

Submission draft
22 December 2010

QR Network Pty Ltd

[Name of Customer]

User Funding – Construction Agreement

[*insert Extension
name*]

[Drafting note: This Agreement has been drafted on the assumption that the Customer and each Other Customer have obtained any ACCC/foreign anti-trust authorisation/s required to permit them to lawfully disclose commercially sensitive information to each other. If that is not the case, this Agreement may need to be modified.]

[Drafting note: This Agreement will need to be modified to address hybrid funding arrangements for the Extension (that is, the Extension being partially funded by user funders and partially funded by QR Network).]

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Date

Parties

QR Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1,
305 Edward Street, Brisbane, Queensland (**QR Network**)

[Insert] ABN **[insert]** of **[insert]** **[as agent for and on behalf of the JV Participants in the Joint Venture]** (**Customer**)

Background

- A The Customer owns and/or operates, or will own and/or operate, a coal mine.
 - B The Customer requires access to the QR Network rail network in order to facilitate the transportation by rail of coal (or additional coal) from the coal mine to the Terminal.
 - C The Extension is required in order to create sufficient capacity for QR Network to provide to the Customer and all Other Customers under Other Construction Agreements (or their nominated Railway Operators) the access to the QR Network rail network required by them.
 - D The Customer and QR Network have not agreed terms upon which QR Network would fund and design, procure, construct and commission the Extension.
 - E As a result, the Customer has requested QR Network to design, procure, construct and commission for the Customer each of the Customer's Segments on the basis that the Customer will pay to QR Network the Customer's Proportion of the Extension Costs for the Customer's Segments and a construction incentive payment.
 - F QR Network agrees to:
 - (a) design, procure, construct and commission each of the Customer's Segments; and
 - (b) enter into the Access Agreement with the Customer or its nominated Railway Operator (as applicable),in accordance with the terms of this Agreement.
 - G QR Network and the Customer will enter into the Participation Agreement on the date of this Agreement under which the Customer is entitled to be paid distributions by QR Network in accordance with the terms of the Participation Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

Acceleration has the meaning given in **clause 5.2(a)**.

Acceleration Variation Notice has the meaning given in **clause 5.2(a)**.

Access Agreement means an Access Holder Access Agreement or an Operator Access Agreement.

Access Holder Access Agreement means QR Network's standard "Access Holder Access Agreement – Coal", as approved by the QCA as at the time a Party gives a notice to the other Party under **clause 11.1(a)**, as completed in accordance with **item 1 of schedule 9** and as modified in accordance with **item 2 of schedule 9**.

Access Undertaking means QR Network's rail access undertaking approved by the QCA from time to time.

Additional Charge means the amount of a Liability for any interest, penalty, charge, fine or fee or other similar amount of any kind assessed, charged or imposed by a Government Agency to the extent that the Liability relates to, arises from or is increased as a result of a Tax Demand.

Adjustment Event means, in respect of a Customer's Segment:

- (a) the occurrence of a Force Majeure Event which prevents or hinders QR Network from fully or partly performing its obligations under this Agreement in respect of that Customer's Segment;
- (b) damage to or destruction of that Customer's Segment caused, or contributed to, by the occurrence of a Force Majeure Event;
- (c) a Latent Condition encountered while carrying out the Works for that Customer's Segment; or
- (d) the existence of a Dispute which delays the carrying out of the Works for that Customer's Segment.

Agreement means this Agreement, including any **schedules** and **annexures**.

Approval means a consent, licence, permit, authorisation, lodgement, filing, agreement, certificate, permission, direction, declaration, authority, accreditation, approval or exemption issued by an Authority.

Assessable Income has the same meaning given to that expression in section 995-1 of the Tax Act.

Assessment means any document or instrument issued, or deemed by operation of Tax Law to have been issued, by a Government Agency

assessing, imposing or claiming any Tax (such as a notice of assessment, amended assessment, penalty notice or demand).

Assigning Party has the meaning given in **clause 20.1(a)**.

Audits has the meaning given in **clause 8.4(a)**.

Auditor has the meaning given in **clause 8.4(a)**.

Authority means any government or any governmental, semi-governmental, regulatory, statutory or similar entity or authority that exercises jurisdiction or control in relation to the Extension.

Available means, in respect of a Segment, the point in time at which the Segment is:

- (a) complete (except for minor omissions and defects); and
- (b) is capable of being lawfully used as a railway, as reasonably determined by QR Network.

Available Date for a Segment means the date on which QR Network gives the Customer a notice under **clause 3.4(b)** specifying that the Segment has become Available.

Bank Account has the meaning given in **clause 16.2(b)**.

Bank Account Reconciliation Date means the later to occur of the following dates:

- (a) the date which is 30 Business Days after QR Network gives the Final Reconciliation Statement to the Customer; and
- (b) if the amount specified in the Final Reconciliation Statement is Disputed, the date that the Dispute is resolved through the Dispute Resolution Process.

Bank Account Reconciliation Statement has the meaning given in **clause 16.6(b)**.

Bank Guarantee means the bank guarantee (or bank guarantees) required to be given by the Customer as security under **clause 9**.

Bank Guarantee Increase Notice has the meaning given in **clause 9.4(a)(ii)(C)**.

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

Change in Law means the occurrence of any of the following after the date of this Agreement:

- (a) the introduction or commencement of, repeal of, or a change in, applicable Legislation;
- (b) a change (other than if caused by the default of a party under the Approval) in the terms and conditions imposed under an Approval after it has been given or the imposition of any new terms or conditions under such Approval;

- (c) the revocation or cancellation (other than if caused by the default of a party under the Approval) of an Approval; or
- (d) the non-renewal or failure of an Authority to re-issue an Approval (other than if caused by the default of a party under the Approval) or its renewal or re-issue on new terms that are materially different from the terms of such Approval, if granted, as at the date of this Agreement (other than if caused by the default of a party under the Approval).

Charge has the meaning given in **clause 20.3**.

Chargee has the meaning given in **clause 20.3**.

Chargor has the meaning given in **clause 20.3**.

Coal Network Infrastructure Lease means the lease titled “*Infrastructure Lease*” between Queensland Treasury Holdings Pty Ltd ACN 011 027 295 (as lessor) and QR Network (as lessee) dated 30 June 2010.

Commencement Date means the date on which this Agreement is executed by QR Network.

[Drafting Note: QR Network will require the Customer and each Other Customer to provide executed copies of the User Funding – Construction Agreements and the User Funding - Participation Agreements to QR Network. QR Network will execute all of those documents on the same day so that they will all have the same Commencement Date.]

Compensation Method means the method contained in **schedule 12**.

Confidential Information of a Disclosing Party means:

- (a) the terms of this Agreement; and
- (b) information disclosed (whether before or after the date of this Agreement) by, or on behalf of, the Disclosing Party to the Recipient which:
 - (i) is by its nature confidential or commercially sensitive;
 - (ii) is identified by the Disclosing Party as confidential or commercially sensitive;
 - (iii) the Recipient knows or ought to know is confidential or commercially sensitive; or
 - (iv) relates to the business, operations or financial affairs of the Disclosing Party or a Related Body Corporate of it,but does not include information which:
 - (v) is or becomes public knowledge other than by breach of this Agreement or by a breach of confidentiality by the Recipient or any third party to whom the Recipient has disclosed the information;
 - (vi) is in the possession of the Recipient or a Related Body Corporate of it without restriction in relation to disclosure before the date of receipt; or

- (vii) has been independently developed or acquired by the Recipient or a Related Body Corporate of it.

Consequential Loss means, subject to **paragraphs (e) and (f)** of this definition:

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any claim in tort;
- (c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill or wasted overheads whatsoever; and
- (d) any loss arising out of any claim by a third party,

but does not include:

- (e) a loss (including a loss arising out of a claim by a third party) in respect of:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person; or
- (f) in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims.

Consolidated Group has the same meaning given to that expression in Part 3-90 of the Tax Act.

Construction Period means the period commencing on the Commencement Date and ending on the last day of the calendar month during which the Available Date for the last of the Segments to become Available occurs.

Cost Allocation Principles means the principles set out in **item 2** of **schedule 7**.

Current Amount has the meaning given in **clause 9.11(a)**.

Customer's Capacity for a Customer's Segment means the number of train services per annum for that Customer's Segment as specified in **item 2** of **schedule 2**.

