.1 Disputes

- (a) If any dispute or question ("Dispute") arises under this Undertaking or in relation to the negotiation of Access between a Third Party Access Seeker and QR Network then, unless otherwise expressly agreed by both parties, such Dispute shall be resolved in accordance with this Clause 4.7 and either party may give to the other party to the Dispute notice in writing ("Dispute Notice") specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 4.7.
- (b) Unless otherwise agreed by the parties, Disputes in relation to an Access Agreement once executed shall be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking.

4.7.2 Chief Executive Resolution

- (a) Unless otherwise agreed by both parties or provided for in this Undertaking, any Dispute shall within seven (7) days of the Dispute Notice be referred in the first instance to the QR Network Chief Executive (or his or her nominee) and the Chief Executive of the Third Party Access Seeker (or his or her nominee) for resolution.
- (b) If:
 - (i) resolution is not reached within fourteen (14) days; or
 - (ii) either Chief Executive appoints a nominee in accordance with Paragraph 4.7.2(a) that is unacceptable to the other party,the relevant Dispute may, by agreement between QR Network and the Third Party Access Seeker, be referred for resolution by an expert in accordance with

Subclause 4.7.3. Failing such agreement, either party may refer the Dispute to the QCA in accordance with Subclause 4.7.4.

4.7.3 Expert Determination

Where a matter is referred to an expert in accordance with this Clause 4.7 or as otherwise specified in accordance with this Undertaking then the following shall apply:

- (a) An expert shall be appointed by the parties, or where agreement cannot be reached by the parties within fourteen (14) days, an expert shall be appointed by:
 - (i) the President of CPA Australia if the parties agree that the matters are financial matters;
 - (ii) the President of the Institution of Engineers Australia if the parties agree that the matters are non-financial matters; and
 - (iii) the President of the Queensland Law Society Incorporated where the parties cannot agree on the nature of the particular dispute, or in situations where the parties agree that it is appropriate that the President of the Queensland Law Society Incorporated appoint an expert, given the nature of the matter in dispute.
- (b) In any event the expert shall:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as expert, he or she being required to fully disclose any such interest or duty before his or her appointment; and
 - (iii) not be an employee of the Access Seeker or QR Network or of a Related Party of either of them.
- (c) The expert shall not act until the expert has given written notice of the acceptance of his or her appointment to both parties.
- (d) The parties shall 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. Any such information or assistance must be provided as soon as reasonably practicable.
- (e) Any determination made by an expert in relation to a Dispute must be consistent with the provisions of this Undertaking.
- (f) The expert will provide both parties with a copy of the determination in relation to the Dispute within a reasonable time after his or her appointment.

- (g) The expert shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties.
- (h) The expert shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1990 (Qld)*, shall not apply to the expert or to the determination or to the procedures by which the expert may reach that determination.
- (i) In the absence of manifest error, the decision of the expert shall be final and binding upon the parties. If a party believes that there has been a manifest error it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error, then the parties may agree to refer the Dispute to another expert in accordance with this Subclause 4.7.3, or failing such agreement, either party may refer the Dispute to the QCA for resolution in accordance with Subclause 4.7.4.
- (j) Unless otherwise agreed by the parties:
 - (i) the parties shall be liable for the costs of the expert and any advisers to the expert in equal shares; and
 - (ii) each party shall bear their own costs of participating in the expert determination.

4.7.4 Determination by the Queensland Competition Authority

- (a) If a Dispute is referred to the QCA in accordance with this Clause 4.7, or as otherwise specified in accordance with this Undertaking, then Division 5 of Part 5 of the Act shall apply subject to any determination by the QCA being consistent with the provisions of this Undertaking.
- (b) If an issue is referred to the QCA for determination as specified in accordance with this Undertaking, but does not constitute a Dispute for the purposes of Division 5 of Part 5 of the Act, then the QCA will make a determination through any process that it considers appropriate, provided that:
 - (i) prior to considering the issue, the QCA advises both parties of the process that it will use to make the determination and both parties are given the opportunity to advise the QCA of any concerns with that process; and
 - (ii) any determination by the QCA is consistent with the provisions of this Undertaking.
- (c) If a Dispute is referred to the QCA in accordance with this Subclause 4.7.4, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the parties a copy of any advice it receives from the Safety Regulator.

- (d) Where the QCA calls upon the Safety Regulator to provide advice to the QCA in relation to a Dispute, the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportion as the QCA determines.
- (e) Where a matter is referred to the Safety Regulator for resolution in accordance with Subparagraph 8.1.3(f)(ii), the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportions as the Safety Regulator determines.
- (f) If a Dispute is referred to the QCA in accordance with this Subclause 4.7.4 and that Dispute relates to Subparagraph 6.5.2(c)(i), QR Network will bear the onus of demonstrating to the QCA that QR Network's risk in the stated circumstances is material.

PART 5: ACCESS AGREEMENTS

5.1 DEVELOPMENT OF ACCESS AGREEMENTS

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the negotiation process.
- (b) The parties to the Access Agreement will be QR Network and the Access Holder. The Access Holder need not be the Railway Operator for the relevant Train Services, but if the Access Holder is not the Railway Operator, it must ensure that the relevant Train Services are operated by a Railway Operator.
- (c) The Railway Operator of the Train Services need not have received Accreditation prior to execution of the Access Agreement. The Railway Operator must obtain such Accreditation prior to the commencement of Train Services and subsequently maintain its Accreditation for the duration of the Access Agreement.
- (d) Unless otherwise agreed between QR Network and the Access Seeker, the Access Agreement must be consistent with:
 - (i) the terms of a Standard Access Agreement incorporated in Volume 2 of this Undertaking if the Train Services are of the same type specified in that Standard Access Agreement; and
 - (ii) subject to Paragraph 5.1(e), for Train Services of a type for which a Standard Access Agreement has not been incorporated in Volume 2 of this Undertaking, the principles outlined in the Standard Access Agreement summary that is contained in Schedule E.
- (e) QR Network recognises that Schedule E does not provide an exhaustive list of the issues that may be included in an Access Agreement. As a result, whilst the terms of a Standard Access Agreement incorporated in Volume 2 of this Undertaking will provide guidance as to how the principles outlined in Schedule E may be reflected in an Access Agreement for a different type of Train Service, QR Network acknowledges that varied terms and conditions to those specified in a Standard Access Agreement incorporated in Volume 2 may be required in such circumstances.
- (f) Once the Access Seeker has notified QR Network that it is satisfied with the terms and conditions of the Access Agreement as drafted, QR Network will, as soon as reasonably practicable, provide a final Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) to the Access Seeker for execution.
- (g) The parties will use reasonable efforts to duly execute the final Access Agreement as soon as practicable after its completion by QR Network.
- (h) QR Network will execute an Access Agreement with an Access Seeker up to two (2) years prior to the commencement of Train Services under the Access Agreement, or such longer period as the Access Seeker and QR Network agree is reasonably necessary bearing in mind the lead time that would be required to accommodate the development of the Customer's infrastructure (such as a mine) and/or elements of the transport logistics chain, as well as

development of rail infrastructure, relevant to the Access Application lodged by the Access Seeker.

5.2 DEVELOPMENT OF NEW STANDARD ACCESS AGREEMENT

- (a) QR Network will submit a proposed standard access agreement for a specified type of Train Service not covered by a Standard Access Agreement (“Proposed Standard Access Agreement”):
 - (i) within sixty (60) days of a notice being received from the QCA in accordance with Paragraph 5.2(b); or
 - (ii) otherwise at QR Network’s discretion.
- (b) The QCA may give QR Network a notice requiring it to submit a Proposed Standard Access Agreement if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a Standard Access Agreement for that specified type of Train Service not covered by a Standard Access Agreement.
- (c) The QCA may develop a Proposed Standard Access Agreement that is consistent with the Undertaking and the principles contained in Schedule E if:
 - (i) QR Network does not comply with a notice given by the QCA under Paragraph 5.2(b) or Subparagraph 5.2(h)(ii) for it to submit, or resubmit, a Proposed Standard Access Agreement (whichever is applicable); or
 - (ii) the QCA refuses to approve a Proposed Standard Access Agreement resubmitted by QR Network.
- (d) Where QR Network submits, or the QCA develops, a Proposed Standard Access Agreement, the QCA will:
 - (i) publish the Proposed Standard Access Agreement;
 - (ii) invite persons to make submissions on the Proposed Standard Access Agreement to the QCA within a reasonable period of time specified by the QCA; and
 - (iii) consider any submission it receives within the time.
- (e) The QCA may approve a Proposed Standard Access Agreement (including a Proposed Standard Access Agreement developed by the QCA) only if the QCA:
 - (i) is satisfied that the Proposed Standard Access Agreement is consistent with this Undertaking and principles contained in Schedule E;
 - (ii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act; and
 - (iii) the QCA has complied with Paragraph 5.2(d).
- (f) The QCA will consider a Proposed Standard Access Agreement given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives a Proposed Standard Access Agreement under this Subclause 5.2 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.

- (g) If the QCA approves a Proposed Standard Access Agreement submitted under Paragraph 5.2(a), or resubmitted under Subparagraph 5.2(h)(ii):
- (i) the Standard Access Agreement will apply from the date of the QCA decision, or any other date following the date of the QCA decision that the QCA determines;
 - (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
 - (iii) QR Network must:
 - (A) publish a new version of Volume 2 which includes the Standard Access Agreement; and
 - (B) advise Access Holders and Access Seekers, in respect of the specified Train Services to which the Standard Access Agreement applies, that a Standard Access Agreement has been approved.
- (h) If the QCA refuses to approve a Proposed Standard Access Agreement, the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the Proposed Standard Access Agreement should be amended; and
 - (ii) where the Proposed Standard Access Agreement has been submitted by QR Network in response to a notice given by the QCA under Paragraph 5.2(b), requiring QR Network to amend the Proposed Standard Access Agreement in the way the QCA considers it appropriate and resubmit the amended Proposed Standard Access Agreement to the QCA within 30 days of the notice.
- (i) If QR Network complies with the notice given under Paragraph 5.2(h)(ii) above, the QCA may approve the resubmitted Proposed Standard Access Agreement in accordance with Paragraph 5.2(j).
- (j) The QCA may approve the resubmitted Proposed Standard Access Agreement only if the QCA:
- (i) is satisfied that it is in accordance with the notice under Paragraph 5.2(h);
 - (ii) is satisfied that it is consistent with this Undertaking and principles contained in Schedule E; and
 - (iii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act.
- (k) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a Proposed Standard Access Agreement, if:
- (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
 - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (l) If the QCA grants QR Network an extension of time under Paragraph 5.2(k) above, QR Network must submit, or resubmit, a Proposed Standard Access Agreement, (whichever is applicable) within the time specified by the QCA.

- (m) The QCA may not make a decision under this Clause 5.2 requiring QR Network to submit a Proposed Standard Access Agreement, or approving or refusing to approve a Proposed Standard Access Agreement, unless:
- (i) the QCA observed the rules of natural justice;
 - (ii) the QCA observed any procedures that were required by law or this Undertaking;
 - (iii) the QCA had jurisdiction to make the decision under this Undertaking;
 - (iv) the QCA was authorised to make the decision under this Undertaking;
 - (v) the QCA's decision would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
 - (A) taking an irrelevant consideration into account in the exercise of a power;
 - (B) failing to take a relevant consideration into account in the exercise of a power;
 - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
 - (D) an exercise of a discretionary power in bad faith;
 - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
 - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
 - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
 - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
 - (I) any other exercise of a power in a way that is an abuse of the power;
 - (vi) the QCA's decision did not involve an error of law (whether or not the error appears on the record of the decision);
 - (vii) the QCA's decision was not induced or affected by fraud;
 - (viii) to the extent that any matters were required to be established before the decision could be made, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the making of the decision or, to the extent that the existence of a particular fact forms the basis on which the decision is made, the fact did or does exist; and
 - (ix) the decision was not otherwise contrary to law or this Undertaking.
- For the avoidance of doubt, the terms of this Paragraph 5.2(m) are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).
- (n) The requirements set out in Paragraph 5.2(m) also apply to the QCA's conduct in making a decision under this Clause 5.2.
- (o) If the QCA's decision or conduct is challenged on the basis of a breach of a requirement in this Clause 5.2, QR Network and the QCA agree that QR

Network may seek an order suspending the operation of the decision and a stay of any proceedings under the decision.

- (p) This Clause 5.2 does not affect the right of any party to seek any other form of remedy or relief including relief by way of the equitable remedies of injunction or declaration or to seek review under the *Judicial Review Act 1991* (Qld).
- (q) Nothing in this Clause 5.2 affects the rights of QR Network under section 142 and related provisions of the Act.

5.3 ACCESS AGREEMENTS FOR NEW OR RENEWED QR TRAIN SERVICES

- (a) The development of Access Agreements with QR or a Related Party of QR for new or renewed QR Train Services will be subject to this Undertaking, provided that QR does not prevent or hinder Access in any way contrary to s.104 or s.125 of the Act.
- (b) Where there is a Reference Tariff and a Standard Access Agreement incorporated in Volume 2 of this Undertaking for a type of Train Service, and an Access Agreement with QR or a Related Party of QR for a new or renewed QR Train Service of that type is consistent with that Reference Tariff and Standard Access Agreement, then QR will be deemed to have complied with Paragraph 5.3(a).

5.4 DISCLOSURE OF ACCESS AGREEMENTS

- (a) Except as provided for in Paragraph 5.4(d), QR Network will permit the public disclosure of the Below Rail aspects of Access Agreements (including Access Charges) for all coal carrying Train Services for new or renewed Train Services.
- (b) QR Network will permit the disclosure to the QCA of the Below Rail aspects of Access Agreements (including Access Charges) for all Train Services for new or renewed Train Services.
- (c) For the purposes of Paragraphs 5.4(a) and 5.4(b), the Below Rail aspects of Access Agreements will not include:
 - (i) insurance provisions;
 - (ii) contact details included in the Interface Coordination Plan;
 - (iii) the Rollingstock and Rollingstock Configuration performance characteristics;
 - (iv) Interface Risk Management Plan; and
 - (v) Environmental Investigation and Risk Management Report.
- (d) Where a party to an Access Agreement considers that specified parts of the Access Agreement should not be publicly disclosed, it may make a request to the QCA for non-disclosure of those specified parts. The QCA must agree to

the request where it is satisfied that disclosure of the information would be likely to damage that party's commercial activities and that disclosure would not be in the public interest.

PART 6. PRICING PRINCIPLES

6.1 PRICE DIFFERENTIATION

In developing Access Charges QR Network will apply the pricing principles set out in this Part 6. In the event of a conflict between these pricing principles, QR Network will apply the pricing principles in the following order of precedence (from highest to lowest):

- (a) Limits on Price Differentiation (Subclause 6.1.2);
- (b) Pricing Limits (Clause 6.2);
- (c) Rail Infrastructure Utilisation (Subclause 6.3.1);
- (d) Revenue Adequacy (Subclause 6.3.2).

6.1.1 Limits on Price Differentiation

- (a) QR Network will not differentiate Access Charges between Access Seekers or between Access Seekers and Access Holders within a relevant market except as provided for in this Subclause 6.1.1.
- (b) Where a Reference Tariff is applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker may only vary from the Reference Tariff:
 - (i) to reflect differences in cost or risk to QR Network of providing Access for that Train Service compared to the Reference Train Service; or
 - (ii) where the Access Charge is for a new or renewed Train Service travelling from a mine on the corridor between Burngrove and Coppabella to the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone), to be less than the applicable Reference Tariff provided that:
 - (A) this is for the purpose of reducing QR Network's asset stranding risk on the corridor between Burngrove and Gladstone; and
 - (B) where Access Seekers are directly competing with each other for the purpose of operating the new or renewed Train Service, the Access Charge offered to each of those Access Seekers will only vary between the Access Seekers so as to reflect differences in the cost or risk to QR Network of providing Access as a result of differences in the type of Train Services proposed by the relevant Access Seeker.
- (c) Where there is no Reference Tariff applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker seeking to transport a specified commodity in a specified geographic area may only vary from the Access Charge for other Access Seekers seeking to transport the same commodity in the same geographical area, on a unit rate basis, either:
 - (i) to reflect differences in cost or risk to QR Network of providing Access for that Train Service compared to other Train Services of that type; or

- (ii) over time, to reflect:
 - (A) changes in the cost or risk to QR Network of providing Access;
 - (B) changes in relevant Transport Service Payments, where such changes have the result that QR Network can no longer commercially provide Access to Train Services in that specified geographic area at the current Access Charges;
 - (C) Changes in Market Circumstances; or
 - (D) limitations on Available Capacity in accordance with Paragraph 6.3.1(b).
- (d) QR Network will give Access Seekers the opportunity to incorporate rate review provisions in Access Agreements as follows:
 - (i) where a Reference Tariff is applicable for the Train Service type, the Access Charge will be reviewed (whether upwards or downwards) to be consistent with changes in the applicable Reference Tariff over time; or
 - (ii) where there is no Reference Tariff applicable for the Train Service type, the Access Charge will be reviewed (whether upwards or downwards) to be consistent with changes in the Access Charges offered to other Access Seekers over time for that specified commodity in that specified geographic area,provided that QR Network will be entitled to incorporate such rate review provisions in any Access Agreement which has a term in excess of five (5) years.
- (e) In addition to any rate review provision that may be incorporated in its Access Agreement in accordance with Paragraph 6.1.1(d), if an Access Holder (referred to in this Paragraph as the Aggrieved Access Holder) can demonstrate to QR Network's reasonable satisfaction that after entering into an Access Agreement with the Aggrieved Access Holder, QR Network has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this Subclause 6.1.1, and if QR Network is not able to alter the Access Charge contained in the subsequent Access Agreement to ensure that it is in accordance with the limits on price differentiation set out in this Subclause 6.1.1, then QR Network will alter the Access Charge for the Aggrieved Access Holder in accordance with the pricing principles set out in this Part 6.

6.1.2 Establishment of Access Charges for QR Train Services

In developing Access Agreements with QR or a Related Party of QR in accordance with Subclause 5.3, QR Network will not establish Access Charges for QR Train Services for the purpose of preventing or hindering Access by a Third Party Access Seeker into any market in competition with the QR Operational Business Group providing those QR Train Services.

6.2 PRICING LIMITS

6.2.1 Definition of Pricing Limits

In determining Access Charges, QR Network will observe price limits in respect of the following elements:

- (i) upper and lower limits for Access Charges for individual Train Services, established at levels which ensure there is no Cross Subsidy between Individual Train Services and determined in accordance with Subclause 6.2.2; and
- (ii) upper and lower limits for Access Charges in respect of combinations of Train Services, established at levels which ensure that there is no Cross Subsidy between combinations of Train Services and determined in accordance with Subclause 6.2.3.

6.2.2 Price Limits for Individual Train Services

- (a) Price limits will apply in respect to Access Charges to be established for each individual Train Service (referred to as “Individual Train Service”) such that, over the Evaluation Period, the relevant Access Charge for the Individual Train Service:
 - (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for the Individual Train Service; and
 - (ii) will not:
 - (A) where the Individual Train Service is the only Train Service using a section of the Rail Infrastructure, exceed the level that will recover the expected Stand Alone Cost of providing Access for the Individual Train Service after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant the Rail Infrastructure; or
 - (B) otherwise, exceed the level that will recover the expected Stand Alone Cost of providing Access for the Individual Train Service.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph 6.2.2(a)(ii), a Revenue Limit will be established for the Individual Train Service. The Revenue Limit for an Individual Train Service will reflect the Stand Alone Cost of providing Access for the Individual Train Service over the Evaluation Period. The Revenue Limit will be determined in accordance with Subclause 6.2.4.

6.2.3 Price Limits on Train Service Combinations

- (a) In addition to Subclause 6.2.2, price limits will apply in respect of Access Charges to be established for Individual Train Services such that, over the Evaluation Period, the expected Access revenue (determined in accordance with Paragraph 6.2.3(c)) for any combination of Train Services incorporating the Individual Train Service:

- (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for that combination of Train Services after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure; and
 - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that combination of Train Services after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph 6.2.3(a)(ii), a Revenue Limit will be established for identified combinations of Train Services. The Revenue Limit for a combination of Train Services will reflect the Stand Alone Cost of providing Access for the combination of Train Services over the Evaluation Period. The Revenue Limit for the combination of Train Services will be determined in accordance with Subclause 6.2.4.
- (c) Expected Access revenue for a combination of Train Services will be determined as the aggregate of revenue reasonably expected from the application of Access Charges for all the Train Services comprising the combination of Train Services, where the Access Charges for different Train Service types will be identified as follows:
- (i) where a Reference Tariff is to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with the Reference Tariff proposed; and
 - (ii) where a Reference Tariff is not intended to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with current applicable Access Charges, except as provided in Subparagraph 6.3.1(b)(ii).
- (d) If QR Network incorporates an Access Charge in the Access Agreement for an Access Holder that, at the time of development, is in contravention of either Subparagraph 6.2.2(a)(i) or Subparagraph 6.2.3(a)(i), then provided that QR Network observes the limits on price differentiation set out in Subclause 6.1.1 in subsequently developing an Access Charge for an Access Seeker for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), QR Network shall be deemed not to be in breach of Subclause 6.2.2 or Subclause 6.2.3.

6.2.4 Definition of Revenue Limit

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

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

$$0 = -AV_0 + \sum_{t=1}^n \frac{(RL_t - C_t - M_t - T_t)}{(1 + ROA)^t} + \frac{AV_n}{(1 + ROA)^n}$$

where:

AV_0 is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with Paragraph 6.2.4(c), at the commencement of the Evaluation Period;

n is the number of years in the Evaluation Period;

t is each year within the Evaluation Period from 1 to n ;

RL_t is the Revenue Limit for the Train Service(s) expressed as revenue that may be earned in each year of the Evaluation Period;

C_t is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;

M_t is the Efficient Cost, including operating and maintenance costs, business and corporate overheads and QCA Levy, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;

ROA is the maximum allowable rate of return expressed in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by QR Network and the QCA or, failing such agreement, as determined by the QCA;

T is the tax expense assessed through the application of the statutory tax rate for corporations to the taxable income reasonably expected to be earned through the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period, where such tax expense is reduced in each year by the application of the gamma factor, reflecting the market value of dividend imputation, as agreed by QR Network and the QCA or, failing such agreement, as determined by the QCA; and

AV_n is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with Paragraph 6.2.4(c), at the end of the Evaluation Period.

(b) In order to determine the amount of each of the variables set out in Paragraph 6.2.4(a), it will be necessary to identify the assumed traffic task resulting from the Train Service(s) over the Evaluation Period. The assumed traffic task shall be the forecast reasonably determined for the traffic task resulting from the Train Service(s) over the Evaluation Period, except where changes in traffic task are the result of the commencement of major projects that individually impact significantly on the traffic task. In such circumstances, expected

increases in traffic task shall be incorporated into the forecast following service commitment.

- (c) The value of assets used in Paragraph 6.2.4(a) will be determined using:
 - (i) where applicable, the value of the assets for the relevant area of the network contained in the Regulatory Asset Base, where the value of those assets is maintained in accordance with Schedule FB; or
 - (ii) where there is no value for the assets for the relevant area of the network contained in the Regulatory Asset Base, the Depreciated Optimised Replacement Cost methodology.

6.3 PRICING OBJECTIVES

6.3.1 Rail Infrastructure Utilisation

- (a) Access Holders serve a number of different markets that have different abilities to support Access Charges that contribute in excess of the Incremental Cost and towards the Common Costs of providing the Rail Infrastructure. Accordingly, QR Network will be entitled to establish different Access Charges for Access Holders serving different markets in order to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs of providing the Rail Infrastructure.
- (b) Where Available Capacity is limited, and QR Network reasonably considers in accordance with Paragraph 7.4.1(n) that expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not commercially justified:
 - (i) QR Network may establish an Access Charge based on the highest Access Charge QR Network is likely to achieve from the current or likely Access Seekers (provided that the highest Access Charge is developed in accordance with the pricing principles set out in this Part 6), i.e. the Access Charge which incorporates the highest contribution to the Common Costs of providing the Rail Infrastructure (referred to in this Paragraph as the “Maximum Access Charge”). The Maximum Access Charge may then be quoted to all Access Seekers seeking Access in respect of the relevant Available Capacity, irrespective of a particular Access Seeker’s ability to contribute to the Common Costs of providing the Rail Infrastructure or the Access Charges payable in existing Access Agreements for similar Train Services; and
 - (ii) if QR Network has received mutually exclusive Access Applications and QR Network chooses to allocate Available Capacity to an Access Application where the Access Seeker will pay an Access Charge that is less than the Maximum Access Charge in preference to an Access Application where the Access Seeker would pay an Access Charge that is equal to the Maximum Access Charge and would otherwise be able to utilise that Available Capacity, then for the purpose of assessing a Revenue Limit in accordance with Subclause 6.2.4 for all Train Services using that constrained section of Rail Infrastructure, the Access Charge for the Access Seeker will be assumed to be the Maximum Access Charge.

6.3.2 Revenue Adequacy

Provided that QR Network complies with the pricing constraints described in Subclauses 6.1.1 and 6.1.2 and Clause 6.2, QR Network will be entitled to earn revenue from the provision of Access, including both Access Charges and Transport Service Payments, that is sufficient to achieve full recovery of Efficient Costs (providing for any transitional arrangements agreed with the QCA), including an adequate rate of return on the value of assets reasonably required. Where QR Network earns revenue in excess of this its first objective will be to reduce the Transport Service Payments.

6.4 REFERENCE TARIFFS

6.4.1 Application of Reference Tariffs

- (a) It is recognised that, for Individual Train Services, there may be a large range between the price limits established in Clause 6.2 within which Access Charges may be determined. Therefore, to assist in the facilitation of an efficient Access negotiation process, QR Network may develop Reference Tariffs for certain types of Train Services.
- (b) Each Reference Tariff will be developed as an Access Charge for a Reference Train Service.
- (c) Reference Tariffs will not be required to be consistent with the actual Access Charges for the relevant type of Train Services applicable under existing Access Agreements. However, QR Network will give Access Holders the opportunity to incorporate rate review provisions in Access Agreements in accordance with Paragraph 6.1.1(d).
- (d) Reference Tariffs for nominated Reference Train Services, including the conditions associated with the application of those Reference Tariffs, are set out in Schedule F.
- (e) Where the QCA has approved a Reference Tariff submitted to it by QR Network, that Reference Tariff will be an acceptable means by which QR Network provides Access Seekers with information about the matters listed in s.101(2)(a) to (c) of the Act, as provided for in accordance with s.101(4) of the Act.

6.4.2 Establishment of Reference Tariffs for new Reference Train Services

- (a) QR Network will submit a proposed Reference Tariff for a new Reference Train Service to the QCA:
 - (i) if required in accordance with Paragraph 6.4.2(c);
 - (ii) subject to Paragraph 6.4.2(d), within sixty (60) days of a notice being received from the QCA in accordance with Paragraph 6.4.2(c); or

- (iii) otherwise at QR Network's discretion.
- (b) Unless otherwise agreed with the QCA, where a new coal mine is developed and Train Services servicing that mine will utilise Rail Infrastructure in the Central Queensland Coal Region or Western System, the Train Services travelling between the mine (or, where the mine is or will be located on Private Infrastructure, the point where that Private Infrastructure connects to the Rail Infrastructure) and its most common destination will be incorporated in a new or existing Reference Train Service in a manner consistent with and subject to the requirements of Schedule F. For the avoidance of doubt, where the mine is or will be located on Private Infrastructure, the loading point for the new Train Service will be used for the purpose of calculating the Private Incremental Costs for and describing that Train Service even though that loading point is located adjacent to Private Infrastructure.
- (c) The QCA may give QR Network a notice requiring it to submit a proposed Reference Tariff for a new Reference Train Service if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a Reference Tariff for a new Reference Train Service.
- (d) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a proposed Reference Tariff for a new Reference Train Service, if:
 - (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
 - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (e) The QCA may develop a proposed Reference Tariff that is consistent with this Undertaking if:
 - (i) QR Network does not comply with a notice given by the QCA under Paragraph 6.4.2(c) or Subparagraph 6.4.2(j)(ii) for it to submit, or resubmit, a proposed Reference Tariff (whichever is applicable); or
 - (ii) the QCA refuses to approve a proposed Reference Tariff resubmitted by QR Network.
- (f) Where QR Network submits, or the QCA develops, a proposed Reference Tariff for a new Reference Train Service, the QCA will:
 - (i) publish the proposed Reference Tariff;
 - (ii) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
 - (iii) consider any submission it receives within the time.

- (g) The QCA may approve a proposed Reference Tariff for a new Reference Train Service (including a proposed Reference Tariff developed by the QCA) only if the QCA:
- (i) is satisfied that the proposed Reference Tariff is consistent with this Undertaking;
 - (ii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act; and
 - (iii) the QCA has complied with Paragraph 6.4.2(f).
- (h) The QCA will consider a proposed Reference Tariff for a new Reference Train Service given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives a proposed Reference Tariff for a new Reference Train Service under this Subclause 6.4.2 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.
- (i) If the QCA approves a proposed Reference Tariff for a new Reference Train Service submitted under Paragraph 6.4.2(a), or resubmitted under Subparagraph 6.4.2(k)(ii):
- (i) the proposed Reference Tariff will apply from the earlier of:
 - (A) the date of the QCA decision;
 - (B) where Paragraph 6.4.2(b) applies, the date of the first Train Service servicing the new coal mine; and
 - (C) where Paragraph 6.4.2(c) applies, the date when the relevant notice is given by the QCA,except where the QCA specifies a later date in its decision, in which case the proposed Reference Tariff will apply from that date.
 - (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
 - (iii) QR Network must:
 - (A) publish a new version of Schedule F which includes the Reference Tariff; and
 - (B) advise Access Holders and Access Seekers, in respect of the Train Services to which the Reference Tariff applies, that the Reference Tariff has been approved.
- (j) If the QCA refuses to approve a proposed Reference Tariff for a new Reference Train Service the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the proposed Reference Tariff should be amended; and
 - (ii) where the proposed Reference Tariff has been submitted by QR Network in response to a notice given by the QCA under Paragraph 6.4.2(c), requiring QR Network to amend the proposed Reference Tariff in the way the QCA considers it appropriate and resubmit the

- amended proposed Reference Tariff to the QCA within thirty (30) days of the notice.
- (k) If QR Network complies with the notice given under Paragraph 6.4.2(j)(ii) above, the QCA may approve the resubmitted proposed Reference Tariff in accordance with Paragraph 6.4.2(l).
- (l) The QCA may approve the resubmitted proposed Reference Tariff only if the QCA:
- (i) is satisfied that the proposed Reference Tariff is in accordance with the QCA's decision;
 - (ii) is satisfied that the proposed Reference Tariff is consistent with this Undertaking; and
 - (iii) considers it appropriate to do so having regard to the matters listed in s138(2) of the Act.
- (m) Subject to the provisions of Subclauses 6.4.2 and 6.4.3, a proposed Reference Tariff may be withdrawn at any time by the party who developed the proposed Reference Tariff.
- (n) If the QCA grants QR Network an extension of time under Paragraph 6.4.2(d), QR Network must submit, or resubmit, the proposed Reference Tariff, (whichever is applicable) within the time specified by the QCA.
- (o) The QCA may not make a decision under this Subclause 6.4.2 requiring QR Network to submit a proposed Reference Tariff, or approving or refusing to approve a proposed Reference Tariff, unless:
- (i) the QCA observed the rules of natural justice;
 - (ii) the QCA observed any procedures that were required by law or this Undertaking;
 - (iii) the QCA had jurisdiction to make the decision under this Undertaking;
 - (iv) the QCA was authorised to make the decision under this Undertaking;
 - (v) the QCA's decision would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
 - (A) taking an irrelevant consideration into account in the exercise of a power;
 - (B) failing to take a relevant consideration into account in the exercise of a power;
 - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
 - (D) an exercise of a discretionary power in bad faith;
 - (E) an exercise of a personal discretionary power at the discretion or behest of another person;

- (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
 - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
 - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
 - (I) any other exercise of a power in a way that is an abuse of the power;
- (vi) the QCA's decision did not involve an error of law (whether or not the error appears on the record of the decision);
 - (vii) the QCA's decision was not induced or affected by fraud;
 - (viii) to the extent that any matters were required to be established before the decision could be made, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the making of the decision or, to the extent that the existence of a particular fact forms the basis on which the decision is made, the fact did or does exist; and
 - (ix) the decision was not otherwise contrary to law or this Undertaking.

For the avoidance of doubt, the terms of this Paragraph 6.4.2(o) are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).

- (p) The requirements set out in Paragraph 6.4.2(o) also apply to QCA's conduct in making a decision under this Subclause 6.4.2.
- (q) If the QCA's decision or conduct is challenged on the basis of a breach of a requirement in this Subclause 6.4.2, QR Network and the QCA agree that QR Network may seek an order suspending the operation of the decision and a stay of any proceedings under the decision.
- (r) This Subclause 6.4.2 does not affect the right of any party to seek any other form of remedy or relief including relief by way of the equitable remedies of injunction or declaration or to seek review under the *Judicial Review Act 1991* (Qld).
- (s) Nothing in this Subclause 6.4.2 affects the rights of QR Network under section 142 and related provisions of the Act.

6.4.3 Review of Reference Tariffs

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

6.5 STRUCTURE OF ACCESS CHARGES AND CONDITIONS TO ACCESS

6.5.1 Structure of Access Charges

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

6.5.2 Access Conditions

- (a) Notwithstanding Subclause 6.5.1, QR Network may require an Access Seeker to agree to certain condition/s (additional to those in the relevant Standard Access Agreement) before being granted Access Rights ("Access Conditions"), to the extent that this is reasonably required in order to mitigate QR Network's exposure to the financial risks associated with providing Access for the Access Seeker's proposed Train Service.
- (b) For the purposes of Paragraph 6.5.2(a), it will be deemed to be reasonable for QR Network to require Access Conditions, to the extent reasonably required, in order to mitigate QR Network's exposure to financial risks resulting from QR Network constructing additional Rail Infrastructure or modifying existing Rail Infrastructure where there will be no more than one Customer using that additional or modified Rail Infrastructure (for example, a new rail spur or increasing the height of tunnels to accommodate a single Customer's taller than usual trains) and that additional or modified Rail Infrastructure would not be required had the Access Seeker not sought Access for its Train Services.