[Drafting note: The Customer's Capacity and the Total Other Customers' Capacity is specified in **item 2** of **schedule 2** as a number of train services per annum assuming a standard train service description. If the Customer utilises a train with an alternative train service description, then the actual number of train services per annum to be completed in the Access Agreements will be less than the number of train services per annum specified for the Customer's Capacity.]

Customer's Proportion for a Customer's Segment means the proportion that the Customer's Capacity for that Customer's Segment bears to the Total Incremental Capacity for that Customer's Segment (which, as at the

Commencement Date, is the proportion specified for the Customer's Segment in **item 2 of schedule 2**).

Customer's Segments means each Segment specified as such in **item 2 of schedule 2**.

Deal With has the meaning given in **clause 20.1(a)**.

Disclosing Party has the meaning give in **clause 18.1(a)**.

Dispute has the meaning given in **clause 17.1(a)** and includes:

- (a) a matter referred to an Expert for determination under this Agreement; and
- (b) a "Dispute" (as defined in an Other Construction Agreement) if QR Network joins the Customer to the dispute resolution process under the Other Construction Agreement in accordance with **clause 17.9**.

Dispute Notice has the meaning given in **clause 17.1(a)**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 17**; and
- (b) if QR Network joins the Customer to the dispute resolution process under an Other Construction Agreement in accordance with **clause 17.9**, the dispute resolution process under the relevant Other Construction Agreement.

Early Termination Payment means the amount which is equal to the Total Mobilisation Fee.

Election Notice has the meaning given in **clause 24.4(c)**.

Estimated Available Date for a Customer's Segment means the date which QR Network reasonably estimates to be the date on which the Customer's Segment will become Available, as reported by QR Network to the Customer from time to time under **clause 6.2** or as determined by an Expert from time to time.

Estimated Outstanding Payments means, at a point in time:

- (a) the sum of all amounts (excluding amounts invoiced by QR Network but not yet paid by the Customer) that QR Network reasonably estimates, at that point in time, will become payable by the Customer to QR Network under this Agreement; less
- (b) the sum of all amounts (excluding amounts invoiced by the Customer but not yet paid by QR Network) that QR Network reasonably estimates, at that point in time, will become payable by QR Network to the Customer under this Agreement,

in each case based on the assumption that this Agreement will not be terminated in accordance with **clause 15**.

Estimated Terminal Available Date means the date which the developer of the Terminal reasonably estimates will be the date on which the Terminal will be complete (except for minor defects) and will be capable of Handling coal (up

to its full design capacity) if it were transported by rail to the Terminal, as reported by the developer of the Terminal to QR Network from time to time under **clause 6.3** or as determined by an Expert from time to time.

Excluded Amount for a Customer's Segment means:

- (a) the amount of the Extension Costs for the Customer's Segment which the QCA does not accept into the Regulatory Asset Base on the basis that the Extension Costs for the Customer's Segment were Not Prudent; less
- (b) any Procurement Methodology Excluded Amount for the Customer's Segment.

Expert has the meaning given in **clause 17.2(b)**.

Extension means the new rail infrastructure, and/or modifications and/or upgrades of and/or additions to existing rail infrastructure, generally described in **item 1 of schedule 2**.

Extension Costs means:

- (a) for the Extension:
 - (i) costs and expenses Incurred by QR Network (whether before or after the date of this Agreement) in connection with the Extension or the Works for the Extension (including costs and expenses specified in **item 1 of schedule 7**); less
 - (ii) amounts recovered by QR Network from any third party (including from an insurer or subcontractor but excluding from an Other Customer under an Other Construction Agreement) in connection with the Extension or the Works for the Extension; and
- (b) for a Segment, the sum of the amounts referred to in **paragraph (a)(i)** of this definition less the sum of the amounts referred to in **paragraph (a)(ii)** of this definition (including amounts which are taken to be recovered from a third party for the Segment under **clause 9.4(c)**) that are either attributable to, or allocated in accordance with **clause 8.2** to, that Segment.

Extension Committee has the meaning given in **clause 6.1(a)**.

Extension Investigation Reports means the reports described in **item 4 of schedule 1**.

Extension Land has the meaning given in **paragraph (r)** of the definition of Force Majeure Event.

Final Certificate has the meaning given in **clause 3.8**.

Final CIP Adjustment Amount for a Customer's Segment means the amount calculated in accordance with **item 2.1 of schedule 11** for the Customer's Segment.

Final CIP Percentage for a Customer's Segment means the percentage calculated in accordance with **item 2.2** of **schedule 11** for the Customer's Segment.

Final Invoice means the invoice issued by QR Network or the Customer (as applicable) under **clause 7.7** in respect of the Final Reconciliation Statement.

Final Reconciliation Statement has the meaning given in **clause 7.5**.

Financial Obligation means any obligation of a Party to:

- (a) pay, or cause to be paid, an amount of money, including damages for a breach of this Agreement; and
- (b) provide a Bank Guarantee or an additional or replacement Bank Guarantee under **clause 9**. **[Drafting note: Optional definition to be included if the Customer is a Joint Venture.]**

Force Majeure Event in respect of QR Network means any event or circumstance:

- (a) which is beyond the reasonable control of QR Network;
- (b) the effects of which could not, by the exercise of reasonable diligence by QR Network, have been avoided; and
- (c) which affects the ability of QR Network to observe and perform its obligations under this Agreement,

and (to the extent it meets the above criteria) includes any:

- (d) act of God;
- (e) law, rule, regulation or order of any government or governmental authority;
- (f) executive or administrative orders or acts of either general or particular application of any government or of any official acting under the authority of such government;
- (g) act of war (declared or undeclared);
- (h) public disorder;
- (i) riot, insurrection, rebellion, sabotage or act of terrorists;
- (j) fire, earthquake, tidal wave or other natural calamity;
- (k) drought, flood, storm, hail, lightning, inclement weather or other severe weather conditions;
- (l) explosion, breakdown or injury to or expropriation, confiscation or requisitioning of production, manufacturing, selling, transportation or delivery facilities;
- (m) shortage or unavailability (whether permanent or temporary) of water, electricity or other essential goods or services;
- (n) quarantine or customs restrictions;

- (o) strike, boycott, lockout or other labour disturbance (whether national, state-wide or otherwise);
- (p) act (including a delay in performing an act) or omission of any Authority;
- (q) failure to obtain, or delay in obtaining, any environmental or other Approval relating to, or necessary for, the design, construction and/or commissioning of the Extension;
- (r) failure to obtain, or delay in obtaining, access to, use of, or tenure to any land or site required to design, construct and/or commission the Extension (**Extension Land**);
- (s) all or part of any Extension Land, or any object or evidence of occupation on, under or within the vicinity of any Extension Land, being, appearing to be, or being alleged to be, Aboriginal Cultural Heritage (as defined in the *Aboriginal Cultural Heritage Act 2003* (Qld));
- (t) all or part of any Extension Land being, appearing to be, or being alleged to be, land which may be subject to native title or land which is the subject of a native title claim, determination or agreement;
- (u) compliance with an obligation contained in any relevant cultural heritage management plan, indigenous land use agreement, right to negotiate agreement or other agreement with indigenous parties;
- (v) all or part of any Extension Land being affected by any latent condition or other adverse physical characteristic;
- (w) any permanent or temporary shortage or unavailability of, or inability to procure:
 - (i) appropriately qualified and experienced labour acceptable to QR Network, acting reasonably;
 - (ii) materials; or
 - (iii) any other necessary goods or services;
- (x) a Change in Law;
- (y) any act or omission of the Customer or any of the Customer's officers, employees, agents or contractors;
- (z) any of the above events (or any other event which constitutes an excusal from performance of a supplier's or contractor's obligations under its arrangements with QR Network) delaying a supplier or contractor to QR Network in performing its obligations; and
- (aa) any other failure by a third party to perform its obligations, or a delay by a third party in performing its obligations.

Government Agency means the Commissioner of Taxation and the Australian Taxation Office.

Handle in relation to coal at the Terminal means the receiving by rail, unloading, stacking, storing and reclaiming of coal and loading of vessels with coal at the Terminal.

Head Company means the head company of any Consolidated Group of which QR Network is a subsidiary member.

Income Year has the meaning given in section 995-1 of the Tax Act.

Incurred has the meaning given in **clause 8.1**.

Infrastructure Lease means each of the Coal Network Infrastructure Lease and the North Coast Line Infrastructure Lease.