- (c) For the purposes of Paragraph 6.5.2(a), it will be deemed to be unreasonable for QR Network to require Access Conditions in order to mitigate QR Network's exposure to the financial risks resulting from QR Network:
- (i) constructing additional Rail Infrastructure or modifying existing Rail Infrastructure where that additional or modified Rail Infrastructure is likely to be used by a number of Customers, Access Seekers or Access Holders such that QR Network's risk of being unable to recover the costs of the enhancements if any one of those Customers, Access Seekers or Access Holders ceases to require all or part of the relevant Train Services is not material; or
 - (ii) constructing Rail Infrastructure, for the purpose of increasing Capacity for the operation of Reference Train Services, that will form part of the Central Queensland Coal Region Mainline.
- (d) In the event of a Dispute arising in relation to QR Network seeking to require an Access Condition in circumstances not within Paragraphs 6.5.2(b) or (c), the issue shall be subject to the Dispute resolution process set out in Clause 4.7. In the event of the QCA being required to determine such a Dispute, the QCA will assess whether QR Network is allowed to impose such an Access Condition pursuant to Paragraph 6.5.2(a).
- (e) Where QR Network requires an Access Condition in accordance with Paragraph 6.5.2(a), the form of the Access Condition may include, to the extent that is reasonably required to mitigate QR Network's exposure to the relevant financial risks:
- (i) an upfront contribution;
 - (ii) an ongoing charge separate to the Access Charge for facilitation of Access which is payable irrespective of actual usage ("Access Facilitation Charge");
 - (iii) a prepayment of all or part of an Access Facilitation Charge;
 - (iv) an additional take or pay arrangement;
 - (v) a further additional take or pay arrangement to address 'back-end' payment risk to an appropriate value equivalent to the exposure (for example, for the development of infrastructure for a new coal mine, the undepreciated component of any relevant additional Rail Infrastructure or modification of existing Rail Infrastructure that was constructed solely for the purpose of the mine) and a bank guarantee for an equivalent or lesser amount payable on demand, or other form of security acceptable to QR Network, acting reasonably, to support payment under the take or pay arrangement;
 - (vi) an agreement to forfeit any right to relinquish Capacity that may arise under this Access Undertaking; or
 - (vii) any combination of the above conditions,
- provided that QR Network cannot require an Access Seeker to accept an Access Condition that is inconsistent with the Act or this Undertaking.

- (f) If an Access Condition results in QR Network earning revenue from the Access Seeker's Access that is in addition to the ongoing Access Charge (eg an upfront contribution or Access Facilitation Charge), QR Network will:
- (i) negotiate an agreement separate from the Access Agreement with the party who agreed to pay such additional revenue (or their nominee Access Seeker) which will provide for payment of a rebate to that party or their nominee, where the rebate is equivalent to the amount provided in the Access Charge for a cost component to the extent that this component is separately funded through the additional revenue (eg depreciation and the non-diversifiable component of the return on any relevant additional Rail Infrastructure, or modification of existing Rail Infrastructure); or
 - (ii) exclude the cost components separately funded through the additional revenue (eg the value of any additional Rail Infrastructure, or modification of existing Rail Infrastructure to the extent supported by the additional revenue) from the cost base (including the asset base) used to determine the ongoing Access Charge.
- (g) Where QR Network has sought an Access Condition from a party ("First Party") in relation to the construction of additional Rail Infrastructure, or the modification of existing Rail Infrastructure and Access is granted to another party ("Subsequent Party") to operate Train Services using all or part of that additional Rail Infrastructure, or modification of existing Rail Infrastructure, QR Network will either:
- (i) negotiate an agreement with the First Party where a rebate paid in accordance with Paragraph 6.5.2(f) includes the amount provided in the Access Charge paid by the Subsequent Party for the cost component to the extent that the component is separately funded through the additional revenue (eg depreciation and the non-diversifiable component of the return on the relevant additional Rail Infrastructure or modification of existing Rail Infrastructure); or
 - (ii) renegotiate the terms of the First Party's Access Conditions and enter into Access Conditions with the Subsequent Party, so that both parties share the responsibility that was originally borne solely by the First Party.
- (h) For the purposes of determining whether another Customer or Subsequent Party uses (or will use) a modification of Rail Infrastructure within the meaning of this Subclause 6.5.2, the Customer or Subsequent Party will be deemed not to do so unless the particular characteristics of the Customer or Subsequent Party's Train Service would also have resulted in the modification being required to be made in order for Access to be provided to the Customer or Subsequent Party. (For example, if QR Network increased the height of tunnels to provide Access to an Access Seeker using taller than usual trains, Customers or Subsequent Parties operating train services through those tunnels will not use that modification unless they use trains of a height that would also have required the height of the tunnels to be increased.)

6.5.3 Access Conditions Register

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

PART 7. CAPACITY MANAGEMENT

7.1 NETWORK MANAGEMENT PRINCIPLES

- (a) QR Network will perform scheduling, Train Control and associated services in accordance with the Network Management Principles.
- (b) QR Network will provide capacity related information to Access Holders in accordance with the Network Management Principles.

7.2 SERVICE SPECIFICATION AND TRAIN SCHEDULING

- (a) The Train Service Entitlement of an Access Holder will be defined in terms of a number of Train Services that can be operated in a given time period subject to constraints agreed between QR Network and the Access Holder. Timetabled Traffics are likely to be defined in terms of a Train Path between certain locations, on particular days, and at particular times. Cyclic Traffics are likely to be defined in terms of a number of Train Services within a particular period of time. The application of constraints is likely to vary significantly between different types of Train Services and may include, but will not necessarily be limited to, the following:
 - (i) specified days of operation and times at the origin and/or destination and where appropriate, specified arrival/departure times at intermediate locations, with an allowable variation around these specified time(s) for the scheduling of the Train Service;
 - (ii) maximum time period between Train Services;
 - (iii) minimum time period between Train Services;
 - (iv) average Below Rail Transit Time;
 - (v) the agreed threshold for on-time running of the Train Services;
 - (vi) regularity of timetable reviews and the applicable review process; and
 - (vii) allowable modifications of timetable, e.g. cancellation or deferral of services.
- (b) As outlined in Subclause 4.5.2, as part of the negotiation process, QR Network will develop an initial specification of a Train Service Entitlement for an Access Seeker. QR Network and the Access Seeker will further refine this specification of the Train Service Entitlement during the negotiation process. The Train Service Entitlement will finally be incorporated into the relevant Access Agreement.
- (c) In respect of Timetabled Traffics, the Train Service Entitlement will be used to develop an initial timetable, which QR Network and the Access Holder will then be required to adhere to unless and until such time as the timetable is varied in accordance with the Network Management Principles.
- (d) QR Network will, subject to the Network Management Principles, be able to manage the scheduling of train plans, including the MTP, WTP and DTP, to

optimise the use of the Rail Infrastructure as circumstances change from time to time. In doing so, QR Network will use reasonable endeavours to consult with other relevant infrastructure providers directly affected by the scheduling of particular train plans.

7.3 CAPACITY ANALYSIS

- (a) QR Network may undertake an Initial Capacity Assessment as part of the preparation of an Indicative Access Proposal. An Initial Capacity Assessment will determine if there is likely to be sufficient Available Capacity to meet the Access Seeker's requirements and, if not, the extent to which Capacity enhancements are likely to be required.
- (b) Where QR Network considers that there are major impediments to the provision of sufficient Capacity to meet the requirements of the Access Seeker, and that the Capacity enhancements that might be necessary would have a significant bearing on the economics of the proposed operation, then the Initial Capacity Assessment, if undertaken, may be conducted in more detail. This may add some time to the preparation of the Indicative Access Proposal and may be a reason for QR Network advising, in accordance with Paragraph 4.2(c), that an Indicative Access Proposal will not be available within thirty (30) days of QR Network's acknowledgment of the Access Application.
- (c) The results of the Initial Capacity Assessment, if undertaken, will be indicative only and will be subject to confirmation by a Capacity Analysis undertaken as part of the negotiation process. As outlined in Subclause 4.5.2, as part of the negotiation process QR Network will undertake a Capacity Analysis. The Capacity Analysis will be conducted in a more comprehensive manner than the Initial Capacity Assessment and will include an investigation of the operational impacts of the proposed Access Rights based on the further detail provided by the Access Seeker in its Operating Plan (see Subclause 8.1.4 for further detail). The Capacity Analysis will confirm whether there is sufficient Available Capacity to meet the Access Seeker's requirements and, if not, detail the requirements for Capacity enhancements. The Capacity Analysis will enable the finalisation of the resultant Train Service Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process).

7.4 CAPACITY ALLOCATION

7.4.1 Allocation of Capacity

- (a) Subject to Paragraphs 7.4.1(b) – (n), Access Rights will be allocated to the first Access Seeker with whom QR Network can negotiate and execute an acceptable Access Agreement. QR Network will provide all Access Seekers with a consistent level of service and opportunity to obtain Access Rights subject to the express provisions of this Undertaking.
- (b) If, at any time, two or more Access Seekers are seeking Access with respect to mutually exclusive Access Rights, each of the Access Seekers who has received an Indicative Access Proposal with respect to those mutually exclusive Access Rights will be advised, either in accordance with

Subparagraph 4.3(a)(iv) or Paragraph 4.5.2(h) that there is one or more other Access Seekers seeking to negotiate for mutually exclusive Access Rights. Failure to give such notification will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.

- (c) QR Network will identify whether it is possible for one or all of the Access Seekers seeking to negotiate for mutually exclusive Access Rights to modify their requirements in order to allow all Access Applications to be accommodated. If QR Network cannot identify a way in which all Access Applications can be accommodated, or if one or more of the Access Seekers does not want to change their Access Application, and as a result there are still two or more Access Seekers seeking to negotiate for mutually exclusive Access Rights, each of whom have notified QR Network, in accordance with Clause 4.4, of their intention to progress their Access Application on the basis of the arrangements outlined in the Indicative Access Proposal, QR Network will form a queue to determine which Access Seeker will be allocated the mutually exclusive Access Rights.
- (d) The order of a queue established in accordance with Paragraph 7.4.1(c) will initially be based upon:
 - (i) where the Access Application was lodged prior to 30 June 2006, application by QR Network of the principles for allocation of capacity specified in Subclause 7.4.1 of the 2001 Undertaking (with the initial order of priority in the queue of such Access Applications being determined in accordance with how favourable each Access Application is in terms of the commercial performance of Below Rail Services such that, for example, the first queue position is given to the Access Application most favourable in terms of the commercial performance of Below Rail Services); and
 - (ii) where the Access Application was lodged on or after 30 June 2006, the date on which QR Network received the relevant Access Applications, so that the Access Application received by QR Network at the earliest time is first in the queue, and the Access Application received next by QR Network is second in the queue, and so on, provided that any such Access Applications will be placed after any Access Applications referred to in Subparagraph 7.4.1(d)(i).
- (e) Once formed, QR Network may change the order of a queue where:
 - (i) the Negotiation Period for an Access Seeker has ceased in accordance with Paragraph 4.5.1(e);
 - (ii) QR Network reasonably considers that an Access Seeker has no genuine intention of obtaining Access Rights or is unlikely to be able to utilise Access at the level sought, taking into account in both instances and without limitation, the factors listed in Subparagraphs 4.6(d)(i)-(iii);
 - (iii) QR Network reasonably considers that the commercial performance of Below Rail Services is better served, as described in Paragraphs 7.4.1(f) and 7.4.1(g), by allocating Access to an Access Seeker who is in the queue but not first in the queue;

- (iv) two or more of the Access Applications relate to the same traffic type (for example, coal traffic) and specific principles are included in this Undertaking for the allocation of Capacity for that traffic type, in which case QR Network may change the order of the queue in accordance with those specified principles; or
 - (v) QR Network receives a new Access Application and this is added to an existing queue for mutually exclusive Access Rights.
- (f) QR Network will assess the ability of Access Seekers to contribute to the commercial performance of Below Rail Services by comparing the net present value (“NPV”) of contribution to the Common Costs of providing the Rail Infrastructure for the total haul for the different traffics subject to the different Access Applications in the queue. In determining the NPV of contribution to the Common Costs of providing the Rail Infrastructure for the total haul of a particular traffic, QR Network will include any contribution from other sources of revenue that would reasonably be expected to reduce or be eliminated as a consequence of QR Network not providing Access to the particular traffic (for example, Access Charges from another Train Service or combination of Train Services, or Transport Service Payments). If a traffic presents an NPV of contribution to the Common Costs that is 2% or more higher than the NPV of contribution to Common Costs for another traffic in the queue, and the first traffic is the subject of an Access Application lower in the queue than the second traffic, QR Network may move the Access Application relating to the first traffic so that it is above the Access Application relating to the second traffic in the queue. However, QR Network will not use this assessment to raise the position of any Access Seeker’s Access Application for coal carrying Train Service operating within the Central Queensland Coal Region above any other Access Application for coal carrying Train Service operating within the Central Queensland Coal Region within the queue. If QR Network, in assessing the NPV of contribution to Common Costs of different traffics subject to different Access Applications under this Paragraph 7.4.1(f), took into account a contribution from other sources of revenue that would reduce or be eliminated as a consequence of QR Network not providing Access to the particular traffic:
 - (i) on request by any Access Seeker adversely affected by that assessment, QR Network must provide the Access Seeker with a copy of the reasons for the assessment; and
 - (ii) in the event of a Dispute, the onus is on QR Network to demonstrate to the QCA’s satisfaction that a reduction or elimination of the other sources of revenue would reasonably be expected to occur as a consequence of QR Network not providing Access to the particular traffic.
- (g) Where a queue contains multiple Access Applications for coal carrying Train Services from different mines in the Central Queensland Coal Region, as between those Access Applications, QR Network will place a later Access Application seeking an Access Agreement term of at least ten (10) years in the queue ahead of an earlier Access Application seeking a term of less than ten (10) years if the Access Seeker for the later Access Application is ready and willing to execute an Access Agreement that is consistent with a Standard Access Agreement.

- (h) In the circumstances covered by Subparagraphs 7.4.1(e)(iii) and (iv), QR Network may change the order of the queue in the manner specified in Paragraphs 7.4.1(f) and 7.4.1(g) above without removing any Access Seeker from the queue.
- (i) QR Network will notify each Access Seeker who has an Access Application in a queue of any change to the position of their Access Application in the queue and the reason/s for that change.
- (j) An Access Seeker may only assign its position in a queue to another party where:
- (i) that party is an operator and the Access Seeker has entered into an agreement with that operator to provide the Train Services and wishes that operator to hold the Access Rights; or
 - (ii) that party has acquired the whole or a substantial part of the assets of the Access Seeker.
- (k) Where mutually exclusive Access Rights are sought by two or more Access Seekers who are competing in order to provide Train Service/s under a rail haulage agreement with the same Customer for the same service (in other words, the Access Rights sought relate to the same traffic task) (“Competing Applications”), and there is insufficient Available Capacity to satisfy any one of the Competing Applications as well as one or more other Access Applications for mutually exclusive Access Rights, then provided all of the Access Seekers have notified QR Network of their intention to progress their Access Applications on the basis of the arrangements outlined in the Indicative Access Proposal, QR Network will form a queue to determine which Access Seeker will be allocated the mutually exclusive Access Rights. The formation and operation of the queue will be no different than otherwise would be the case under this Clause 7.4.1 except for the following:
- (i) subject to Subparagraph 7.4.1(k)(iii) below, the Competing Applications will be collectively positioned in the queue as though they were a single application;
 - (ii) the date of the Competing Applications, for the purposes of the queue, will be deemed to be that of the earliest of the Competing Applications; and
 - (iii) where the Competing Applications are first in the queue, QR Network will commence negotiations with each of the Access Seekers and progress those negotiations to a stage where QR Network has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and both parties accepting a Standard Access Agreement (if applicable) or otherwise an access agreement consistent with the summary of the standard terms and conditions outlined in Schedule E. An Access Agreement will be negotiated and executed with the Access Seeker who demonstrates to QR Network’s reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s for the Customer for which the Access Rights are sought, and that the Customer is agreeable to the execution of the Access Agreement with that Access Seeker.

- (l) Where mutually exclusive Access Rights are sought by two or more Access Seekers with Competing Applications and Paragraph 7.4.1(k) does not apply, QR Network will commence negotiations with each of the Access Seekers and progress those negotiations to a stage where QR Network has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and both parties accepting a Standard Access Agreement (if applicable) or otherwise an access agreement consistent with the summary of the standard terms and conditions outlined in Schedule E. An Access Agreement will be negotiated and executed with the Access Seeker who demonstrates to QR Network's reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s for the Customer for which the Access Rights are sought, and that the Customer is agreeable to the execution of the Access Agreement with that Access Seeker.
- (m) Disputes concerning positions in a queue or any other aspect of QR Network's management of a queue may be referred to the QCA under Subclause 4.7.4 for resolution. In the event of such a Dispute, QR Network will not implement any change to any Access Seeker's position in the queue unless and until the Dispute is resolved in favour of such a change in position.
- (n) QR Network will expand the Capacity of the Rail Infrastructure in order to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker where QR Network reasonably considers that, in respect of the Capacity expansion, the expected net additional Below Rail revenue, less any expected costs associated with the expansion, is sufficient to commercially justify the required expenditure.

7.4.2 Capacity Resumption

- (a) Where an Access Holder, for any reason other than the occurrence of a Force Majeure Event or the failure of QR Network to make the Access Holder's Access Rights available, does not operate:
 - (i) a Train Service on a Scheduled Train Path seven (7) or more (not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular Scheduled Train Path exists; or
 - (ii) all of the Nominated Weekly Train Services for seven (7) or more (not necessarily consecutive) weeks out of any twelve (12) consecutive weeks,

the terms of the Access Agreement will provide that QR Network may, within sixty (60) days of the last day of the relevant twelve (12) occasions or weeks (whichever is relevant), by notice in writing, reduce from a nominated date (referred to as the "Date of Resumption") the Access Holder's Access Rights by:

- (iii) deleting the Scheduled Train Path referred to in Subparagraph 7.4.2(a)(i) from the Access Holder's Train Service Entitlement; or
- (iv) reducing the Access Holder's Nominated Weekly Train Services referred to in Subparagraph 7.4.2(a)(ii), provided that the number of remaining Nominated Weekly Train Services is no less than the Access Holder's average weekly usage during the relevant twelve (12) week period,

provided that the Access Holder cannot demonstrate, to QR Network's reasonable satisfaction, a sustained requirement for the Access Rights that have not been utilised, and QR Network is satisfied that it can demonstrate that it has:

- (v) a reasonable expectation of a sustained alternative demand for the Capacity used by the Access Rights in question; or
 - (vi) a reasonable expectation of a commercial benefit for the provision of Below Rail Services sufficiently material to justify the resumption of the Capacity used by the Access Rights in question.
- (b) QR Network may withdraw the notice provided in accordance with Paragraph 7.4.2(a) at any time prior to the Date of Resumption or fourteen (14) days following the conclusion of a dispute resolution process pursuant to Paragraph 7.4.2(d), whichever is the later. However, if QR Network had originally provided the notice in response to a written request by an Access Seeker under Paragraph 7.4.2(e), then QR Network may (at its election) withdraw the notice only if:
- (i) the Access Seeker who requested the resumption consents to the withdrawal of the notice; or
 - (ii) the Access Rights that QR Network is able to resume are not sufficient to enable QR Network to provide to the Access Seeker the Access Rights sought by the Access Seeker, and the Access Seeker has not agreed to accept the lesser Access Rights that QR Network would be able to provide.
- (c) Where QR Network resumes an Access Holder's Access Rights in accordance with this Subclause 7.4.2, the Access Charge payable by the Access Holder will be varied in accordance with the terms of its Access Agreement and the Access Agreement will be varied accordingly.
- (d) Where QR Network makes a decision to resume an Access Holder's Access Rights in accordance with Paragraph 7.4.2(a), and the Access Holder believes that QR Network's decision is not justified in the circumstances after having regard to the factors specified in Paragraph 7.4.2(a), the Access Holder may, within twenty-one (21) days of receiving notification from QR Network in accordance with Paragraph 7.4.2(a), refer the matter to the Dispute resolution process contained in its Access Agreement. In these circumstances, QR Network will not implement resumption until the Dispute resolution process has been concluded, and then may implement the resumption only to the extent that such resumption is consistent with the outcomes of the Dispute resolution process.
- (e) Where an Access Seeker has been notified in accordance with Paragraph 7.5.2(d) that an Access Holder has triggered the criteria in Subparagraph 7.4.2(a)(i) or 7.4.2(a)(ii), the Access Seeker may, within thirty (30) days of such notification, submit a written request to QR Network for it to resume Access Rights from an Access Holder in accordance with Paragraph 7.4.2(a). QR Network will provide notice to the Access Holder in accordance with Paragraph 7.4.2(a) provided that the Access Seeker has provided QR Network with a legally enforceable written undertaking (supported by security if required by QR Network) that it will:

- (i) reimburse QR Network for all of QR Network's reasonable costs associated with it seeking the resumption of the relevant Access Rights from the Access Holder, including the costs of QR Network participating in any dispute resolution process;
 - (ii) enter into an Access Agreement with QR Network upon terms and conditions agreed with QR Network in accordance with the negotiation process specified in this Undertaking, or failing agreement, resolved in accordance with the Dispute resolution process specified in this Undertaking, in respect of Access Rights equivalent to the relevant Access Rights should they be resumed from the Access Holder, and that QR Network's obligation to provide such equivalent Access Rights to the Access Seeker will commence at the same time that the relevant Access Rights are resumed from the Access Holder; and
 - (iii) indemnify QR Network if QR Network incurs a net loss as a result of the resumption of the relevant Access Rights from the Access Holder and the taking up of the equivalent Access Rights by the Access Seeker, such loss to be calculated and paid when the Access Seeker enters into an Access Agreement with QR Network in respect of the equivalent Access Rights, and shall be determined as the present value of any future reductions in contributions to QR Network's Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure assets) due to the net effect of the relevant resumption of Access Rights and the taking up of the equivalent Access Rights by the Access Seeker, considered over the remaining term of the Access Holder's existing Access Agreement on the assumption that the Access Holder does not utilise those Access Rights for such remaining term.
- (f) QR Network will provide written advice to the Access Seeker of whether or not it will resume the Access Rights in question, and if so the Date of Resumption, within seven (7) days of the decision being reached on whether or not the Access Rights can be resumed in accordance with Paragraph 7.4.2(a).

7.4.3 Capacity Relinquishment

- (a) This Subclause 7.4.3 describes when an Access Holder may relinquish Access Rights upon the payment of a Relinquishment Fee. This Subclause 7.4.3 also describes how this Relinquishment Fee may be reduced if QR Network enters into an Access Agreement with another Access Holder that has been identified by QR Network (provided that QR Network could not have entered into the Access Agreement in the absence of such relinquishment) in order to reflect the resultant variation in contribution to QR Network's Common Costs in relation to the section of corridor that is common between the relinquished Access Rights and new Access Rights.
- (b) Unless otherwise specified in the Access Holder's Access Agreement and provided the Access Holder has given QR Network reasonable notice of its intention to do so, an Access Holder may relinquish Access Rights upon payment of a Relinquishment Fee.

- (c) The period from the provision of the notice of intention to relinquish, pursuant to Paragraph 7.4.3(b), until the date of payment of the Relinquishment Fee shall not:
- (i) exceed two (2) years, where:
 - (A) Access Rights are to be relinquished under an Access Agreement that was executed on or after 30 June 2006; and
 - (B) that Access Agreement is for coal carrying Train Services (including those Train Services in relation to the Access Rights that are to be relinquished) operating in the Central Queensland Coal Region; or
 - (ii) exceed six (6) months, where Subparagraph 7.4.3(c)(i) does not apply.

During such period, the terms of the Access Agreement will continue to apply in respect of the Access Rights which the Access Holder intends to relinquish.

- (d) QR Network will reduce the Relinquishment Fee in accordance with Paragraph 7.4.3(f) if:
- (i) a new Access Holder has entered into an Access Agreement with QR Network in respect of Access Rights that QR Network could not have provided without using the whole or part of the relinquished Access Rights;
 - (ii) following the provision of the notice of intention to relinquish, but prior to the payment of the Relinquishment Fee, QR Network's obligation to provide the Access Rights under the new Access Agreement has commenced; and
 - (iii) no other Access Holder is seeking to transfer Access Rights in accordance with Subclause 7.4.4 or relinquish Access Rights in accordance with this Subclause 7.4.3 that more closely resemble the Access Rights sought by the new Access Holder.
- e) Where QR Network identifies an opportunity for it to enter into an Access Agreement with an Access Seeker that would result in a reduction to an Access Holder's Relinquishment Fee pursuant to Paragraph 7.4.3(d), QR Network will not unreasonably delay the process for negotiating and executing an Access Agreement with such Access Seeker.
- f) Subject to Paragraph 7.4.3(h), QR Network will reduce the Relinquishment Fee by subtracting from it the product of the Relinquishment Fee and the Reduction Factor. To the extent that the new Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service is less than the existing Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service, the Reduction Factor will be decreased in proportion to the relative contribution.
- g) Where:
- i) Access Rights are to be relinquished under an Access Agreement that was executed on or after 30 June 2006; and
 - ii) that Access Agreement is for coal carrying Train Services (including those Train Services in relation to the Access Rights that are to be relinquished) operating in the Central Queensland Coal Region,

the amount payable by the Access Holder to QR Network under Paragraph 7.4.3(b) will not exceed fifty percentage points (50%) of the Relinquishment Fee (as determined prior to any reduction under Paragraph 7.4.3(f)).

- h) In no circumstances will the Relinquishment Fee be reduced to less than zero (0).

7.4.4 Capacity Transfer

- (a) This Subclause 7.4.4 describes when and how an Access Holder may transfer all or part of its Access Rights to an Access Seeker, upon the payment to QR Network of a transfer fee (if applicable) designed so that QR Network should not be financially disadvantaged as a result of such transfer. This Subclause 7.4.4 acknowledges that transfers may occur for Train Services with the same origin and destination, or for Train Services with a different origin and destination. Given that the financial consequences to QR Network as a result of a transfer will differ in these situations, this Subclause 7.4.4 provides different mechanisms for determining the transfer fee in such situations, which are broadly described as follows:

- (i) for the transfer of Access Rights with the same origin and destination, the transfer fee reflects any reduction in contribution to QR Network's Common Costs over the remaining term of the existing Access Holder's Access Agreement, as a result of the transfer; and
- (ii) for the transfer of Access Rights with a different origin and destination, the transfer fee reflects the Relinquishment Fee that would have been paid if the existing Access Holder had relinquished its Access Rights, where such Relinquishment Fee is reduced in order to reflect the resultant variation in contribution to QR Network's Common Costs in relation to:
- for transfers of Access Rights within an Individual Coal System, provided that the new Access Rights are for a new traffic task (as described in Subparagraph 7.4.4(e)(ii)), the shorter of the haul distance of the relinquished Access Rights and the haul distance of the new Access Rights; and
 - for all other transfers, the section of corridor that is common between the relinquished Access Rights and new Access Rights.

Schedule M contains a worked example of the calculation of a transfer fee.

This Subclause 7.4.4 also describes the circumstances in which a Customer or Customers may require an Access Holder to transfer its Access Rights to an Access Seeker.

- (b) Subject to Paragraphs 7.4.4(c) - (e), an Access Holder may agree to transfer Access Rights to an Access Seeker, provided that the Access Seeker is seeking Access Rights with the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic) as the Access Holder's Access Rights.
- (c) The transfer of Access Rights between an Access Holder and an Access Seeker will be effected as a reduction in the Access Rights of the Access Holder, conditional upon the corresponding Access Rights being included in a

new or varied Access Agreement with the Access Seeker, and that QR Network's obligation to provide Access under that new or varied Access Agreement commences at the same time as the incumbent Access Holder's Access Agreement is varied or terminated (whichever is applicable).

- (d) The transfer of Access Rights with the same origin and destination between an Access Holder and an Access Seeker will only occur if:
- (i) QR Network is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking; and
 - (ii) the Access Holder has paid to QR Network, where applicable, a transfer fee determined by QR Network as equivalent to the present value, calculated at a discount rate equal to the Discount Rate, considered over the remaining term of the Access Holder's Access Agreement, of any future expected reductions in contributions to QR Network's Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure assets), due to the net effect of the relevant relinquishment of Access Rights and the take up of corresponding Access Rights by the Access Seeker on the assumption that the Access Holder would have fully utilised the Access Rights for the remaining term of its Access Agreement, provided that in no circumstances will the transfer fee be less than zero (0).
- (e) The transfer of Access Rights with a different origin and destination between an Access Holder and an Access Seeker will only occur if:
- (i) QR Network is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking;
 - (ii) the Access Holder has paid to QR Network, where applicable, a transfer fee equivalent to the Relinquishment Fee, provided that:
 - for Access Rights for coal carrying Train Services operating in the Central Queensland Coal Region, where the Access Rights are for the purpose of a new traffic task (that is, a traffic task, being the transportation of specified net tonnes of coal between a specified origin and destination, that was not included in the forecast traffic task for that period used in the determination of the relevant Reference Tariff); or
 - for Access Rights for Train Services other than coal carrying Train Services operating in the Central Queensland Coal Region, the Relinquishment Fee will be reduced in accordance with Paragraph 7.4.3(f); and
 - (iii) no other Access Holder is seeking to transfer Access Rights that more closely resemble the Access Rights sought by the Access Seeker.
- (f)
- (i) Subject to Paragraph 7.4.4(g), where an Access Holder has a Customer or Customers, who has or have provided concurrent written notification to QR Network and the relevant Access Holder that they intend to vary or terminate their rail haulage agreement(s) with the Access Holder and use another Access Seeker for some or all of their rail haulage services, then QR Network will reduce the Access Rights of the Access Holder

necessary for the Customer or Customers to effect the termination or variation of the relevant rail haulage agreement(s), provided that:

- (A) the equivalent Access Rights (“Transferred Access Rights”) are included in a new or varied Access Agreement with the Access Seeker (“New Access Agreement”); and
 - (B) that New Access Agreement commences at the same time as the Access Holder’s Access Agreement (“Old Access Agreement”) is varied or terminated (whichever is applicable).
- (ii) The terms of the Old Access Agreement relating to Take or Pay and Relinquishment Fees will apply to the New Access Agreement:
- (A) to the extent that the New Access Agreement relates to the Transferred Access Rights; and
 - (B) until the date that the Transferred Access Rights would have terminated under the Old Access Agreement.
- (iii) For the purpose of this Paragraph 7.4.4(f), Access Rights are deemed to be equivalent if those Access Rights relate to Train Services with the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic), the same origin and destination and transporting the same net tonnage of the same commodity.
- (g) The transfer of Access Rights as initiated by an Access Holder’s Customer or Customers in accordance with Paragraph 7.4.4(f) will only be permitted to proceed if:
- (i) the Customer or Customers has or have warranted to QR Network in writing that they either are the sole end Customer or collectively constitute one hundred percentage points (100%) of the Customers, in respect of any Train Services operated by the Access Holder pursuant to the Access Rights that they are requesting QR Network to transfer from the Access Holder to the Access Seeker;
 - (ii) where there is more than one Customer in respect of the Train Services operated by the Access Holder pursuant to the Access Rights sought to be transferred under Paragraph 7.4.4(f), all the Customers warrant to QR Network in writing that they have agreed to request QR Network to transfer the Access Rights in respect of those Train Services from the Access Holder to the Access Seeker;
 - (iii) the Access Holder’s rail haulage agreement or rail haulage agreements with its Customer or Customers was or were signed after 1 March 2002 or, where a relevant rail haulage agreement was signed on or before 1 March 2002 and the particulars of that agreement (such as the parties, and term of that agreement) were notified to the QCA prior to 30 June 2006, the agreement has been varied after 1 March 2002 to extend the term of the agreement and the period that is the extension of that term has commenced;
 - (iv) QR Network is satisfied that:
 - (A) the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking; and

- (B) the Access Seeker to be granted the Transferred Access Rights has agreed in writing to pay all Adjustment Charges (“Transferred Adjustment Charges”) that, but for the transfer in accordance with Paragraphs 7.4.4(f) to (j), are or would have become payable by the existing Access Holder in relation to Train Services operated prior to the commencement of the New Access Agreement (whether or not those Adjustment Charges are approved by the QCA before or after the commencement of the New Access Agreement);
 - (v) the Customer or Customers has or have provided QR Network with a legally enforceable written undertaking (including security if reasonably required by QR Network having regard to the financial capacity of the Customer(s)) indemnifying QR Network for:
 - (A) costs arising in respect of any Claim by the Access Holder in connection with the transfer; and
 - (B) shortfalls in Access Charges caused by the transfer, including any failure of the Access Seeker, who is to be granted the Transferred Access Rights, to pay all Transferred Adjustment Charges when due;
 - (vi) the Customer or Customers has or have paid to QR Network, where applicable, a transfer fee determined by QR Network as equivalent to the present value, calculated at a discount rate equal to the Discount Rate, considered over the remaining term of the Access Holder’s Access Agreement, of any future expected reductions in contributions to QR Network’s Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure assets), due to the net effect of the relevant transfer of Access Rights and the take up of the equivalent Access Rights by the Access Seeker on the assumption that the Access Holder would have fully utilised the Access Rights for the remaining term of its Access Agreement, provided that in no circumstances will the transfer fee be less than zero (0);
 - (vii) where information is provided by the Access Holder pursuant to Paragraph 7.4.4(h), the information provided, in QR Network’s reasonable opinion, does not show that the transfer of the Access Rights would not comply with Paragraphs 7.4.4(f) and (g); and
 - (viii) where a Dispute has been referred to the QCA pursuant to Paragraph 7.4.4(i), the Dispute has been resolved in favour of the transfer of Access Rights being permitted.
- (h) An Access Holder may, within fifteen (15) Business Days of being given a notice under Subparagraph 7.4.4(f), notify QR Network in writing of any reasons and supporting evidence as to why Subparagraphs 7.4.4(g)(i), (ii) or (iii) are not satisfied.
- (i) Where:
- (i) a transfer of Access Rights is initiated in accordance with Paragraph 7.4.4(f); and
 - (ii) a Dispute arises between the Customer or Customers initiating the transfer and the Access Holder as to whether Subparagraphs 7.4.4(g)(i),

(ii) and (iii) are satisfied and therefore whether the transfer should be permitted,

either the Customer or Customers or the Access Holder may refer the Dispute to the QCA for the determination of the Dispute under Subclause 4.7.4. QR Network will not be a party to the Dispute resolution process but QR Network will abide by the QCA's determination of the Dispute. If the QCA considers that it is necessary for QR Network to participate in the Dispute resolution process in order to resolve the Dispute, QR Network will participate and QR Network's costs will be borne by the Customer or Customers initiating the transfer and the Access Holder in the proportions determined by the QCA.