Insolvency Event in respect of QR Network means:

- (a) except to reconstruct or amalgamate while solvent, QR Network enters into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of QR Network's creditors or members or a moratorium involving any of them;
- (b) a controller, administrator, liquidator or provisional liquidator is appointed to QR Network or in respect of any property of QR Network and is not removed or withdrawn within 20 Business Days; or
- (c) QR Network is deregistered under the *Corporations Act 2001* (Cth).

Insolvency Termination Clause has the meaning given in **clause 15.2(b)**.

Interest Rate means, for any day in a calendar month, the annual interest rate that is the sum of:

- (a) 7%; and
- (b) the interest rate for 30 day bank accepted bills (Source: AFMA, Mnemonic: FIRMMBAB30D) as published or quoted by the Reserve Bank of Australia for the last trading day of the previous calendar month (or in the event that such a rate is not so published or quoted at or in respect of any relevant date, such other similar rate agreed by the Parties or, failing agreement, as determined by an Expert under **clause 17.3**).

Joint Venture means the unincorporated joint venture between the JV Participants specified in **item 3.1** of **schedule 1**. **[Drafting note: Optional definition to be included if the Customer is a Joint Venture.]**

JV Participants means the entities specified in **item 3.2** of **schedule 1**. **[Drafting note: Optional definition to be included if the Customer is a Joint Venture.]**

Latent Conditions means physical conditions on the Extension Land and its near surrounds (including artificial things but excluding weather conditions) which differ materially from the physical conditions which could have been reasonably anticipated by QR Network as at the date of this Agreement based on the information set out in the Extension Investigation Reports.

Latest Target Available Date means the latest of the Target Available Dates for the Customer's Segments.

Legislation means statutes, ordinances, regulations, by-laws, proclamations and subordinate legislation of the Commonwealth, the State or an Authority.

Liability means any liability (whether actual, contingent or prospective), loss, damage, cost and expense of whatsoever description and howsoever arising.

Major Scope Elements means the following elements of the Works:

- (a) earthworks;
- (b) track works;
- (c) signalling works;
- (d) telecommunication works; and
- (e) electrification works.

Mobilisation Fee for a Customer's Segment means the amount which is 10 percent of the amount which is, as at the Commencement Date, the Customer's Proportion of the Target Cost for the Customer's Segment.

Monthly Report has the meaning given in **clause 6.2(a)**.

Monthly Statement has the meaning given in **clause 7.2**.

Non-Assigning Party has the meaning given in **clause 20.1(a)**.

Not Prudent has the meaning given in **clause 7.15(b)**.

Notice has the meaning given in **clause 21.1**.

North Coast Line Infrastructure Lease means the lease titled "*North Coast Line Infrastructure Lease*" between Queensland Rail Limited ACN 132 181 090 (as lessor) and QR Network (as lessee) dated 30 June 2010.

OCA Termination Clause in respect of an Other Construction Agreement means the provision in the Other Construction Agreement which is on substantially the same terms as **clause 9.3**.

Operator Access Agreement means QR Network's standard "*Access Agreement – Coal*", as approved by the QCA as at the time a Party gives a notice to the other Party under **clause 11.1(a)**, as completed in accordance with **item 1 of schedule 9** and as modified in accordance with **item 2 of schedule 9**.

Other Construction Agreement means, subject to **clause 9.4(a)**, an agreement titled "*User Funding – Construction Agreement: [insert Extension name]*" entered into between QR Network and another party (or other parties) in respect of the Extension on the Commencement Date.

Other Customer means, subject to **clause 9.4(a)**:

- (a) for the Extension, a party which is the "Customer" under an Other Construction Agreement; and
- (b) for a Segment, an Other Customer (as defined in **paragraph (a)** of this definition) who has that Segment specified as a "Customer's Segment" in item 2 of schedule 2 of the Other Customer's Other Construction Agreement (which, as at the Commencement Date, is each of the Other

Customers specified for the Customer's Segment in **item 2 of schedule 2**).

Other Customer's Capacity for an Other Customer for a Customer's Segment means the number of train services per annum for that Other Customer for that Customer's Segment as specified in item 2 of schedule 2 of its Other Construction Agreement.

Other Participation Agreement means an agreement titled "*User Funding – Participation Agreement: [insert Extension name]*" entered into (or deemed to be entered into) between QR Network and another party (or other parties) in respect of the Extension on the Commencement Date.

Outstanding Amount has the meaning given in **clause 16.3(b)(i)**.

Participation Agreement means the agreement entitled "*User Funding – Participation Agreement: [insert Extension name]*" entered into (or deemed to be entered into under **clause 10.2**) between QR Network and the Customer on the Commencement Date in the form contained in **schedule 10**.

Parties means collectively QR Network and the Customer, and **Party** means one of them.

Payee has the meaning given in **clause 7.10(c)(i)**.

Payor has the meaning given in **clause 7.10(c)(i)**.

Pre-Commencement Extension Costs for a Segment means Extension Costs for that Segment Incurred by QR Network prior to the Commencement Date (together with interest in accordance with **item 1(e) of schedule 7**).

Price Sensitive Information means any information which QR Network is under a contractual or other obligation (including an equitable obligation of confidence) not to disclose to the Customer.

Principal Contractor has the meaning given in the WH&S Act.

Proceedings has the meaning given in **clause 17.7(a)**.

Procurement Methodology means the procurement methodology for procuring the Major Scope Elements set out in **schedule 6**.

Procurement Methodology Excluded Amount for a Customer's Segment means the amount of the Extension Costs for the Customer's Segment which the QCA does not accept into the Regulatory Asset Base on the basis that the Extension Costs for the Customer's Segment were Not Prudent because of the Procurement Methodology adopted by QR Network.

Proposed Assignee has the meaning given in **clause 20.1(b)(i)**.

Provisional CIP Adjustment Amount for a Customer's Segment means the amount calculated in accordance with **item 1.1 of schedule 11** for the Customer's Segment.

Provisional CIP Percentage for a Customer's Segment means the percentage calculated in accordance with **item 1.2 of schedule 11** for the Customer's Segment.

Provisional Reconciliation Statement has the meaning given in **clause 7.3**.

QCA means the Queensland Competition Authority established pursuant to the QCA Act, or any body that may from time to time replace, or take over the functions of, the Queensland Competition Authority in respect of the economic regulation of QR Network's central Queensland coal railway network.

QCA Act means the *Queensland Competition Authority Act 1997* (Qld).

QR Network Compensation means an amount calculated in accordance with the Compensation Method.

Railway Operator means a person who:

- (a) is a "rolling stock operator" and is an "accredited person" (each as defined in the TRSA); or
- (b) holds a "TIA accreditation" (as defined in the TRSA) that:
 - (i) continues in force in accordance with section 290 of the TRSA; and
 - (ii) was granted to that person as a "railway operator" (as defined under the "unamended TIA") under section 126 of the "unamended TIA" (as defined in the TRSA).

Recipient has the meaning given in **clause 18.1**.

Reference Program means the program in respect of the Works for the Extension set out in **item 3** of **schedule 5**, as revised by QR Network under **clause 5.8**.

Refund Amount for a Customer's Segment means the amount which is the Customer's Proportion for the Customer's Segment of the Excluded Amount for the Customer's Segment.

Refund Date for a Customer's Segment means the date which is 10 Business Days after the date that the QCA makes a final binding decision which is not capable of being legally challenged by QR Network in respect of the amount of the Extension Costs for the Customer's Segment not accepted into the Regulatory Asset Base on the basis that the Extension Costs for the Customer's Segment were Not Prudent.

Regulatory Asset Base has the meaning given in QR Network's Access Undertaking.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Relevant Other Customer means, in respect of a Customer's Segment, an Other Customer for that Customer's Segment.

Relevant Proportion for a Segment (other than the Relevant Terminated Customer's Segment) means the proportion that the Target Cost for that Segment bears to the sum of the Target Costs for all Segments (other than a Relevant Terminated Customer's Segment).

Relevant Terminated Customer's Segment has the meaning given in **clause 9.4(c)(ii)**.

Reviewed Amount has the meaning given in **clause 9.11(a)**.

Scope Change Event means each of the following:

- (a) a Change in Law; and
- (b) a Latent Condition encountered while carrying out the Works.

Scope of Works for a Customer's Segment means the scope of works set out in **schedule 3** to the extent that it relates to that Customer's Segment, as varied in accordance with this Agreement.

Segment means, for each section of railway corridor described in **item 2** of **schedule 2**, that part of the Extension relating to that section of railway corridor.

State means the State of Queensland.

Target Available Date for a Customer's Segment means the date specified for that Customer's Segment in **item 1** of **schedule 5**, as varied in accordance with this Agreement.