- (j) Access Rights may only otherwise be transferred by an Access Holder assigning its respective rights and obligations under an Access Agreement in accordance with the assignment provisions of that Access Agreement.

7.5 CAPACITY REGISTERS

7.5.1 Committed Capacity Register

- (a) Except as provided in Paragraph 7.5.1(b), no Access Holder is to assume that it has Access Rights beyond the term of its Access Agreement.
- (b) Where an Access Seeker requests Access that will utilise Capacity that would otherwise be Available Capacity because of the expiration of an existing Access Agreement for coal carrying Train Services, QR Network will approach the Access Holder of the existing Access Agreement, as well as the Customer served by that Access Agreement if they are entered on the Committed Capacity Register, and ask them if they wish to retain the Access Rights in question beyond the term of their current Access Agreement:
- (i) if the existing Access Holder (or Customer) advises QR Network within ninety (90) days of QR Network's notification under Subparagraph 7.5.1(b) that it does wish to retain the Access Rights in question for the existing mine which has the benefit of the Access under the existing Access Agreement or a Replacement Mine; and
- (ii) a new Access Agreement is executed for the Train Services (not in excess of the Train Services provided for under the existing Access Agreement) or the term of the current Access Agreement is extended, for a term of the lesser of ten (10) years or the remaining life of the existing mine, up to two (2) years prior to the expiry of the existing Access Agreement or such longer period where an Access Seeker is willing and able to sign an unconditional Access Agreement for the relevant Capacity at that time, or as otherwise agreed between the existing Access Holder (or Customer) and QR Network,

the Capacity that is required to provide the coal carrying Train Services under the new or extended Access Agreement with the existing Access Holder (or Customer) will not be Available Capacity.

- (c) Where an Access Seeker requests Access which will commence within two (2) years of the expiration of an existing Access Agreement and which will utilise

Capacity that will only become available following the expiration of that Access Agreement, QR Network will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the Committed Capacity Register established in accordance with Paragraph 7.5.1(d) as having an interest in the existing Access Rights of the existence of the Access Application. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.

- (d) QR Network will maintain a Committed Capacity Register that will identify parties who have an interest (whether as the existing holder or otherwise) in Committed Capacity or existing Access Rights. The Committed Capacity Register will identify:
- (i) the party who has an interest in the Committed Capacity or Access Rights;
 - (ii) the Committed Capacity or Access Rights in which they have an interest; and
 - (iii) the nature of that interest.

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

7.5.2 Capacity Resumption Register

- (a) If the Indicative Access Proposal for an Access Seeker identifies that QR Network does not have sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services, and QR Network cannot justify a Capacity enhancement in accordance with Paragraph 7.4.1(n) in order to create sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services, if requested by the Access Seeker, QR Network will place the Access Seeker on the Capacity Resumption Register.
- (b) The Capacity Resumption Register will identify:
- (i) the Access Seeker who has an interest in Access Rights; and
 - (ii) the Access Rights in which they have an interest.
- (c) An Access Seeker will remain on the Capacity Resumption Register until:
- (i) QR Network notifies the Access Seeker that Capacity availability changes will occur within the next two (2) years such that QR Network will have sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services; or
 - (ii) six (6) months after its initial entry onto the Capacity Resumption Register, except if, prior to its removal from the Capacity Resumption Register under this Subclause 7.5.2, the Access Seeker has notified QR Network in writing that it remains interested in the relevant Access Rights,

then six (6) months after the last such notification, or as otherwise reasonably agreed between QR Network and the Access Seeker.

- (d) If, in relation to Access Rights recorded in the Capacity Resumption Register, the relevant Access Holder triggers the criteria in Subparagraphs 7.4.2(a)(i) or 7.4.2(a)(ii), the Access Seeker recorded as having an interest in those Access Rights will be notified by QR Network within twenty-one (21) days of the relevant trigger occurring. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.
- (e) Nothing in this Subclause 7.5.2 derogates from the general principles for the allocation of Capacity outlined in Subclause 7.4.1.

PART 8. INTERFACE CONSIDERATIONS

8.1 INTERFACE RISK MANAGEMENT PROCESS

8.1.1 Overview

- (a) As Railway Manager, QR Network is responsible for ensuring that the Interface Risks associated with the operation of Train Services on the Rail Infrastructure are appropriately managed in accordance with this Part 8.
- (b) For the purpose of identifying the Interface Risks posed by the operation of a particular Train Service on the Rail Infrastructure, and agreeing a plan for managing those Interface Risks, QR Network and the Access Seeker or Access Holder will participate in the Interface Risk Management Process. This process will commence with an Interface Risk Assessment and culminate in an Interface Risk Management Plan ('IRMP').
- (c) In progressing the Interface Risk Management Process, QR Network and the Access Seeker or Access Holder are responsible for:
 - (i) ensuring that their representatives involved in the process have the appropriate competence to ensure that the process is conducted in a diligent manner;
 - (ii) ensuring that all relevant information, that is reasonably available, is provided to the other party on a timely basis to facilitate the process; and
 - (iii) using reasonable endeavours to ensure that all information provided is accurate.
- (d) The Interface Risk Management Process outlined in this Clause 8.1 shall be conducted for all new Train Services and for any variation to Train Services including changes in the Operating Plan or Rollingstock specification, and a new or varied IRMP, as the case may be, must be agreed between the Access Seeker or the Access Holder and QR Network prior to the operation of such new or varied Train Services. For the avoidance of doubt, a variation to existing Train Services will not require a new IRMP, varying the existing IRMP for those Train Services will be sufficient.

8.1.2 The Interface Risk Assessment

- (a) Schedule HA contains a sample IRMP which specifies a list of safety and Rollingstock issues that should, at a minimum, be addressed by the parties during the Interface Risk Assessment, along with suggested controls for the identified safety and Rollingstock issues. The IRMP developed by the parties may cover additional safety and/or Rollingstock issues and associated controls depending on the circumstances of the particular operation.
- (b) Prior to undertaking the Interface Risk Assessment, the Access Seeker or Access Holder will provide a draft Operating Plan to QR Network in accordance with Subclause 8.1.4.

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

8.1.3 The Interface Risk Management Plan ('IRMP')

- (a) Once the Interface Risk Assessment is complete, the Access Seeker or Access Holder and QR Network must jointly develop and agree the IRMP.

- (b) The IRMP must reflect the outcome of the Interface Risk Assessment. In particular, the IRMP will detail the controls agreed between QR Network and the Access Seeker or Access Holder for the Interface Risks identified and assessed during the Interface Risk Assessment. As such, it will specify:
- (i) which Safeworking Procedures and Safety Standards are applicable to the proposed operation;
 - (ii) the additional controls, including Rollingstock Interface Standards, agreed between the parties for the proposed operation;
 - (iii) the audit, inspection and review regime agreed between the parties; and
 - (iv) the particular party responsible for ensuring that the various elements of the IRMP are implemented and that the IRMP remains effective in addressing the Interface Risks it was developed to address.
- (c) Prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, QR Network shall ensure that its Safety Management System incorporates the elements agreed with the Access Seeker or Access Holder in the IRMP, that QR Network is responsible for implementing.
- (d) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, the Access Seeker or Access Holder (or where relevant, a Railway Operator appointed by the Access Seeker or Access Holder) will incorporate into its Safety Management System:
- (i) the elements agreed in the IRMP, that the Access Seeker or Access Holder is responsible for implementing; and
 - (ii) necessary processes for ensuring that the Access Seeker or Access Holder, its Rollingstock, Rollingstock Configurations and Train Services, at all times comply with the requirements of the Access Agreement, including the agreed IRMP.
- (e) The IRMP will become a schedule to the Access Seeker's or Access Holder's Access Agreement. If an Access Agreement has already been negotiated before the finalisation of the IRMP, the implementation of the IRMP may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and Environmental Investigation and Risk Management Report ("EIRMR").
- (f) If the Access Seeker or Access Holder and QR Network cannot agree any aspect of the IRMP, then either party may give to the other party notice in writing of the dispute ("IRMP Dispute Notice"), whereupon either party may then refer the matter to an expert for resolution in accordance with Subclause 4.7.3. If the matter is not referred to an expert for resolution within fourteen (14) days after a party gives an IRMP Dispute Notice to the other party, then at any time thereafter:
- (i) if the matter has not been referred to the Safety Regulator in accordance with Subparagraph 8.1.3(f)(ii) or the QCA in accordance with Subparagraph 8.1.3(f)(iii), either party may still refer the matter to an expert for resolution in accordance with Subclause 4.7.3;
 - (ii) if the matter has not been referred to an expert in accordance with Subparagraph 8.1.3(f)(i), or to the QCA in accordance with Subparagraph 8.1.3(f)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either party may refer the

matter to the Safety Regulator through any process that the Safety Regulator considers appropriate; and

- (iii) if the matter has not been referred to an expert in accordance with Subparagraph 8.1.3(f)(i), or to the Safety Regulator in accordance with Subparagraph 8.1.3(f)(ii), then either party may refer the matter to the QCA (acting with the advice of the Safety Regulator) for resolution in accordance with Subclause 4.7.4;

provided that if the matter is in the first instance referred to an expert for resolution (whether this occurs during or after the relevant fourteen (14) day period) and either party is not satisfied with the determination which the expert makes, then notwithstanding Paragraph 4.7.3(i), either party may, within twenty-one (21) days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Subparagraph 8.1.3(f)(ii) or the QCA under Subparagraph 8.1.3(f)(iii). Any determination made by the QCA or the Safety Regulator (whether or not following a determination by an expert) shall be final and binding upon the parties.

- (g) If an expert, the Safety Regulator or the QCA is called upon, under Paragraph 8.1.3(f), to make a determination the effect of which would be to establish the content of any aspect of the IRMP, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding principles for the resolution of a dispute under Clause 8.1.3(f) that may from time to time be determined by the Safety Regulator.

8.1.4 Operating Plan

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

8.1.5 Provision of Assistance by QR Network

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

8.1.6 Rollingstock Authorisation

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

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

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

terms of the agreed IRMP for resolution by an expert in accordance with Subclause 4.7.3.

8.1.7 Audit, Inspection and Review

- (a) The Access Holder must have in place processes to ensure that it complies with its IRMP at all times in its operations on the Rail Infrastructure.
- (b) QR Network and the Access Holder must inform each other of any failure to comply with the relevant IRMP, as and when they become aware of such non-compliance. This will include advice on the nature of the non-compliance and how the relevant party has rectified or intends to rectify the non-compliance.
- (c) In addition, where such failure is relevant to its operations on the Rail Infrastructure, the Access Holder must inform QR Network of any failure to comply with:
 - (i) any applicable laws;
 - (ii) QR Network Train Control directions; and
 - (iii) the Rollingstock and Rollingstock Configurations authorised under the Access Agreement.
- (d) In addition, QR Network will provide the Access Holder with Above Rail Rollingstock incident information concerning that Access Holder's Train Services.
- (e) Where QR Network has reasonable grounds to believe that the Access Holder has not or is not complying with any aspect of its IRMP, then QR Network may conduct or require the conduct of an audit or inspection of the relevant aspect of the Access Holder's Train Services provided that QR Network advises the Access Holder in writing of the reasonable grounds upon which it requires the audit or inspection prior to the audit or inspection. Any such inspection or audit may be conducted by QR Network, its appointed representative or by a suitably qualified person reasonably acceptable to both parties, provided that if the audit or inspection would require access to commercially sensitive information of the Access Holder, and the Access Holder has a legitimate commercial reason for wanting to withhold access to that information from QR Network, then the audit or inspection shall be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be given access to the commercially sensitive information by the Access Holder, but who shall be prohibited from disclosing that commercially sensitive information to QR Network. In carrying out such an inspection or audit, QR Network must not interfere unreasonably with the Access Holder's Rollingstock or Trains and must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the Access Holder's business activities.
- (f) Where the Access Holder has reasonable grounds to believe that QR Network has not or is not complying with any aspect of the relevant IRMP, it may conduct or require the conduct of an audit or inspection of the relevant aspect of the Rail Infrastructure provided that the Access Holder advises QR Network in writing of the reasonable grounds upon which it requires the audit or inspection prior to the audit or inspection. Any such inspection or audit may be conducted by the Access Holder, its appointed representative or by a suitably

qualified person reasonably acceptable to both parties, provided that if the audit or inspection would require access to commercially sensitive information of QR Network, and QR Network has a legitimate commercial reason for wanting to withhold access to that information from the Access Holder, then the audit or inspection shall be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be given access to the commercially sensitive information by QR Network, but who shall be prohibited from disclosing that commercially sensitive information to the Access Holder. In carrying out such an inspection or audit, the Access Holder must not interfere unreasonably with QR Network's provision of Above Rail Services and Below Rail Services and must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the business activities of QR Network or other Access Holders.

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

8.2 ENVIRONMENTAL RISK MANAGEMENT PROCESS

8.2.1 Environmental Investigation and Risk Management Report

- (a) As outlined in Clause 4.5, as part of the negotiation process or as otherwise specified in an Access Agreement, the Access Seeker or Access Holder will commission a suitably qualified person, reasonably acceptable to both QR Network and the Access Seeker or Access Holder, to prepare an Environmental Investigation and Risk Management Report ("EIRMR") containing an environmental investigation component and an environmental risk management component which respectively identify:
- (i) possible risks of Environmental Harm arising out of the proposed use of the Rail Infrastructure by the Access Seeker or Access Holder, including risks associated with those matters identified in Schedule J; and
 - (ii) the manner in which the Access Seeker or Access Holder proposes to address the possible risks of Environmental Harm identified, as well as the roles and responsibilities, including financial responsibility, for the control measures proposed (including an audit regime).
- (b) In order to ensure that an appropriate EIRMR is developed, QR Network will disclose to an Access Seeker or Access Holder on a timely basis all relevant information, reasonably available to it, relating to the environmental impact of the Access Seeker's or Access Holder's proposed operations on the Rail Infrastructure. This information may include:
- (i) details of any Environmental Authorities held by QR Network that are relevant to the operation by the Access Seeker or Access Holder of its proposed Train Services on the Rail Infrastructure;
 - (ii) relevant environmental reports;
 - (iii) a copy of QR Network's Code of Practice for Railway Noise Management;
 - (iv) any currently applicable noise levels or limits;
 - (v) particulars of noise complaints and enforcement actions; and
 - (vi) any other information from QR Network's Environmental Management System ("EMS") considered relevant by QR Network to the development of an appropriate EIRMR.
- (c) If an Access Seeker or Access Holder has an existing EMS that it proposes to use in connection with its proposed operation on the Rail Infrastructure, the EIRMR should also detail the relevant parts of the Access Seeker's or Access Holder's existing EMS, including how those parts address the risks identified in the EIRMR. Extracts of the relevant parts of the EMS should also be included in the EIRMR.
- (d) The Access Seeker or Access Holder must provide a copy of the EIRMR to QR Network for its consideration.

- (e) QR Network will consider whether the EIRMR adequately addresses the issues outlined in Paragraph 8.2.1(a) and advise the Access Seeker or Access Holder of its decision.
- (f) In order to assist QR Network in determining the adequacy of an EIRMR provided to it, the Access Seeker or Access Holder will disclose to QR Network all relevant information reasonably available to it relating to the environmental impact of its proposed operations on the Rail Infrastructure.
- (g) If, in QR Network's reasonable opinion, the EIRMR discloses areas of risk that cannot be adequately managed by the proposals included in the EIRMR, or the EIRMR fails to identify and adequately deal with additional relevant environmental risks, QR Network may notify the Access Seeker or Access Holder in writing of the risks not adequately managed or not identified or adequately dealt with.
- (h) If QR Network considers that the EIRMR does adequately address the issues outlined in Paragraph 8.2.1(a), or if QR Network fails to give the Access Seeker or Access Holder the notice referred to in Paragraph 8.2.1(g) within thirty (30) days of receipt (or such other period as the parties, acting reasonably, agree), the EIRMR will be accepted.
- (i) If QR Network gives the Access Seeker or Access Holder a notice pursuant to Paragraph 8.2.1(g), the Access Seeker or Access Holder may respond to QR Network, by a date agreed by the parties, with a written proposal that:
 - (i) contains an investigation of the areas of risk and/or additional relevant environmental risks referred to in the notice provided pursuant to Paragraph 8.2.1(g);
 - (ii) specifies risk abatement or attenuation measures that the Access Seeker or Access Holder proposes to undertake in relation to the relevant risks, or specifies how the Access Charge might contain a component reflecting the cost to QR Network of assuming all or some portion of the risk;
 - (iii) where risk abatement or attenuation measures are proposed pursuant to Subparagraph 8.2.1(i)(ii), specifies a timeframe for implementation of those measures; and
 - (iv) specifies details of any public consultation the Access Seeker or Access Holder proposes to undertake in connection with the implementation of any such measures.
- (j) QR Network may, exercising reasonable discretion, accept or reject all or part of the Access Seeker's or Access Holder's proposal (the "Proposal"). If QR Network accepts the Proposal, it will be incorporated into and form part of the EIRMR, which will then be accepted. If QR Network rejects all or part of the Proposal, it may advise the Access Seeker or Access Holder of the risks not adequately managed or not identified or adequately dealt with.
- (k) If the Access Seeker or Access Holder fails to submit its Proposal within the specified time, or if QR Network rejects all or part of the Proposal, then either QR Network or the Access Seeker or Access Holder may refer the issue of whether the EIRMR and/or the Proposal does not adequately manage or does not identify or adequately deal with the relevant environmental risks, to Dispute resolution or determination in accordance with Clause 4.7 if an Access Agreement has not already been signed, or if an Access Agreement has

already been signed, in accordance with the Dispute resolution process provided therein.