Target Cost for a Segment means the amount specified for that Segment in **schedule 4**, as varied in accordance with this Agreement.

Tax means income tax imposed by the *Income Tax Act 1986* (Cth) and any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect thereof.

Tax Act means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) or the *Taxation Administration Act 1953* (Cth) as the case may be.

Tax Demand means any Assessment, show cause notice, demand, notice, letter, claim, amendments or modifications to Assessments, change of any Tax Law or accepted judicial presumptions as to common law, or change in administrative practice of any Government Agency (including the manner in which the Tax Law is administered by any Government Agency), including any legislation or change of Tax Law, judicial presumption or administrative practice which takes effect retrospectively or other document issued or action taken by or on behalf of any Government Agency whether before or after the date of this Agreement, which directly or indirectly requires QR Network, or the Head Company, to recognise the amount of the Customer's payment to QR Network or the Extension Costs incurred by QR Network under this Agreement that relate to the Customer other than in accordance with the principles set out in *Income Tax Ruling IT 2450*.

Terminal means [insert]. **[Drafting note: The definition of "Terminal" to be completed on a case-by-case basis. If necessary, the definition of "Terminal" will reflect the stage of the development of the Terminal.]**

Terminated Customer has the meaning given in **clause 9.4(c)**.

Terminated OCA has the meaning given in **clause 9.4(c)**.

Total Incremental Capacity for a Customer's Segment means the sum of:

- (a) the Customer's Capacity for that Customer's Segment; and
- (a) the Total Other Customers' Capacity for that Customer's Segment, (which, as at the Commencement Date, is the number of train services per annum specified for the Customer's Segment in **item 2 of schedule 2**).

Total Mobilisation Fee means the amount which is the sum of the Mobilisation Fees for each of the Customer's Segments.

Total Other Customers' Capacity for a Customer's Segment means the sum of the Other Customer's Capacity for each Relevant Other Customer (which, as at the Commencement Date, is the number of train services per annum specified for the Customer's Segment in **item 2 of schedule 2**).

Total Recovered ETPs means the sum of the following amounts recovered by QR Network:

- (a) each "Early Termination Payment" (as defined under an Other Construction Agreement) payable by an Other Customer to QR Network under:
 - (i) the OCA Termination Clause in the Other Construction Agreement; or
 - (ii) the provision in the Other Construction Agreement on substantially the same terms as **clause 9.7**; and
- (b) the Early Termination Payment payable by the Customer to QR Network under **clause 9.7**.

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

Unnecessary Delay Notice has the meaning give in **clause 24.4(a)**.

Variation Notice has the meaning given in **clauses 4.1** and **4.2**.

Weather Adjustment Event means an Adjustment Event arising out of a Force Majeure Event referred to in **paragraph (k)** of the definition of Force Majeure Event.

Weather Delay Period for a Customer's Segment means the period specified in **item 2 of schedule 5** for the Customer's Segment.

WH&S Act means the *Workplace Health and Safety Act 1995* (Qld).

Works means:

- (a) for the Extension, all design, procurement, construction, commissioning, defects rectification and ancillary works and services associated with the Extension; and
- (b) for a Segment, all design, procurement, construction, commissioning, defects rectification and ancillary works and services associated with that Segment.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) "includes" means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (g) if the documents comprising this Agreement contain any ambiguity, discrepancy or inconsistency, then the following order of precedence will apply to resolve that ambiguity, discrepancy or inconsistency:
 - (i) this Agreement excluding the schedules; and
 - (ii) the schedules.
- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender will include every gender;
- (j) references to clauses and schedules are references to clauses of, and schedules to, this Agreement; and
- (k) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane;
 - (vi) \$ or dollars is a reference to Australian currency;
 - (vii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;

- (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission;
- (ix) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations; and
- (x) an Other Customer includes that Other Customer's successors according to law and permitted assigns and any person to whom it novates its rights and obligations under the applicable Other Construction Agreement.

2 Term

- (a) This Agreement commences on the Commencement Date and will continue until:
 - (i) QR Network or the Customer (as applicable) has given the Final Invoice and the amount claimed in the Final Invoice (or, if the amount specified in the Final Reconciliation Statement is Disputed, the total statement amount for the Final Reconciliation Statement as agreed or determined under the Dispute Resolution Process, together with any interest payable under **clause 7.10**) has been paid; and
 - (ii) there are no Disputes between QR Network and the Customer and/or any Other Customers which remain unresolved under the Dispute Resolution Process.
- (b) Promptly after this Agreement expires under **clause 2(a)**, QR Network must notify the Customer of the expiration of this Agreement.

3 Execution of the Works

3.1 Scope of Works

QR Network must carry out the Works for each Customer's Segment in accordance with the Scope of Works for the Customer's Segment.

3.2 Procurement

- (a) QR Network must comply with the Procurement Methodology in procuring the Major Scope Elements required for the carrying out of the Works for each Customer's Segment.
- (b) Subject to **clause 3.2(a)**, QR Network may subcontract the carrying out of all or part of the Works for the Extension.
- (c) The subcontracting of any Works under **clause 3.2(b)** will not relieve QR Network of any liability or obligations under this Agreement in respect of those Works.

- (d) Except where this Agreement provides otherwise, QR Network will be liable to the Customer for acts and omissions of any subcontractors engaged by QR Network as if they were acts and omissions of QR Network.

3.3 Cost

Without limiting QR Network's obligation under **clauses 3.1 and 3.2**, QR Network must use its reasonable endeavours to ensure that the Extension Costs for each Customer's Segment do not exceed the Target Cost for the Customer's Segment.

3.4 Availability

- (a) Without limiting its obligations under **clauses 3.1, 3.2 and 3.3**, QR Network must use its reasonable endeavours to ensure that each Customer's Segment becomes Available by the Target Available Date for the Customer's Segment.
- (b) Within three Business Days after each Segment becomes Available, QR Network must give the Customer a notice specifying that the Segment has become Available.

3.5 Consequences of non-compliance

- (a) The Customer acknowledges and agrees that:
 - (i) a failure by QR Network to comply with **clauses 3.3 and 3.4** will reduce the Provisional CIP Percentage and Final CIP Percentage and consequently, the total amount that QR Network is entitled to be paid by the Customer under this Agreement; and
 - (ii) except for the consequence referred to in **clause 3.5(a)(i)**, a failure by QR Network to comply with **clauses 3.3 and 3.4** will have no other consequence for QR Network and QR Network will have no liability to the Customer in respect of such a failure.
- (b) For the avoidance of doubt, the Customer is required to pay the Customer's Proportion of the Extension Costs for a Customer's Segment under this Agreement if:
 - (i) the Extension Costs for the Customer's Segment exceed the Target Cost for the Customer's Segment; and/or
 - (ii) the Available Date for the Customer's Segment is later than the Target Available Date for the Customer's Segment.

3.6 Legislation

QR Network must comply (or procure compliance) with all:

- (a) relevant Legislation; and
- (b) directions of any Authorities,

relating to each Customer's Segment and the Works for each Customer's Segment.

3.7 Workplace Health and Safety

- (a) For the avoidance of doubt, in respect of the Works for each Customer's Segment (or separate parts of them), QR Network must appoint or otherwise ensure the appointment of a Principal Contractor.
- (b) If no third party is appointed as Principal Contractor in respect of the Works for a Customer's Segment (or any separate part of them), then QR Network will be the Principal Contractor for those Works.

3.8 Final Certificate

Within 10 Business Days after the date on which QR Network forms the opinion, acting reasonably, that no further Extension Costs will be Incurred or recovered, QR Network must give the Customer a notice (**Final Certificate**) stating that it is the Final Certificate given under this **clause 3.8**.

4 Variations to Scope of Works

4.1 Variation to Scope of Works initiated by QR Network

If QR Network proposes to vary the Scope of Works for a Customer's Segment, QR Network may, by notice in writing to the Customer and each Relevant Other Customer (**Variation Notice**), request the consent of the Customer and each Relevant Other Customer to vary the Scope of Works for the Customer's Segment as proposed in the Variation Notice.

4.2 Variation to Scope of Works due to Scope Change Event

If QR Network considers, acting reasonably, that it is necessary to vary the Scope of Works for a Customer's Segment as a result of a Scope Change Event, QR Network may, by notice in writing to the Customer and each Relevant Other Customer (also a **Variation Notice**), request the consent of the Customer and each Relevant Other Customer to vary the Scope of Works for the Customer's Segment as a result of the Scope Change Event as proposed in the Variation Notice.