- (l) If the expert or QCA determination (as applicable) finds that the Proposal and/or the EIRMR does adequately manage the risks or does identify and adequately deal with the risks, then the EIRMR (as modified by the Proposal, where applicable) will be accepted.
- (m) If the expert or QCA determination (as applicable) finds that the Proposal and/or the EIRMR fails to adequately manage the risks or fails to identify and adequately deal with the risks, and the Access Seeker or Access Holder amends the EIRMR in accordance with the expert's or QCA's determination and/or recommendations, the EIRMR (as amended) will be accepted.
- (n) The accepted EIRMR will be incorporated as a schedule to the Access Seeker's or Access Holder's Access Agreement. If the Access Agreement has already been negotiated before the acceptance of the EIRMR, the implementation of the EIRMR may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and the IRMP.
- (o) If the expert or QCA determination (as applicable) finds that the Proposal and/or the EIRMR fails to adequately manage the risks or fails to identify and adequately deal with the risks, and the Access Seeker or Access Holder fails, within the timeframe nominated by the expert or QCA, to amend the EIRMR in accordance with the expert's or QCA's determination and/or recommendations, QR Network may cease negotiations or terminate the Access Agreement (whichever is applicable).
- (p) A new or varied EIRMR shall be prepared as outlined in this Subclause 8.2.1 for all new Train Services and for any variation to Train Services prior to the operation of such new or varied Train Services.

8.2.2 Environmental Management System

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

- (b) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, QR Network will ensure that the elements included in the EIRMR, which QR Network is responsible for implementing, are incorporated in QR Network's EMS.

8.2.3 Audit and Review of EIRMR

- (a) As noted in Subparagraph 8.2.1(a)(ii), an Access Holder's EIRMR will specify the environmental audit requirements for its Train Services. The frequency of environmental audits must be reasonably linked to the risks identified in the EIRMR.
- (b) An Access Holder will provide QR Network with copies of those parts of any environmental audits undertaken by or on behalf of the Access Holder that are relevant to the operation of its Train Services on the Rail Infrastructure.
- (c) QR Network will provide an Access Holder with copies of those parts of QR Network's environmental audits that are relevant to the Access Holder's operation of Train Services on the Rail Infrastructure.
- (d) An Access Holder must advise QR Network of any failure to comply with its EIRMR, as and when the Access Holder becomes aware of such failure. QR Network must advise an Access Holder of any failure to comply with the EIRMR applicable under the Access Holder's Access Agreement, as and when QR Network becomes aware of such failure. The Access Agreement will specify the consequences for a party's failure to notify in accordance with this Paragraph 8.2.3(d).
- (e) If QR Network becomes aware of:
- (i) any inadequacy of the Access Holder's EIRMR due to:
 - any change in Environmental Laws of relevance to the Access Holder's Train Services; or
 - any conduct on the part of the Access Holder which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or
 - (ii) any non-compliance by the Access Holder with the EIRMR,
then QR Network may by notice to the Access Holder direct the Access Holder to undertake a review of the adequacy of its EIRMR and/or the Access Holder's compliance with it. The review will only deal with:
 - (iii) the extent to which the EIRMR appears not to address a change in applicable Environmental Laws; or
 - (iv) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or
 - (v) the extent of non-compliance by the Access Holder with its EIRMR,
whichever is applicable in the circumstances.
- (f) If directed by QR Network to undertake a review in accordance with Paragraph 8.2.3(e), the Access Holder will ensure the review is carried out and will provide

QR Network with a copy of the review report not later than three (3) months after the notice was received from QR Network.

- (g) The Access Holder's Access Agreement will specify the obligations of both QR Network and the Access Holder in relation to the implementation of the outcomes of a review carried out in accordance with Paragraph 8.2.3(e), including the implementation of changes to the EIRMR.
- (h) The Access Holder's Access Agreement will specify the circumstances in which QR Network may suspend the operation of an Access Holder's Rollingstock or Train Services, on environmental grounds, during the course of the Access Holder's Access Agreement.

8.3 ADJOINING INFRASTRUCTURE

- (a) Unless otherwise agreed, where a Third Party Access Seeker or Third Party Access Holder proposes to construct infrastructure which connects to the Rail Infrastructure but for which QR Network will not be Railway Manager, QR Network reserves the right to design, project manage, construct, commission, maintain, upgrade, and in any other way manage the Connecting Infrastructure, provided that:
 - (i) in undertaking any tasks associated with this right, QR Network may only undertake a reasonable standard of works bearing in mind the nature of the traffic and the current or planned service standards for the Rail Infrastructure; and
 - (ii) the Third Party Access Seeker or Third Party Access Holder:
 - (A) is given a reasonable period within which to provide comments to QR Network on any design or construction matters; and
 - (B) may provide comments to QR Network identifying any matters relating to QR Network's proposed project management of the construction of the Connecting Infrastructure that will result in unreasonable costs or delays being incurred by the Third Party Access Seeker or Third Party Access Holder.
- (b) The Third Party Access Seeker or Third Party Access Holder will pay QR Network an amount, for work carried out in accordance with Paragraph 8.3(a), which is reasonable given the terms and conditions of the agreement governing the development of the Connecting Infrastructure, provided that QR Network will pay the reasonable costs (excluding Consequential Loss) incurred by the Third Party Access Seeker or Third Party Access Holder where QR Network has unreasonably delayed the development of the Connecting Infrastructure.
- (c) Where the Third Party Access Seeker or Third Party Access Holder and QR Network cannot agree as to:
 - (i) whether works referred to under Subparagraph 8.3(a)(i) are to a reasonable standard;
 - (ii) what is a reasonable period within which to provide comments to QR Network under Subparagraph 8.3(a)(ii)(A);
 - (iii) whether QR Network's proposed project management of the construction of the Connecting Infrastructure will result in unreasonable costs or

delays being incurred by the Third Party Access Seeker or Third Party Access Holder;

- (iv) an amount payable under Paragraph 8.3(b);
- (v) whether QR Network has unreasonably delayed the construction of Connecting Infrastructure; or
- (vi) any other aspect of a Rail Connection Agreement,

then, subject to any other remedies sought by a party at law, either party may initiate the dispute resolution process in Clause 4.7.

PART 9. REPORTING

9.1 QUARTERLY PERFORMANCE REPORTS

- (a) QR Network will publicly release a quarterly report in relation to each complete Quarter within the Term and which contains the information set out in Paragraphs 9.1(e) to (k). QR Network will use reasonable efforts to ensure that the information contained in each quarterly report is accurate.
- (b) The quarterly reports will be publicly released within thirty (30) days of the end of the subject Quarter.
- (c) In publishing a quarterly report in accordance with Paragraph 9.1(a), QR Network will include in the quarterly report a comparative presentation of the information in the subject Quarter and the four (4) preceding Quarters in respect of the information set out in Paragraphs 9.1(e) to 9.1(k). To the extent that a preceding Quarter is not within the Term, the information for the preceding Quarter for the purposes of the comparative presentation shall be that published for that Quarter under the 2005 Undertaking.
- (d) Where a quarterly report has been published in accordance with Paragraph 9.1(a) and QR Network has actual knowledge of a material error in the quarterly report, QR Network will, as soon as practicable but no later than the date by which the next quarterly report is to be publicly released, publish either, at QR Network's discretion, an erratum or a corrected quarterly report identifying the material errors. An error will be a material error where:
- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
 - (ii) otherwise, QR Network or the QCA considers the error to be material.
- In addition, QR Network shall notify the QCA of any errors that QR Network has actual knowledge of in the quarterly report unless the QCA has otherwise been notified or is aware of the error.
- (e) Information on the reliability of Train Services that have operated in the subject Quarter, as follows:
- (i) number and percentage of Healthy Train Services that reach their destination within the Agreed Exit Threshold;
 - (ii) number and percentage of Healthy Train Services that do not reach their destination within the Agreed Exit Threshold solely due to delays attributed to QR Network as Railway Manager;
 - (iii) number and percentage of Healthy Train Services that do not reach their destination within the Agreed Exit Threshold, but excluding those Train Services identified in Subparagraph 9.1(e)(ii);
 - (iv) number and percentage of Unhealthy Train Services that do not deteriorate further, within the Agreed Deterioration Threshold;
 - (v) number and percentage of Unhealthy Train Services that deteriorate beyond the Agreed Deterioration Threshold, solely due to delays attributed to QR Network as Railway Manager;

- (vi) number and percentage of Unhealthy Train Services that deteriorate beyond the Agreed Deterioration Threshold, due solely to delays attributed to an Access Holder or to unallocated reasons;
 - (vii) number and percentage of Unhealthy Train Services that deteriorate beyond the Agreed Deterioration Threshold, but excluding those Train Services identified in Subparagraphs 9.1(e)(v) or (vi); and
 - (viii) number and percentage of Unhealthy Train Services that do not reach their destination within the Agreed Exit Threshold.
- (f) Information on the transit time of Train Services that have operated in the subject Quarter, as follows:
- (i) for all Train Services, the average Above Rail Delay, in minutes, per one hundred (100) train kilometres;
 - (ii) for all Train Services, the average Below Rail Delay, in minutes, per one hundred (100) train kilometres;
 - (iii) for all Train Services, the average Unallocated Delay, in minutes, per one hundred (100) train kilometres; and
 - (iv) for all coal carrying Train Services operating in the Central Queensland Coal Region:
 - (A) the average actual Below Rail Transit Time; and
 - (B) the percentage of Train Services where the agreed Maximum Transit Time has been exceeded.
- (g) Information on the availability of the network for Train Services in the subject Quarter, as follows:
- (i) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributed directly to QR Network as Railway Manager;
 - (ii) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributed directly to an Access Holder (which would include cancellations attributable to a Railway Operator appointed by the Access Holder);
 - (iii) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that cannot be clearly assigned as directly attributable to an Access Holder or to QR Network as Railway Manager; and
 - (iv) the percentage of Agreed Paths which QR Network, as Railway Manager, does not make available for coal carrying Train Services operating in the Central Queensland Coal Region.
- (h) Information on the safety of Train Services that have operated in the subject Quarter, being the number of major reportable incidents, as reported to the Safety Regulator.
- (i) Information on speed restrictions, being the average percentage and the average number of kilometres of Track under temporary speed restriction.

- (j) Information on QR Network's billing performance, being the number of instances where an Access Holder has made a complaint to QR Network about an incorrectly calculated bill, and where QR Network's investigation into the complaint identifies that the bill was incorrectly calculated.
- (k) In respect of the treatment by Train Control of Third Party Access Holder Train Services and the Train Services of QR Operational Business Groups, operating in direct competition with each other, the following information regarding complaints from each of Third Party Access Holders collectively and QR Operational Business Groups as Access Holders collectively that QR Network Train Control has made a decision in breach of QR Network's traffic management decision making matrix contained in Schedule G, Part B, Appendix 2, of this Undertaking:
- (i) the number of complaints received by QR Network;
 - (ii) of the complaints received by QR Network, the number which are currently being assessed by QR Network;
 - (iii) of the complaints received by QR Network, the number which, after being assessed by QR Network, were verified; and
 - (iv) of the complaints which were verified, the number of verified complaints expressed per 100 train paths used by either, as relevant, the Third Party Access Holders collectively or QR Operational Business Groups as Access Holders collectively.
- (l) For the purposes of Paragraphs 9.1(e) to (k) other than Paragraph 9.1(i) and Subparagraphs 9.1(f)(iv) and (g)(iv), the Train Services will be aggregated as follows:
- (i) Train Services operated for the purpose of transporting bulk coal and mineral products;
 - (ii) Train Services operated for the purpose of transporting freight products, other than those products referred to in Subparagraph 9.1(l)(i); and
 - (iii) Train Services operated for the purpose of providing long distance passenger transport.
- (m) For the purposes of Paragraph 9.1(i), information on speed restrictions will be reported in the following segments:
- (i) the Central Queensland Coal Region; and
 - (ii) the remainder of the network, with the exception of:
 - the Metropolitan Region; and
 - Standard Gauge Rail Infrastructure.

9.2 ANNUAL REPORTS

9.2.1 Annual Financial Report

Within six (6) months after the end of the subject Year, or such longer time as agreed by the QCA, QR Network will publicly release Financial Statements in relation to the subject Year, that have been prepared and certified by the QR Network Chief Executive in accordance with Subclause 3.2.1 and, for Financial Statements prepared under Subparagraph 3.2.1(a)(i), which will be accompanied by the audit certificate prepared in accordance with Subclause 3.2.2.

9.2.2 Annual Performance Report

- (a) Within four (4) months of the end of the subject Year, or such longer time as agreed by the QCA, QR Network will publicly release an annual performance report in relation to the subject Year (either complete or partial) containing the information set out in Paragraphs 9.2.2(c) to (f) and which will be accompanied by an audit certificate prepared in accordance with Subclause 9.5 in respect of QR Network's compliance with its obligations under this Subclause 9.2.2.
- (b) Where an annual performance report has been published in accordance with Paragraph 9.2.2(a) and QR Network has actual knowledge of a material error in the annual performance report, QR Network will, as soon as practicable but no later than six (6) months after acquiring knowledge of the material error, publish either, at QR Network's discretion, an erratum or a corrected annual performance report identifying the material errors. An error will be a material error where:
- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
 - (ii) otherwise, QR Network or the QCA considers the error to be material.

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

- (c) Subject to Paragraph 9.2.2(g), information in relation to QR Network's compliance with the Undertaking over the subject Year, or such part of the subject Year within the Term, as follows:
- (i) the number and percentage of requests for Preliminary Information received in accordance with this Undertaking and responded to within the applicable timeframe nominated in Paragraph 4.1(d);
 - (ii) for those requests for Preliminary Information received in accordance with this Undertaking not responded to within the applicable timeframe nominated in Paragraph 4.1(d), the average delay (in days) taken to provide the Preliminary Information;
 - (iii) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in Paragraph 4.2(a) or (b);
 - (iv) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in Paragraph 4.2(a) or (b), the average delay (in days) taken to acknowledge the Access Applications;
 - (v) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in Paragraph 4.2(c);
 - (vi) the number and percentage of Access Applications received in accordance with this Undertaking for which an extension of time for provision of an Indicative Access Proposal is sought by QR Network in accordance with Paragraph 4.2(c);

- (vii) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in Paragraph 4.2(c), the average delay (in days) taken to provide the Indicative Access Proposals;
 - (viii) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 4.7;
 - (ix) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 4.7 and QR Network was found to have committed a breach of the Undertaking;
 - (x) the number of instances where QR Network has received a complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3; and
 - (xi) the number of instances where QR Network has received a complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3 and QR Network was found to have committed a breach of those ring fencing obligations.
- (d) Subject to Paragraph 9.2.2(g), information in relation to the outcome of QR Network's negotiations with Access Seekers over the subject Year, or such part of the subject Year within the Term, as follows:
- (i) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker;
 - (ii) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of any reason other than the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker; and
 - (iii) the number of instances where a Negotiation Period commenced in accordance with this Undertaking has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker.
- (e) Information on network service quality most recently measured within the subject Year, being Track quality for the network measured by a quality index with component measures including gauge, top, twist and versine.
- (f) For the purpose of Paragraph 9.2(e), the network service quality will be reported in the following segments:
- (i) the Central Queensland Coal Region; and
 - (ii) the remainder of the network, with the exception of:
 - the Metropolitan Region; and
 - Standard Gauge Rail Infrastructure.

- (g) The information referred to under Paragraphs 9.2.2(c) and (d) will be taken to include the equivalent information in respect of:
- (i) any part of the subject Year that is prior to the Commencing Date (in relation to QR and the 2005 Undertaking as applicable); and
 - (ii) QR Network's negotiations with Access Seekers where Paragraph 2.5(b) applies.