4.3 Consequential variations to Target Available Date and Target Cost

If QR Network considers that a proposed variation to the Scope of Works for a Customer's Segment under **clauses 4.1** or **4.2** requires a consequential variation to the Target Available Date and/or the Target Cost for the Customer's Segment, the Variation Notice may also request the consent of the Customer and each Relevant Other Customer to vary the Target Available Date and/or the Target Cost (as applicable) for the Customer's Segment as proposed in the Variation Notice.

4.4 Consultation with Customer and Relevant Other Customers

- (a) If QR Network gives a Variation Notice, QR Network must invite the Customer and each Relevant Other Customer to attend a meeting with QR Network to discuss the variation(s) proposed in the Variation Notice.

- (b) A meeting referred to in **clause 4.4(a)**, must be held:
 - (i) not less than five Business Days, and not more than 10 Business Days, after the date that QR Network gives the Variation Notice; and
 - (ii) at a place in Brisbane or by telephone conference (as determined by QR Network) on a Business Day.

4.5 Consent of Customer and Relevant Other Customers

- (a) Within five Business Days after the date of the meeting referred to in **clause 4.4**, the Customer must notify QR Network whether or not it consents to the variation(s) proposed in the Variation Notice.
- (b) If the Customer does not notify QR Network under, and within the time required by, **clause 4.5(a)**, the Customer will be deemed to have consented to the variation(s) proposed in the Variation Notice at the end of that time.
- (c) If the Customer and each Relevant Other Customer each consent to a variation to the Scope of Works for a Customer's Segment proposed in a Variation Notice:
 - (i) the Scope of Works for the Customer's Segment will be taken to be varied as proposed in the Variation Notice on the date on which such consent is obtained; and
 - (ii) QR Network must promptly notify the Customer of the variation.
- (d) If **clause 4.5(c)** applies and the Customer and each Relevant Other Customer also all consent to a variation to the Target Available Date and/or Target Cost (as applicable) for the Customer's Segment proposed in the Variation Notice:
 - (i) the Target Available Date and/or Target Cost (as applicable) for the Customer's Segment will be taken to be varied as proposed in the Variation Notice on the date on which such consent is obtained; and
 - (ii) QR Network must promptly notify the Customer of the variation(s).
- (e) If the Customer and each Relevant Other Customer do not all consent to a variation to the Scope of Works for a Customer's Segment proposed in a Variation Notice given under **clause 4.1**, the Scope of Works for the Customer's Segment will not be varied and QR Network must notify the Customer and each Relevant Other Customer that the Scope of Works for the Customer's Segment will not be varied.

4.6 Expert determination

- (a) If the Customer and each Relevant Other Customer do not all consent to a variation to the Scope of Works for a Customer's Segment proposed in a Variation Notice given under **clause 4.2**:
 - (i) QR Network may refer the matter to an Expert to determine whether QR Network's proposed variation to the Scope of Works

- for the Customer's Segment is reasonable as a result of the Scope Change Event; and
- (ii) if the Expert determines that the variation to the Scope of Works for a Customer's Segment:
 - (A) is reasonable as a result of the Scope Change Event, the Scope of Works for the Customer's Segment will be taken to be varied as proposed in the Variation Notice on the date the Expert notifies the Parties of his or her determination; or
 - (B) is not reasonable as a result of the Scope Change Event:
 - (1) the Scope of Works for the Customer's Segment will not be varied; and
 - (2) the Expert's determination must specify the reasons why the Expert considers that the proposed variation is not reasonable as a result of the Scope Change Event.
- (b) If the Scope of Works for a Customer's Segment is varied under **clauses 4.5(c) or 4.6(a)(ii)(A)** but the Customer and each Relevant Other Customer do not all consent to a variation to the Target Available Date and/or Target Cost (as applicable) for a Customer's Segment proposed in the Variation Notice under **clause 4.3**:
- (i) QR Network may refer the matter to an Expert to determine whether QR Network's proposed variation to the Target Available Date and/or Target Cost (as applicable) for the Customer's Segment proposed in the Variation Notice is reasonable as a result of the variation to the Scope of Works for the Customer's Segment; and
 - (ii) if the Expert determines that the variation to the Target Available Date and/or Target Cost (as applicable) for the Customer's Segment proposed in the Variation Notice:
 - (A) is reasonable as a result of the variation to the Scope of Works for the Customer's Segment, the Target Available Date and/or Target Cost (as applicable) will be taken to be varied as proposed in the Variation Notice on the date the Expert notifies the Parties of his or her determination; or
 - (B) is not reasonable as a result of the variation to the Scope of Works for the Customer's Segment:
 - (1) the Expert must determine the variation to the Target Available Date and/or Target Cost (as applicable) which is reasonable as a result of the variation to the Scope of Works; and
 - (2) the Target Available Date and/or Target Cost (as applicable) will be taken to be varied as determined by the Expert on the date the Expert notifies the Parties of his or her determination.

4.7 Variations to Scope of Works requested by Customer

- (a) The Customer may, by notice in writing to QR Network, request that QR Network propose to vary the Scope of Works for a Customer's Segment under **clause 4.1**.
- (b) QR Network must consult with the Customer in respect of such a request and must act reasonably in considering whether or not QR Network should propose to vary the Scope of Works for the Customer's Segment under **clause 4.1** as requested (including by considering the impact of the proposed variation on QR Network's other existing or proposed customers and its own commercial interests).

5 Variations to Target Available Date and Target Cost

5.1 Variation to Target Available Date and Target Costs initiated by QR Network

Subject to **clause 4** and this **clause 5**, QR Network cannot vary the Target Available Date or Target Cost for a Customer's Segment without the consent of the Customer and each Relevant Other Customer.

5.2 Variation to Target Available Date for Acceleration

- (a) If QR Network, the Customer and/or a Relevant Other Customer propose(s) to accelerate the progress of the carrying out of the Works for a Customer's Segment (**Acceleration**), QR Network may, by notice in writing to the Customer and each Relevant Other Customer (**Acceleration Variation Notice**) request the consent of the Customer and each Relevant Other Customer to vary the Target Available Date for the Customer's Segment to bring it forward as proposed in the Acceleration Variation Notice.
- (b) An Acceleration Variation Notice given under **clause 5.2(a)** must specify reasonable details of the actions which are proposed to be undertaken to give effect to the proposed Acceleration by the proposed varied Target Available Date.

5.3 Consequential variations to Target Cost for Acceleration

If QR Network considers that a proposed variation to the Target Available Date for a Customer's Segment as a result of a proposed Acceleration under **clause 5.2** requires a consequential increase to the Target Cost for the Customer's Segment to carry out the Works for the Customer's Segments by the proposed varied Target Available Date, the Acceleration Variation Notice may also request the consent of the Customer and each Relevant Other Customer to vary the Target Cost for the Customer's Segment by increasing it as proposed in the Acceleration Variation Notice.

5.4 Consultation with Customer and Relevant Other Customers

- (a) If QR Network gives an Acceleration Variation Notice under **clause 5.2**, QR Network must invite the Customer and each Relevant Other

Customer to attend a meeting with QR Network to discuss the variation(s) proposed in the Acceleration Variation Notice.

- (b) A meeting referred to in **clause 5.4(a)**, must be held:
 - (i) not less than five Business Days, and not more than 10 Business Days, after the date that QR Network gives the Acceleration Variation Notice; and
 - (ii) at a place in Brisbane or by telephone conference (as determined by QR Network) on a Business Day.

5.5 Consent of Customer and Relevant Other Customers

- (a) Within five Business Days after the date of the meeting referred to in **clause 5.4(a)**, the Customer must notify QR Network whether or not it consents to the variation(s) proposed in the Acceleration Variation Notice.
- (b) If the Customer does not notify QR Network under, and within the time required by, **clause 5.5(a)**, the Customer will be deemed to have consented to the variation(s) proposed in the Acceleration Variation Notice at the end of that time.
- (c) If the Customer and each Relevant Other Customer all consent to a variation to the Target Available Date for a Customer's Segment proposed in the Acceleration Variation Notice given under **clause 5.2**:
 - (i) the Target Available Date for the Customer's Segment will be taken to be varied as proposed in the Acceleration Variation Notice on the date on which such consent is obtained; and
 - (ii) QR Network must promptly notify the Customer of the variation.
- (d) If **clause 5.5(c)** applies and the Customer and each Relevant Other Customer also all consent to a variation to the Target Cost for the Customer's Segment proposed in the Acceleration Variation Notice:
 - (i) the Target Cost for the Customer's Segment will be taken to be varied as proposed in the Acceleration Variation Notice on the date on which such consent is obtained; and
 - (ii) QR Network must promptly notify the Customer of the variation.
- (e) If the Customer and each Relevant Other Customer do not all consent to a variation to the Target Available Date for a Customer's Segment proposed in the Acceleration Variation Notice given under **clause 5.2**, the Target Available Date for the Customer's Segment will not be varied and QR Network will not give effect to the proposed Acceleration and QR Network must notify the Customer and each Relevant Other Customer that the Target Available Date for the Customer's Segment will not be varied.