9.2.3 Maintenance Cost Report

- (a) Within four (4) months after the end of the subject Year, or such longer time as agreed by the QCA, QR Network will publicly release an annual report of actual maintenance costs containing the information set out in Paragraph 9.2.3(b) for the geographic areas specified in Paragraph 9.2.3(c) in a format to be agreed with the QCA from time to time.
- (b) QR Network will report its actual maintenance costs in the subject Year compared to the forecast maintenance costs accepted by the QCA for the purpose of determining Reference Tariffs, and will provide an explanation of significant variations between actual and forecast maintenance costs.
- (c) The actual and forecast maintenance costs will be separately reported for each Individual Coal System Infrastructure and for any section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted forecast maintenance costs for the purpose of assessing the relevant Reference Tariffs unless otherwise agreed by QR Network and the QCA.
- (d) Where a report has been published in accordance with Paragraph 9.2.3(a) and QR Network has actual knowledge of a material error in the report, QR Network will, as soon as practicable but no later than six (6) months after acquiring knowledge of the material error, publish either, at QR Network's discretion, an erratum or a corrected report identifying the material errors. An error will be a material error where:
- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
 - (ii) otherwise, QR Network or the QCA considers the error to be material.

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

9.2.4 Regulatory Asset Base Report

- (a) Within one (1) month after notification by the QCA of its acceptance of QR Network's roll forward of the Regulatory Asset Base, QR Network will publicly release an annual report of changes to the Regulatory Asset Base, containing the information set out in Paragraph 9.2.4(b) for the geographic areas specified in Paragraph 9.2.4(c) in a format to be agreed with the QCA from time to time.

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

9.3 REPORTING TO THE QCA

- (a) The QCA has the right, by written notice, to request that QR Network provide to the QCA information or a document that the QCA reasonably requires for the purpose of performing its obligations or functions in accordance with either this Undertaking or an Access Agreement developed pursuant to this Undertaking. The notice must include a description of the information or document required, the purpose for which it is required, and the day by which it is required, provided that the day stated in the notice must be reasonable.
- (b) QR Network will comply with a request by the QCA under Paragraph 9.3(a) by the day stated in the notice unless QR Network has a reasonable excuse for non compliance.
- (c) QR Network will provide to the QCA information in accordance with Schedule MB which information shall be accompanied by a responsibility statement signed by the QR Network Chief Executive.
- (d) QR Network will report to the QCA any breaches of this Undertaking of which QR Network is aware, including advising the QCA of the nature of the breach and the remedial action proposed or taken by QR Network in respect of the breach, at the following times:
- (i) within ten (10) business days of the end of each calendar month, in relation to any breaches of obligations with respect to timeframes that occurred within that calendar month; and
 - (ii) in relation to other breaches, as soon as QR Network becomes aware of the breach,
- except where:

- (iii) if that information was sought from QR Network by the QCA under section 105 or 126 of the Act, QR Network could lawfully refuse to provide it to the QCA.

Where QR Network does not report a breach or a remedial action proposed or taken by QR Network to the QCA on the basis of Subparagraph 9.3(d)(iii), QR Network must notify the QCA of this and QR Network or the QCA may apply to the Supreme Court of Queensland for a determination of whether the exception in Subparagraph 9.3(d)(iii) applies.

9.4 COMPLIANCE OFFICER

- (a) Without affecting QR Network's liability to discharge all its obligations under the Undertaking, the Compliance Officer is to be responsible for using best efforts to undertake the following activities:
 - (i) notifying the QR Network Chief Executive:
 - (A) as soon as possible of any material breach of the Undertaking by QR Network and advising of any remedial action proposed or taken by QR Network in respect of the breach; and
 - (B) in respect of other breaches and the remedial action proposed or taken by QR Network in respect of those breaches, on a monthly basis;
 - (ii) taking all steps necessary to ensure that QR Network is able to meet its obligations under Subclause 3.2.1, Paragraphs 9.1(a) and (b), Subclauses 9.2.1 to 9.2.4 and Clause 9.3; and
 - (iii) taking all steps necessary to ensure that QR Network is able to meet any other obligation under the Undertaking nominated by the QR Network Chief Executive and agreed to by the QCA in writing.
- (b) The QR Network Chief Executive will be responsible for taking all steps necessary for ensuring that QR Network is able to meet any other reporting obligation or activity imposed on QR Network by the Undertaking not identified or nominated under Paragraph 9.3(a).

9.5 AUDIT OF PERFORMANCE REPORT

- (a) QR Network's compliance with its obligations under Clause 9.1 and Subclause 9.2.2 ("Reporting Obligations") will be audited annually.
- (b) The QCA may require the annual audit, referred to in Paragraph 9.5(a), to be conducted by an external party, and if it does, the following process will apply:
 - (i) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA's approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Subparagraph 9.5(b)(ii);
 - (ii) if, following completion of an audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may

advise QR Network that its approval of that auditor in relation to the next external audit of QR Network's compliance with the Reporting Obligations is withdrawn, such advice to be provided in writing and within three (3) months of completion of the audit;

- (iii) the auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the auditor's obligations to QR Network and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence; and
 - (iv) prior to commencing the audit the auditor must agree an audit plan with QR Network, document that audit plan, and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR Network), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise.
- (c) QR Network will provide any relevant information the auditor reasonably requires for the purpose of conducting the annual audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network.
- (d) The auditor will be required to enter into a confidentiality deed with QR Network in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the annual audit and completing the audit report detailed below.
- (e) The auditor will compile an audit certificate identifying:
- (i) whether QR Network has complied in all material respects with the Reporting Obligations;
 - (ii) in the event that the auditor identifies that QR Network has not complied in all material respects with the Reporting Obligations, information as to the relevant non-compliance; and
 - (iii) the process adopted for the conduct of the audit.
- (f) At the same time as it releases the annual performance report under Paragraph 9.2.2(a), QR Network will provide to the QCA a copy of any letter or report from the auditor accompanying the audit certificate which explains the audit findings in greater detail.

PART 10. DEFINITIONS & INTERPRETATIONS

10.1 DEFINITIONS

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

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

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

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

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

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

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

“Access Agreement” means an agreement between QR Network and an Access Holder for the provision of Access and, subject to Subparagraph 2.5.2(e), includes an Internal Access Agreement. For the purposes of Paragraph 5.1(h), Paragraph 7.4.1(g), Subclause 7.4.2, Subclause 7.5.1 and the definition of “Evaluation Period” in Clause 10.1, agreements providing for multiple Train Services are deemed to be separate Access Agreements for each Train Service. To the extent that the QCA considers that Access Agreement should have that different meaning for the purposes of any other provisions of this Undertaking, it will:

- notify QR Network and other interested stakeholders of the additional provision (or provisions) to which it considers that different meaning should apply;
- provide QR Network and other interested stakeholders with a reasonable time in which to provide submissions in relation to that proposal;
- consider any submissions received from QR Network and other interested stakeholders, and the matters set out in section 138(2) of the Act; and
- determine whether that different meaning should apply to the provision (or provisions) proposed.

If during the term of this Undertaking the QCA determines that that different meaning of Access Agreement should apply to any additional provisions, it will be deemed that for the purposes of those provisions Access Agreement has that meaning;

“Access Application” means a request for Access by an Access Seeker which has been prepared in writing and which complies with the information requirements of Paragraph 4.1(b);

“Access Charge” means the price paid by an Access Holder for Access under an Access Agreement;

“Access Conditions” has the meaning given in Paragraph 6.5.2(a).

“Access Conditions Register” means a register maintained by QR Network and including the information identified in Subclause 6.5.3;

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

“Access Holder” means a party who holds Access Rights;

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

“Access Seeker” means a party who is seeking new or additional Access Rights;

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

“Acknowledgment Notice” means a notice given to an Access Seeker under Paragraph 4.2(a) or Paragraph 4.2(b) acknowledging the receipt of an Access Application;

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

“Ad Hoc Train Service” means any Train Service:

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

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

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

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

“Agreed Deterioration Threshold” means the threshold allowance for deviations from a Train Path within which a Train Service is considered to be on time, as agreed between QR Network and the Access Holder in its Train Service Entitlement;

“Agreed Exit Threshold” means the threshold allowance for deviations from a scheduled exit time within which a Train Service is considered to be on time, as agreed between QR Network and the Access Holder in its Train Service Entitlement;

“Agreed Paths” means the lesser of:

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

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

“AT₂₋₄” means the aggregate of the AT₂, AT₃ and AT₄ components of Access Charges;

“AT₂₋₄ Revenue Adjustment Amount” means the amount calculated under Subparagraph 3.2.1(a)(i), Part B of Schedule F;

“AT₅ Revenue Adjustment Amount” means the amount calculated under Subparagraph 3.2.1(a)(ii), Part B of Schedule F;

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

“Available Capacity” means Capacity that is not Committed Capacity and, subject to Paragraph 7.5.1(b), includes Capacity that will cease being Committed Capacity prior to the time in respect of which Capacity is being assessed;

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

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

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

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

- (i) the relevant nominated section running times (in the direction of travel) as specified in the Train Service Entitlement;
- (ii) identified Below Rail Delays for that Train Service;
- (iii) time taken in crossing other Trains to the extent that such time is not contributed to by Above Rail causes or Force Majeure Events or otherwise included in Paragraph (i) of this definition; and
- (iv) delays due to Operational Constraints directly caused by the activities of QR Network in maintaining the Rail Infrastructure or due to a fault or deficiency in the Rail Infrastructure provided such delays are not contributed to by Above Rail causes or Force Majeure Events or otherwise included in Paragraph (ii) or (iii) of this definition;

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

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

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

“Capacity Resumption Register” means a register maintained by QR Network and including the information identified in Paragraph 7.5.2(b);

“Capital Expenditure Carryover Account” has the meaning given to that term in Clause 4.2 of Schedule FB;

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

“Central Queensland Coal Region Mainline” means, for the purposes of Subparagraph 6.5.2(c)(ii), that part of the Central Queensland Coal Region where the Rail Infrastructure serves, or as a result of the grant of Access Rights to which the proposed Access Conditions relate would serve, more than one mine;

“Central Queensland Coal Region” means the rail corridors:

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

“Change in Law” means:

- (i) any amendment, repeal, modification or enactment of any Law;
- (ii) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority;
- (iii) the making of any new directive, or any change in an existing directive, of any Authority;
- (iv) the imposition of a requirement for authorisations not required as at 30 June 2006;
- (v) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or
- (vi) any such authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application therefore being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation;

“Change in Relevant Taxes” means:

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

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

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

“Commencing Date” has the meaning given to that term in Paragraph 2.3(b);

“Committed Capacity” means that portion of the Capacity that is required to meet the Train Service Entitlements of Access Holders and to comply with any Passenger Priority Obligation;

“Committed Capacity Register” means a register maintained by QR Network and including the information identified in Paragraph 7.5.1(d);

“Common Corridor” means:

- (i) in relation to transfers of Access Rights for coal carrying Train Services within an Individual Coal System in accordance with Paragraph 7.4.4(e), the part of the Rail Infrastructure that will be utilised by the new Access Holder’s relevant Trains in respect of which the existing Access Holder’s Relinquishment Fee is to be reduced, provided that where the distance from the new Access Holder’s origin to its destination is greater than the distance from the existing Access Holder’s origin to its destination (“existing Access Holder’s haul distance”), the Common Corridor will only extend from the new Access Holder’s destination (unloading facility) for a distance equal to the existing Access Holder’s haul distance; and
- (ii) in all circumstances other than those described in Subparagraph (i) of this definition, that part of the Rail Infrastructure that was utilised by the existing Access Holder for the Train Services for which Access Rights are being relinquished and will also be utilised by the new Access Holder’s Trains in respect of which the existing Access Holder’s Relinquishment Fee is to be reduced;

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

“Compliance Officer” means the QR Network employee designated as such by the QR Network Chief Executive for the purposes of Paragraph 9.4(a);

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

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

provided that such information:

- is not already in the public domain;
- does not become available to the public through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in Paragraph 3.3(c);
- was not in the other party’s lawful possession prior to such disclosure; and
- is not received by the other party independently from a third party free to disclose such information, data or other matter;

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

- the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;
- the information is now in the public domain through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in Paragraph 3.3(c); or

- the information has been received by the recipient independently from a third party free to disclose the information;

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

“Consequential Loss” means:

- (i) any special, indirect or consequential loss or damage;
- (ii) any economic loss in respect of any claim in tort; and
- (iii) any loss of profits, production, revenue, use, contract, opportunity or goodwill or wasted overheads whatsoever,

but does not include, in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;

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

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

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

- (i) for Financial Statements prepared under Subparagraph 3.2.1(a)(i):
 - (A) the process for identifying, from QR’s audited general purpose financial statements, the cost base for Below Rail Services, separate from other services provided by QR or Related Parties of QR to which those Financial Statements relate; and
 - (B) within the cost base for Below Rail Services, the process for identifying the costs of Below Rail Services provided by QR Network separate from the costs of Below Rail Services provided by QR Operational Business Groups (i.e. the management of stations and platforms);
- (ii) within the cost base for Below Rail Services, the process for identifying costs attributable to specified line sections (line section costs), costs not attributable to specified line sections but attributable to specified geographic regions (regional costs), and costs not attributable to specified line sections or any specified geographic region (network costs); and
- (iii) the format of Financial Statements;

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

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

- (i) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and

- (ii) in respect of a combination of Train Services, the Common Costs related specifically to sections of Rail Infrastructure that are used solely for the purpose of Train Services within that combination of Train Services,

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

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

“Customer” means a person or entity that the Access Holder or Access Seeker is providing or intending to provide Train Services for or on behalf of, and for the purpose of providing such Train Services to the Customer, the Access Seeker or Access Holder is acquiring or has acquired Access Rights to the Rail Infrastructure except, for the purposes of Subclause 7.4.4, where “Customer” has the more limited meaning of a person or entity that has a rail haulage agreement with the Access Holder in respect of some or all of the Access Rights subject to the Access Holder’s Access Agreement;

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

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

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

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

“Declared Service” means the service that consists of the use of rail transport infrastructure for providing transportation by rail and which is a declared service for the purposes of Part 5 of the Act;

“Destination System” means the Individual Coal System Infrastructure on which the Nominated Unloading Facility is located;

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

“Dispute” has the meaning given to that term in Paragraph 4.7.1(a);

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

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

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

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

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

- (i) the gtk for the Train Service, if that Train Service uses electric traction; and
- (ii) zero (0), if the Train Service does not use electric traction;

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

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

- (i) a Change in Law or a Change in Relevant Taxes occurs, that either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since the Commencing Date, would cause a change in the costs reflected in, for Reference Tariffs specified in Part B of Schedule F, the AT₃, AT₄, and/or AT₅ input of the relevant Reference Tariff and, for Reference Tariffs specified in Part C of Schedule F, the AT₁ input of the relevant Reference Tariff, of greater than two and a half percentage points (2.5%) excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a variation of the Reference Tariff;
- (ii) a change in the pricing of one or more Distribution Entities and/or Transmission Entities that, either alone or in combination with all other changes in the pricing of relevant Distribution Entities and/or Transmission Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the AT₅ input of the relevant Reference Tariff of greater than two and a half percentage points (2.5%);
- (iii) a change in the pricing of one or more Retail Entities that either alone or in combination with all other changes in the pricing of relevant Retail Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the EC input of the relevant Reference Tariff of greater than two and a half percentage points (2.5%); or

- (iv) the QCA Levy is reviewed (taking into account any over or under recovery of fees via the QCA Levy in the previous year) following the QCA's announcement of its fees for the provision of regulatory services for the rail industry.