5.6 Expert determination

- (a) If the Target Available Date for a Customer's Segment is varied under **clause 5.5(c)** but the Customer and each Relevant Other Customer do

not all consent to the variation to the Target Cost for the Customer's Segment proposed in the Acceleration Variation Notice under **clause 5.3:**

- (i) QR Network may refer the matter to an Expert to determine whether QR Network's proposed variation to the Target Cost for the Customer's Segment is reasonable as a result of the additional Extension Costs reasonably likely to be Incurred to carry out the Works for the Customer's Segment by the varied Target Available Date; and
- (ii) if the Expert determines that the variation to the Target Cost for the Customer's Segment proposed in the Acceleration Variation Notice:
 - (A) is reasonable as a result of the additional Extension Costs reasonably likely to be Incurred to carry out the Works for the Customer's Segment by the varied Target Available Date, the Target Cost will be taken to be varied as proposed in the Acceleration Variation Notice on the date the Expert notifies the Parties of his or her determination; or
 - (B) is not reasonable as a result of the additional Extension Costs reasonably likely to be Incurred to carry out the Works for the Customer's Segment by the varied Target Available Date:
 - (1) the Expert must determine the variation to the Target Cost which is reasonable as a result of the additional Extension Costs likely to be Incurred to carry out the Works for the Customer's Segment by the varied Target Available Date; and
 - (2) the Target Cost will be taken to be varied as determined by the Expert on the date the Expert notifies the Parties of his or her determination.

5.7 Variations resulting from Adjustment Events

- (a) If an Adjustment Event occurs in respect of a Customer's Segment, then QR Network:
 - (i) must notify the Customer and each Relevant Other Customer of the Adjustment Event as soon as reasonably practicable after QR Network becomes aware of the occurrence of the Adjustment Event; and
 - (ii) may, by notice to the Customer and each Relevant Other Customer:
 - (A) vary the Target Cost for the Customer's Segment by increasing it by the amount that QR Network considers is reasonable as a result of the Adjustment Event; and/or

- (B) subject to **clause 5.7(b)(ii)**, vary the Target Available Date for the Customer's Segment by extending it by the period that QR Network considers is reasonable as a result of the Adjustment Event.
- (b) If an Adjustment Event is a Weather Adjustment Event:
 - (i) as soon as reasonably practicable after the occurrence of the Weather Adjustment Event, QR Network must notify the Customer of the period of the delay to the carrying out of the Works for the Customer's Segment as a result of the Weather Adjustment Event; and
 - (ii) QR Network may only vary the Target Available Date for a Customer's Segment under **clause 5.7(a)(ii)(B)** if, and to the extent that, the total period of the delay in carrying out the Works for the Customer's Segment as a result of the Weather Adjustment Event and all previous Weather Adjustment Events in respect of the Customer's Segment exceeds the Weather Delay Period for the Customer's Segment.
 - (c) If the Customer issues a Dispute Notice under **clause 17.1** in respect of a variation to the Target Cost and/or Target Available Date (as applicable) for a Customer's Segment specified in a notice given under **clause 5.7(a)(ii)**:
 - (i) the Dispute may be referred to an Expert to determine whether the variation to the Target Cost and/or Target Available Date (as applicable) for the Customer's Segment is reasonable as a result of the Adjustment Event; and
 - (ii) if the Expert determines that the variation to the Target Cost and/or Target Available Date (as applicable) for the Customer's Segment:
 - (A) is reasonable as a result of the Adjustment Event, the Target Cost and/or Target Available Date (as applicable) for the Customer's Segment will be taken to be varied as specified in the notice given under **clause 5.7(a)(ii)** on the date the notice is given; or
 - (B) is not reasonable as a result of the Adjustment Event:
 - (1) the Expert must determine the variation (extension) to the Target Available Date and/or variation (increase) to the Target Cost (as applicable) which is reasonable as a result of the Adjustment Event; and
 - (2) the Target Available Date and/or Target Cost (as applicable) will be taken to be varied as determined by the Expert on the date that the Expert notified the Parties of his or her determination.

5.8 Reference Program

- (a) The Customer acknowledges that:

- (i) the Reference Program will be used for reporting purposes to monitor the progress of the carrying out of the Works for the Extension; and
 - (ii) the Reference Program does not bind QR Network and meeting any timeframes or milestones specified in the Reference Program is not (in itself) an obligation under this Agreement.
- (b) Within 10 Business Days after a variation to the Scope of Works and/or the Target Available Date for a Customer's Segment under **clauses 4 or 5**, QR Network must:
- (i) revise the Reference Program to the extent necessary as a result of the variation to the Scope of Works and/or the Target Available Date (as applicable) for the Customer's Segment; and
 - (ii) provide the revised Reference Program to the Customer and each Other Customer.
- (c) If QR Network revises the Reference Program under **clause 5.8(b)**, the revised Reference Program will take effect on the date it is provided to the Customer and each Other Customer.

6 Consultation and reporting

6.1 Extension Committee

- (a) QR Network, the Customer and Other Customers will establish a committee (**Extension Committee**) which will provide a forum for:
 - (i) QR Network to report to the Customer and Other Customers about matters relating to the Extension and the carrying out of the Works for the Extension; and
 - (ii) consultation between QR Network, the Customer and Other Customers about matters relating to the Extension and the carrying out of the Works for the Extension.
- (b) The Customer and each Other Customer may appoint one senior representative to attend meetings of the Extension Committee and may replace their respective representatives from time to time.
- (c) Meetings of the Extension Committee will be held in Brisbane at least once every calendar quarter.
- (d) QR Network must give the Customer and each Other Customer at least 10 Business Days' notice of each meeting of the Extension Committee.
- (e) A representative appointed by QR Network will chair Extension Committee meetings.
- (f) QR Network must:
 - (i) arrange for minutes of each Extension Committee meeting to be taken; and

- (ii) give a copy of the minutes of each Extension Committee meeting to the Customer and each Other Customer as soon as practicable, but no later than 10 Business Days, after the meeting.
- (g) QR Network, the Customer and each Other Customer will bear the travel and other expenses of their respective representatives attending Extension Committee meetings.
- (h) QR Network warrants, and the Customer acknowledges, that each Other Construction Agreement will include a provision on substantially the same terms as this **clause 6.1**.

6.2 Reporting

- (a) Within 15 Business Days after the end of each calendar month during the Construction Period, QR Network must give to the Customer a report for that month (**Monthly Report**) in respect of the matters set out in **schedule 8**.
- (b) After the Construction Period, QR Network must give the Customer reports in respect of material matters relevant to this Agreement at intervals of not more than three months.
- (c) If the Customer Disputes the Estimated Available Date for a Customer's Segment notified by QR Network to the Customer in a Monthly Report and the Dispute is not resolved in accordance with **clause 17.2**, the Customer may refer the Dispute to an Expert to determine the Estimated Available Date for the Customer's Segment.

6.3 Estimated Terminal Available Date

- (a) The Customer must ensure that:
 - (i) the developer of the Terminal notifies QR Network in writing (at least once per month) of the Estimated Terminal Available Date as at the time the notice is given; and
 - (ii) each notice is accompanied by reasonable details of the information relied upon by the developer of the Terminal in estimating the Estimated Terminal Available Date specified in the notice.

[Drafting note: QR Network expects to be advised on this information from the developer of the Terminal in order to coordinate the development of the two large and related infrastructure projects.]

- (b) If QR Network disputes the Estimated Terminal Available Date specified in a notice given to QR Network under **clause 6.3(a)**, QR Network may refer the matter to an Expert to determine the Estimated Terminal Available Date as at the time the notice was given to QR Network based on the information which accompanied the notice and any relevant additional information which QR Network or the Customer provides to the Expert for the purpose of his or her determination.

7 Payments

7.1 Total Mobilisation Fee

Within 20 Business Days after the Commencement Date, QR Network must give to the Customer an invoice for the Total Mobilisation Fee.

7.2 Monthly Statements

Within 15 Business Days after the end of each calendar month during the Construction Period, QR Network must give to the Customer a statement for that month (**Monthly Statement**) setting out:

- (a) in the first Monthly Statement only, the sum of the amounts which are for each Customer's Segment the sum of:
 - (i) the amount which is the Customer's Proportion of the Pre-Commencement Extension Costs for the Customer's Segment; and
 - (ii) the amount which is four percent of the amount referred to in **clause 7.2(a)(i)** for the Customer's Segment; and
- (b) in each Monthly Statement (including the first), the sum of the amounts which are for each Customer's Segment (which may be a positive or negative amount) the sum of:
 - (i) the amount (which may be a positive or negative amount) which is the Customer's Proportion of the Extension Costs for the Customer's Segment Incurred or recovered on or after the Commencement Date but prior to the end of that month and which have not been included in a previous Monthly Statement; and
 - (ii) the amount (which may be a positive or negative amount) which is four percent of the amount referred to in **clause 7.2(b)(i)** for the Customer's Segment;
- (c) in the Monthly Statements for each of the last three months occurring prior to the month in which the last of the Estimated Available Dates for the Customer's Segments is to occur, the amount which is one third of the Total Mobilisation Fee; and
- (d) the total statement amount (which may be a positive or negative amount) being the amount referred to in **clause 7.2(a)**, if applicable, plus the amount referred to in **clause 7.2(b)**, less, if applicable, the amount referred to in **clause 7.2(c)**.

7.3 Provisional Reconciliation Statement

Within 15 Business Days after the end of the calendar month following the month in which the Construction Period ends, QR Network must give to the Customer a statement (**Provisional Reconciliation Statement**) setting out:

- (a) the sum of the amounts which are, for each Customer's Segment, the amount which is the Customer's Proportion of the Extension Costs for

- the Customer's Segment Incurred or recovered by QR Network prior to the end of the Construction Period;
- (b) the sum of the Provisional CIP Adjustment Amounts for each Customer's Segment;
 - (c) the sum of all amounts previously invoiced by the Customer under **clause 7.7** in respect of Monthly Statements (or, if the amount specified in a Monthly Statement is Disputed, the total statement amount for that Monthly Statement as agreed or determined under the Dispute Resolution Process);
 - (d) the sum of all amounts previously invoiced by QR Network under **clause 7.1** and **clause 7.7** in respect of Monthly Statements (or, if the amount specified in a Monthly Statement is Disputed, the total statement amount for that Monthly Statement as agreed or determined under the Dispute Resolution Process); and
 - (e) the total statement amount (which may be a positive or negative amount) being the sum of the amounts referred to in **clauses 7.3(a), 7.3(b) and 7.3(c)** less the amount referred to in **clause 7.3(d)**.

7.4 After Construction Period

After the end of the Construction Period, QR Network may from time to time (but not more than once per month) give to the Customer a statement in respect of the amount of the Customer's Proportion of any further Extension Costs for a Customer's Segment Incurred or recovered by QR Network (which may be a positive or negative amount) which have not previously been included in a Monthly Statement, the Provisional Reconciliation Statement or any earlier statement given under this **clause 7.4**.

7.5 Final Reconciliation Statement

At the time that QR Network gives the Final Certificate to the Customer, QR Network must also give to the Customer a statement (**Final Reconciliation Statement**) setting out:

- (a) the sum of the amounts which are, for each Customer's Segment, the amount which is the Customer's Proportion of the Extension Costs for the Customer's Segment Incurred or recovered by QR Network prior to the date that QR Network gives the Final Certificate to the Customer; and
- (b) the sum of the Final CIP Adjustment Amounts for each Customer's Segment;
- (c) the sum of all amounts previously invoiced by the Customer under **clause 7.7** in respect of Monthly Statements, the Provisional Reconciliation Statement or statements given under **clause 7.4** (or, if the amount specified in such a statement is Disputed, the total statement amount for that statement as agreed or determined under the Dispute Resolution Process);

- (d) the sum of all amounts previously invoiced by QR Network under **clause 7.1** and **clause 7.7** in respect of Monthly Statements, the Provisional Reconciliation Statement or statements given under **clause 7.4** (or, if the amount specified in such a statement is Disputed, the total statement amount for that statement as agreed or determined under the Dispute Resolution Process); and
- (e) the total statement amount (which may be a positive or negative amount) being the sum of the amounts referred to in **clauses 7.5(a), 7.5(b) and 7.5(c)** less the amount referred to in **clause 7.5(d)**.

7.6 Supporting information

Each statement given by QR Network to the Customer under this **clause 7** must be accompanied by reasonable details of the calculation of the amounts specified in the statement.

7.7 Issue of invoices

- (a) If the total statement amount specified in a statement given by QR Network under **clauses 7.2, 7.3, 7.4 or 7.5** is a positive amount, at the time of giving the Customer the statement, QR Network must also give the Customer an invoice for that amount.
- (b) If the total statement amount specified in a statement given by QR Network under **clauses 7.2, 7.3, 7.4 or 7.5** is a negative amount, the Customer may, within 20 Business Days after the statement is given to the Customer, give QR Network an invoice for that amount (disregarding the negative sign).

7.8 Payment of invoices

Subject to **clause 7.9**:

- (a) a Party must, subject to **clause 7.8(b)**, pay the amount claimed in an invoice given to the Party under **clauses 7.1 or 7.7** within 15 Business Days after the invoice is given to the Party; or
- (b) in the case of an invoice given by QR Network under **clause 7.7** in respect of the Provisional Reconciliation Statement or the Final Reconciliation Statement, the Customer must pay the invoice within 20 Business Days after the invoice is given to the Customer.

7.9 Interest on overdue payments

- (a) If for any reason a Party does not pay an amount payable under or in connection with this Agreement on or before the due date for payment, it must pay interest to the other Party (who is entitled to receive the payment).
- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.

- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each month will be capitalised and will thereafter itself bear interest.

7.10 Disputes

- (a) If the Customer Disputes any amount specified in a statement given by QR Network under this **clause 7**:
 - (i) the Customer may give QR Network a Dispute Notice under **clause 17.1**; and
 - (ii) if the Dispute is not resolved in accordance with **clause 17.2**, either Party may refer the Dispute to an Expert.
- (b) Notwithstanding **clause 7.10(a)**, if the amount specified in a statement given by QR Network under this **clause 7** is Disputed:
 - (i) QR Network must give the Customer an invoice for the total statement amount under **clause 7.7(a)** (if applicable) and the Customer must pay the portion of the invoice that is not in Dispute within the time specified in **clause 7.8**; and
 - (ii) the Customer may give QR Network an invoice for the total statement amount under **clause 7.7(b)** (if applicable) and QR Network must pay the amount claimed in the invoice within the time specified in **clause 7.8**.
- (c) Upon resolution of any Dispute about the amount specified in a statement given by QR Network under this **clause 7**, if the total statement amount for the relevant statement as agreed or determined under the Dispute Resolution Process is:
 - (i) more than the amount that was paid by the Party under the invoice (**Payor**), then the amount of the difference, together with interest on that amount calculated in accordance with **clause 7.9** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount in Dispute would have been due and payable but for the Dispute), must be paid by the Payor to the other Party (**Payee**) within five Business Days after the Payee gives the Payor an invoice or adjustment note for that amount; or
 - (ii) less than the amount that was paid by the Payor, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 7.9** (provided that, for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount was paid by the Payor), must be paid by the Payee to the Payor within five Business Days after the resolution of the Dispute.
- (d) The Customer is barred from Disputing an amount claimed in an invoice given under **clause 7.7** unless, and then only to the extent that, the

amount specified in the invoice differs from the final statement amount specified in the statement to which the invoice relates.

- (e) For the purpose of **clauses 7.2(b)(i) and 7.4**, if an amount included in a Monthly Statement or a statement given by QR Network under **clause 7.4** is Disputed and it is agreed or determined under the Dispute Resolution Process that the amount should not have been included in the relevant statement or a different amount should have been included in the relevant statement, then the amount will be taken to have not been included in the statement or the different amount will be taken to have been included in the statement (respectively).

7.11 QR Network's right of set off

QR Network may deduct from any amounts which are due and payable by QR Network to the Customer under this Agreement any amounts which are due and payable by the Customer to QR Network under this Agreement.