“Environmental Authorities” means:

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

“Environmental Investigation and Risk Management Report” or **“EIRMR”** is a report containing the matters referred to it in Paragraph 8.2.1(a);

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

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

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

“EPA” means the Environmental Protection Agency - an authority established under the EP Act;

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

“Escalation Date” means 1 July in each year;

“Evaluation Period” means:

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

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

“Financial Statements” has the meaning given to that term in Paragraph 3.2.1(a);

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

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

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

and includes:

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

“Good Engineering Practices” means, in respect of any undertaking in any circumstances, the exercise of that degree of care, foresight, prudence and skill that would reasonably and ordinarily be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

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

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

“Healthy Train Service” means a Train Service that has experienced no cumulative delay, within an Agreed Threshold, attributable to an Above Rail Delay or Unallocated Delay, either on entry or whilst on the Rail Infrastructure;

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

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

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

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

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

- (i) all coal carrying Train Services operating to or from the port of Abbot Point on the Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) all coal carrying Train Services operating to or from the ports of Hay Point or Dalrymple Bay on the Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and Oaky Creek mine and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines south of Oaky Creek;
- (iii) all coal carrying Train Services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Rail Infrastructure comprising the rail corridor from the port of Gladstone to Gregory mine, Minerva mine, and Rolleston mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;
- (iv) all coal carrying Train Services operating to or from the Stanwell Power Station on the Rail Infrastructure comprising the rail corridor from the Stanwell Power Station to Gregory mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura; or
- (v) all coal carrying Train Services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Rail Infrastructure comprising the rail corridor from the port of Gladstone to Moura mine and the loading facility for Baralaba mine in the vicinity of Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Blackwater;

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

- (i) that Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;

- (ii) that Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Hail Creek mine, Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines beyond the junction with the Gregory mine branch line;
- (iii) that Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine, Minerva mine and Rolleston mine, and all branch lines directly connecting coal mine loading facilities to those corridors with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond); or
- (iv) that Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine and the loading facility for Baralaba mine in the vicinity of Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond);

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

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

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

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

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

“Interface Coordination Plan” means a plan that identifies the procedures to be followed and the responsible officers from both QR Network and the Access Holder, in respect of all regular operational interfaces between the parties that arise in the exercise of rights and the performance of obligations under an Access Agreement other than those specified in the Network Management Principles;

“Interface Risk Assessment” means an assessment that ensures that the Interface Risks are properly managed within a risk management framework and which will

identify all reasonably foreseeable hazards related to the Interface Risks, assess the risks of such hazards occurring and the implications of such hazards occurring as well as nominating suitable control mechanisms to manage the Interface Risks;

“Interface Risk Management Plan” or **“IRMP”** means a document that identifies the Interface Risks associated with the Access Seeker’s or Access Holder’s proposed operations and outlines both the control mechanisms agreed between QR Network and an Access Seeker or Access Holder to ensure those Interface Risks are managed to an acceptable level, and the parties responsible for implementing those controls and ensuring they remain effective;

“Interface Risk Management Process” means a risk management framework to evaluate and address Interface Risks, conducted collaboratively by QR Network and an Access Seeker or Access Holder;

“Interface Risks” means all risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Access Seeker’s or Access Holder’s proposed operations and:

- (i) the Rail Infrastructure;
- (ii) the operation of other Train Services; and
- (iii) any other activities on the Rail Infrastructure that affect QR Network staff or QR Network’s interfaces with members of the public;

“Internal Access Agreement” means an arrangement in place immediately prior to the Commencing Date between Network Access (as defined under the 2005 Undertaking) and another QR business group for the provision of Access for the purpose of QR operated Train Services;

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

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

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

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

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

“Major Yards” means:

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

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

“Material Default” means:

- (i) repeated failure to comply with any non trivial terms and/or conditions of a relevant agreement; or
- (ii) any breach of a fundamental term and/or condition of a relevant agreement, where a fundamental term and/or condition is one that if breached gives rise to a remedy of termination,

where a relevant agreement is as described in Subparagraph 4.6(c)(ii);

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

“Maximum Transit Time” means the maximum Below Rail Transit Time for the relevant Train Service type that QR Network may provide under an Access Agreement;

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

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

“Negotiation Cessation Notice” has the meaning given to that term in Paragraph 4.6(b) ;

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

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

“New Access Agreement” has the meaning given in Subparagraph 7.4.4(f)(i)(A);

“Noise Planning Levels” means the planning levels for railways referred to in the *Environmental Protection (Noise) Policy 1997*;

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

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

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

“Nominated Weekly Train Services” means, for a Cyclic Traffic, the number of Train Services that an Access Holder has an entitlement to operate during any one week period, as specified in its Train Service Entitlement;

“Non-Pricing Provisions” means the provisions of the 2001 Undertaking other than:

- (i) Parts 4 and 6 and Subclauses 7.4.1 and 7.5.1 of the 2001 Undertaking;
- (ii) any Reference Tariffs (as defined under the 2001 Undertaking) endorsed under Part 6 of the 2001 Undertaking; and
- (iii) the Standard Access Agreements included in Volume 2 of the 2001 Undertaking;

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

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

“Old Access Agreement” has the meaning given in Subparagraph 7.4.4(f)(i)(B);

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

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

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

“Other Rail Infrastructure” has the meaning given to that term in the TIA;

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

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

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

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

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

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

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

“Private Infrastructure” means the infrastructure, including but not limited to the track, signalling and electrical overhead traction system (if applicable) for which a party other than QR Network or a Related Party of QR Network is the Railway Manager (whether or not they are Accredited);

“Proposed Standard Access Agreement” has the meaning given to that term in Paragraph 5.2(a);

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

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

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

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

“QR” means QR Limited ACN 124 649 967;

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

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

“QR Network Chief Executive” means the chief executive from time to time of QR Network currently referred to as the Executive General Manager;

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

“QR Network’s Code of Practice for Railway Noise Management” means QR Network’s code of practice for railway noise management approved under the EP Act;

“QR Operational Business Groups” means business groups within QR or Related Parties of QR (other than QR Network) that undertake the operation of Train Services for transporting passengers or freight for reward;

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

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

“QR Train Services” means Train Services provided or to be provided by a QR Operational Business Group;

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

“Rail Infrastructure” means:

- (i) except where paragraph (ii) of this definition applies, Rail Transport Infrastructure including all stations and platforms but excluding the track and associated infrastructure on those parts of the network identified on the Line Diagrams as the responsibility of a Related Party of QR Network; and
- (ii) if this Undertaking applies in whole or in part to QR Passenger pursuant to a transfer notice in accordance with the IIARD Act:
 - (A) except where paragraph (ii)(B) of this definition applies, Rail Transport Infrastructure including all stations and platforms but excluding the track and associated infrastructure on those parts of the network identified on the Line Diagrams as the responsibility of a Related Party of QR Network or QR Passenger; or
 - (B) if this Undertaking ceases to apply to QR Network, Rail Transport Infrastructure including all stations and platforms but excluding the track and associated infrastructure on those parts of the network identified on the Line Diagrams as the responsibility of a Related Party of QR Passenger;

“Rail Transport Infrastructure” means:

- (i) except where paragraph (ii) of this definition applies, rail transport infrastructure as defined in the TIA for which QR Network or a Related Party of QR Network is the Railway Manager; and
- (ii) if this Undertaking applies in whole or in part to QR Passenger pursuant to a transfer notice in accordance with the IIARD Act:
 - (A) except where paragraph (ii)(B) of this definition applies, rail transport infrastructure (as defined in the TIA) for which QR Passenger, QR Network or a Related Party of either of them is the Railway Manager; or
 - (B) if this Undertaking ceases to apply to QR Network, rail transport infrastructure (as defined in the TIA) for which QR Passenger or a Related Party of QR Passenger is the Railway Manager;

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

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

“Reduction Factor” means:

A / B

Where:

A = the annual train kilometres over the Common Corridor attributable to the new Access Holder’s Trains in respect of which Access Rights could not have been provided without using the whole or part of the Access Rights relinquished by the existing Access Holder; and

B = the annual train kilometres over the Rail Infrastructure attributable to the Train Services for which the existing Access Holder is seeking to relinquish Access Rights;

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

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

“Regulatory Asset Base” means the asset value accepted by the QCA for the Central Queensland Coal Region;

“Related Party” has the meaning given to related body corporate in the Corporations Act;

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

"Relinquishment Fee" means:

- (i) in respect of an Access Agreement that includes an obligation to pay take or pay in the event that an Access Holder does not operate Train Services, other than an Access Agreement for Train Services specified in Subparagraph (ii) of this definition, the amount equivalent to the present value of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement if the Access Agreement remained on foot but the Access Holder did not operate the relevant Train Services;
- (ii) subject to Clause 3 of Part B, for coal carrying Train Services included in Access Agreements in place on the day immediately prior to 30 June 2006 (or New Access Agreements entered as part of transferring Access Rights from such Access Agreements pursuant to Paragraph 7.4.4(f) of the Undertaking), the amount that would be payable over the following two (2) year period if the Access Holder were to pay 40% (forty percentage points) of the Access Charge that would be payable if it operated the relevant Train Services; and
- (iii) in respect of an Access Agreement other than those nominated in Subparagraphs (i) or (ii), the amount that would have been contributed over the following two (2) year period to the Common Costs of providing the Rail Infrastructure as a result of the operation of the relevant Train Services and payment of the applicable Access Charge;

"Replacement Mine" means a mine that is:

- (i) operated by the same operator as an existing mine referred to in Paragraph 7.5.1(b);
- (ii) in the same geographic area as the existing mine referred to above such that Train Services for the Replacement Mine use substantially the same Train paths as Train Services for the existing mine; and
- (iii) producing a volume of coal substantially equivalent to a reduction in existing volume from the existing mine.

"Revenue Limit" for the purposes of Subclause 6.2.2 and 6.2.3 is the maximum revenue that QR Network should be entitled to earn from the provision of Access to the relevant Train Service(s) over the Evaluation Period as determined in accordance with Subclause 6.2.4;

"Revenue Adjustment Amounts" means collectively the AT₂₋₄ Revenue Adjustment Amount and the AT₅ Revenue Adjustment Amount and **"Revenue Adjustment Amount"** means one of them;

"Review Event" means:

- (a) a change in QR Network's maintenance practices, reasonably requested by an Access Holder or Customer subsequent to the Commencing Date, which has caused, or will cause a change in the costs reflected in:
 - (i) for Reference Tariffs specified in Part B of Schedule F, the AT₃, AT₄ and/or AT₅ components of the relevant Reference Tariff; and
 - (ii) for Reference Tariffs specified in Part C of Schedule F, the AT₁ component of the relevant Reference Tariff,

of greater than two and a half percentage points (2.5%) excluding the impact of:

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

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

“Ringfencing Compliance Officer” means the person designated as such by QR Network for the purposes of Paragraph 3.3.2(i);

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

“Rollingstock Configuration” means the description of the combination of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

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

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

“Safety Management System” means:

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

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

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

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

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

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

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

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

“Standard Access Agreement” means a pro forma Access Agreement, incorporating terms and conditions that are consistent with Schedule E, set out in Volume 2 of this Undertaking or approved by the QCA in accordance with Clause 5.2;

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

“State” means the state of Queensland;

“Support Staff” means the person or persons who provide clerical and administrative assistance to the relevant Board, chief executive or nominated manager, as the case may be, and in particular, includes the positions of Company Secretary and Assistant Company Secretary;

“System Allowable Revenue” means:

- (i) for AT₂₋₄ in relation to an Individual Coal System Infrastructure, the total revenue from AT₂₋₄ arising from all Access Agreements in relation to that Individual Coal System Infrastructure that QR Network is entitled to earn over the relevant Year, as specified in Clauses 5.3, 6.3, 7.3 and 8.3, Part B of Schedule F; and
- (ii) for the AT₅ component of Access Charges for the Central Queensland Coal Region, the total revenue from the AT₅ component of Access Charges arising from all Access Agreements in relation to the Central Queensland Coal Region that QR Network is entitled to earn over the relevant Year, as specified in either Clause 5.3 or 6.3, Part B of Schedule F,

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

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

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

“System Gtk” means the sum of the gtk for all coal carrying Train Services to the extent those Train Services travel on the relevant Individual Coal System Infrastructure over the relevant period;

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

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

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

“Term” means the period between the Commencing Date and the Terminating Date;

“Terminating Date” means:

- (i) in respect of QR Network, the date on which this Undertaking ceases to apply to QR Network in accordance with Paragraph 2.3(d)(i); and
- (ii) in respect of QR Passenger, if this Undertaking applies in whole or in part to QR Passenger pursuant to a transfer notice in accordance with the IIARD Act,

the date on which this Undertaking ceases to apply to QR Passenger in accordance with Paragraph 2.3(d)(ii);

“Third Party” means a party other than QR or a Related Party of QR;

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

“Timetabled Traffic” means a traffic, the Train Service Entitlement in respect of which, is defined in terms of a specified Train Path on a particular day and/or week;

“Total Actual Revenue” means:

- (i) for AT₂₋₄ in relation to an Individual Coal System Infrastructure, the amount calculated in accordance with Subclauses 3.2.3, 3.2.4 and 3.2.15, Part B of Schedule F; and
- (ii) for the AT₅ component of Access Charges for the Central Queensland Coal Region, the amount calculated in accordance with Subclauses 3.2.5 and 3.2.15, Part B of Schedule F;

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

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

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

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

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

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

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

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

“Train Service” means:

- (i) the operation of a Train between specified origins and destinations on the Rail Infrastructure; and
- (ii) for the purpose of the definition of Private Incremental Costs in this Clause 10.1 and Clause 4, Part B of Schedule F, also includes the extent to which the

relevant Rollingstock utilises Private Infrastructure in addition to Rail Infrastructure as part of its trip;

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

“Transferred Access Rights” has the meaning given to that term in Subparagraph 7.4.4(f)(i)(A);

“Transferred Adjustment Charges” has the meaning given to that term in Subparagraph 7.4.4(g)(iv)(B);

“Transport Service Payments” means payments to QR Network from Queensland Transport in consideration of specified Below Rail Services for nominated sections of Rail Infrastructure;

“Unallocated Delay” means a delay to a Train Service from its Train Path scheduled in the DTP that is neither an Above Rail Delay nor a Below Rail Delay;

“Undertaking” means this document (including schedules) which is an undertaking for the purposes of the Act;

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

“Urgent Possession” is similar to a Planned Possession, except that these possessions are required to correct problems that are considered potentially dangerous and as a result, the possession must be carried out between seven (7) days and three (3) months from the detection of the problem;

“Unhealthy Train Service” means a Train Service that has experienced a cumulative delay, outside an Agreed Threshold, attributable to an Above Rail Delay or an Unallocated Delay, either on entry or whilst on the Rail Infrastructure;

“X-Factor” means an efficiency factor applicable to maintenance or operating costs as approved by the QCA for the purpose of adjusting System Allowable Revenues in Part B of Schedule F;

“Yard Control” means the control of Train movements, and other activities affecting Train movements, at those locations that are not under the direct control of a Train Controller;

“Weekly Train Plan” or **“WTP”** means a seven (7) day plan that details the scheduled times for all Train Services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Rail Infrastructure on each day of the relevant week;

“Western System” means the rail corridor from the port at Fisherman’s Island to Macalister (Wilkie Creek), including all branch lines directly connecting coal mine loading facilities and coal unloading facilities to this corridor; and

“Year” means the period of twelve (12) months commencing 1 July.

10.2 INTERPRETATION

In this Undertaking unless the context otherwise requires:

- (a) where reference is made to a position or group name, and that position or group name changes during the course of the Undertaking, provided the position or group retains responsibility for the same or substantially the same tasks, the reference will be taken to cover the changed name;
- (b) reference to a person includes any other entity recognised by law and vice versa;
- (c) reference to “dollars” or “\$” means a reference to Australian dollars;
- (d) words importing the singular number includes the plural number and vice versa;
- (e) words importing any gender include the other gender;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) any reference to any parties by their defined terms includes that party’s executors, administrators, permitted assigns or permitted subcontractors or, being a company, its successors, permitted assigns or permitted subcontractors and the obligation of any party extends to those persons;
- (h) a reference to conduct includes a benefit, remedy, discretion, authority or power;
- (i) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (j) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or enures for the benefit of those persons jointly and each of them severally;
- (k) clause headings are for reference purpose only;
- (l) any reference to the words “include” or “including” must be read as if they are followed by the words “without limitation”;
- (m) any reference to time is to local time in Queensland;
- (n) reference to a Part, Clause, Subclause, Paragraph, Subparagraph or Schedule is a reference to the corresponding Part, Clause, Subclause, Paragraph, Subparagraph or Schedule to this Undertaking as amended or replaced from time to time;
- (o) reference to this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time;
- (p) reference to any legislation includes all legislation under and amendments to that legislation and any legislation passed in substitution for that legislation or incorporating any of its provisions to the extent that they are incorporated;

- (q) if there is any inconsistency between matters contained in a Schedule and the body of this Undertaking, the provisions in the body of the Undertaking prevail;
- (r) QR Network may be taken to have engaged in conduct for a purpose referred to in Subclause 6.1.2 even though, after all the evidence has been considered, the existence of the relevant purpose is ascertainable only by inference from the conduct of QR Network or other relevant circumstances;
- (s) where in this Undertaking QR Network is prohibited from engaging in conduct for the purpose of preventing or hindering Access, QR Network will be taken to have engaged in such conduct if, having regard to the criteria set out in Paragraph 10.2(t), QR Network provides or proposes to provide Access to QR (or a Related Party of QR) on more favourable terms than the terms on which QR Network provides Access to a competing Third Party Access Holder, or proposes to provide Access to a competing Third Party Access Seeker; and
- (t) for Paragraph 10.2(s), the criteria are the terms, taken as a whole, on which QR Network provides or proposes to provide Access to QR (or a Related Party of QR) and the competitor having regard, in particular, to:
 - (i) the Access Charge to be paid by QR (or a Related Party of QR) and the competitor; and
 - (ii) the nature and quality of the Access provided or proposed to be provided to QR (or a Related Party of QR) and the competitor;

10.3 NOTICES

- (a) Subject to Paragraph 10.3(b), where this Undertaking requires a notice or document be given to a person, the notice or document will be given:
 - (i) when the notice or document is personally delivered to the person;
 - (ii) where the person is a body corporate, when the person has been served in the way provided for the service of documents under the Corporations Act or another applicable law;
 - (iii) if the notice or document is posted, on the earliest of the following:
 - (A) where the notice is an Acknowledgement Notice, on the date the notice is posted;
 - (B) where the notice (other than an Acknowledgement Notice) is posted within Australia to an Australian address, three (3) Business Days after posting; or
 - (C) in any other case, ten (10) Business Days after posting; or
 - (iv) if the notice is sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee (and that report is conclusive evidence that the addressee received the fax in full at the time indicated on that report).
- (b) If a notice or document is given:
 - (i) after 5:00 pm in the place of receipt; or
 - (ii) on a day which is not a Business Day in the place of receipt,then it will be deemed to have been given at 9.00 am on the next day which is a Business Day in the place of receipt.