7.12 Method of payment

All payments to be made under or in connection with this Agreement must be paid in Australian currency, without set-off or deduction (subject to **clause 7.11**), by:

- (a) electronic payment to an account nominated by the Party entitled to receive the payment; or
- (b) such other method as the Party entitled to receive the payment may reasonably require from time to time.

7.13 Amounts deducted under Participation Agreement

If QR Network exercises its right under the Participation Agreement to deduct from an amount which is due and payable by QR Network to the "Funder" (as described in the Participation Agreement) under the Participation Agreement an amount which is due and payable by the Customer to QR Network under or in connection with this Agreement:

- (a) promptly after deducting the amount, QR Network must notify the Customer that it has deducted the amount under the Participation Agreement; and
- (b) the amount deducted will be taken to have been paid by the Customer to QR Network under this Agreement.

7.14 Termination of Other Construction Agreement

If an Other Construction Agreement is terminated for any reason other than under the OCA Termination Clause in the Other Construction Agreement, then for the purpose of calculating the Customer's Proportion for each Customer's Segment:

- (a) the Other Construction Agreement will, despite its termination, continue to be an Other Construction Agreement;
- (b) the relevant Other Customer will continue to be an Other Customer; and

- (c) the relevant Other Customer's Other Customer's Capacity for each Customer's segment will continue to be included in the calculation of the Total Other Customers' Capacity for each Customer's Segment.

7.15 Exclusion of imprudent costs

- (a) QR Network must seek to include the Extension Costs for each Customer's Segment and the Final CIP Adjustment Amount for each Customer's Segment into the Regulatory Asset Base when required under the Access Undertaking.
- (b) Subject to **clause 7.15(c)**, if the QCA makes a decision not to accept part of the Extension Costs for a Customer's Segment into the Regulatory Asset Base on the basis that the Extension Costs for the Customer's Segment were not reasonable having regard to the scope and standard of work done (**Not Prudent**), QR Network must pay the Refund Amount for the Customer's Segment to the Customer by the Refund Date for the Customer's Segment.
- (c) **Clause 7.15(b)** does not apply, and QR Network will have no obligation to pay any amount to the Customer, in respect of a Customer's Segment if the Extension Costs for the Customer's Segment are less than or equal to the Target Cost for the Customer's Segment.
- (d) For the avoidance of doubt, QR Network will have no obligation to pay any amount to the Customer under this **clause 7.15** or otherwise, in the event that the QCA does not accept the whole or part of:
 - (i) the Extension Costs for a Customer's Segment into the Regulatory Asset Base on the basis of prudence of scope and/or prudence of standard of work; or
 - (ii) the Final CIP Adjustment Amount for a Customer's Segment into the Regulatory Asset Base on the basis of prudence of costs.

8 Allocation, records and auditing

8.1 When costs and expenses Incurred

For the purpose of this Agreement, a cost or expense will be taken to be **Incurred**:

- (a) in the case of a cost or expense payable by QR Network to a third party (other than a Related Body Corporate of QR Network), when the cost or expense is paid by QR Network; and
- (b) in any other case, when the cost or expense is incurred by QR Network.

8.2 Allocation of Extension Costs

In respect of costs, expenses and recovered amounts which relate to:

- (a) two or more Segments; or
- (b) the Extension and other works,

then QR Network must allocate the costs, expenses and recovered amounts between the Segments and/or the Extension and other works in accordance with the Cost Allocation Principles.

8.3 Keeping of records

- (a) QR Network must maintain complete records of and relating to the Extension, the Works and the Extension Costs.
- (b) QR Network must preserve and maintain the records referred to in **clause 8.3(a)** for a period of not less than one year following the date that QR Network gives the Final Certificate to the Customer.

8.4 Audit

- (a) The Customer and all Other Customers may jointly appoint an independent auditor nominated by them and approved by QR Network (such approval not to be unreasonably withheld or delayed) (**Auditor**) to carry out audits in order to verify amounts included in a statement given by QR Network to the Customer under **clause 7** and to Other Customers under Other Construction Agreements (**Audits**).
- (b) The costs and expenses of an Auditor must be borne solely by the Customer and the Other Customers.
- (c) Prior to the Auditor undertaking its first Audit, the Customer must ensure that the Auditor provides QR Network with a signed confidentiality undertaking from the Auditor in favour of QR Network in a form acceptable to QR Network (acting reasonably).
- (d) Upon at least 10 Business Days prior written request given jointly by the Customer and each Other Customer (not more than once each year of this Agreement), QR Network must:
 - (i) give the Auditor reasonable access during normal business hours to the books, accounts and records of QR Network relevant to an Audit; and
 - (ii) otherwise provide reasonable assistance and co-operation to the Auditor in relation to the conduct of the Audit.
- (e) The Parties acknowledge and agree that the Auditor will only be entitled to disclose to the Customer and Other Customers:
 - (i) whether or not the Auditor verified the amounts included in a statement given by QR Network to the Customer under **clause 7** or to Other Customers under Other Construction Agreements; and
 - (ii) information obtained by the Auditor in carrying out an Audit to the extent that the Customer and the Other Customers require access to that information for the purpose of resolving a Dispute under the Dispute Resolution Process.

9 Bank Guarantee

9.1 Warranty and acknowledgment

QR Network warrants, and the Customer acknowledges, that each Other Construction Agreement will:

- (a) commence on the Commencement Date; and
- (b) contain a provision on substantially the same terms as this **clause 9**.

9.2 Customer to provide Bank Guarantee

Within 10 Business Days after the Commencement Date, the Customer must deliver to QR Network a Bank Guarantee for the amount specified in **item 1 of schedule 1** as security for the due and proper performance by the Customer of its obligations under this Agreement.

9.3 Termination of Agreement for non-provision of Bank Guarantee

- (a) If the Customer does not provide a Bank Guarantee to QR Network in accordance with this **clause 9** by the time required by **clause 9.2**, then unless otherwise agreed in writing by QR Network and the Customer, this Agreement will automatically terminate without the need for either Party to give notice of such termination to the other Party.
- (b) If this Agreement terminates under **clause 9.3(a)**, then:
 - (i) QR Network must promptly give the Customer an invoice for the Early Termination Payment;
 - (ii) the Customer must, within 10 Business Days after QR Network gives the Customer an invoice for the Early Termination Payment, pay the Early Termination Payment to QR Network as a liquidated debt due; and
 - (iii) except for the amount payable under **clause 9.3(b)(ii)** and any interest accruing on that amount under **clause 7.9**, neither Party will have any liability to the other Party in connection with the termination of this Agreement.
- (c) The Customer acknowledges that the Early Termination Payment is a genuine pre-estimate of the loss, cost, expense and damage to QR Network in the circumstance in which it is payable and constitutes not more than fair and reasonable compensation for the occurrence of such circumstance.

9.4 Termination of Other Construction Agreement for non-provision of bank guarantee

- (a) If an Other Construction Agreement terminates under the OCA Termination Clause in the Other Construction Agreement, then:
 - (i) on and from the date of termination:
 - (A) the Other Construction Agreement will cease to be an Other Construction Agreement, and the relevant Other Customer

- will cease to be an Other Customer, for the purpose of this Agreement; and
- (B) the Other Customer's Capacity of the relevant Other Customer for each Customer's Segment will cease to be included in the calculation of the Total Other Customers' Capacity for each Customer's Segment for the purpose of calculating the Customer's Proportion for each Customer's Segment; and
- (ii) within 10 Business Days after the date of termination, QR Network must give to the Customer:
- (A) a written notice stating that the Other Construction Agreement terminated under the OCA Termination Clause in the Other Construction Agreement;
- (B) a revised copy of **schedule 2** of this Agreement (which will be taken to replace the then existing **schedule 2** of this Agreement) updated by QR Network to show for each Customer's Segment:
- (1) each Relevant Other Customer;
 - (2) the Total Other Customers' Capacity for the Customer's Segment;
 - (3) the Total Incremental Capacity for the Customer's Segment; and
 - (4) the Customer's Proportion for the Customer's Segment,
- as a consequence of the termination of the Other Construction Agreement; and
- (C) written notice under **clause 9.11** of the increase to the amount of the Bank Guarantee required to be given by the Customer under **clause 9** as a consequence of the termination of the Other Construction Agreement (**Bank Guarantee Increase Notice**).
- (b) If one or more Other Construction Agreements terminate under the OCA Termination Clauses in the Other Construction Agreements and, as a consequence of the termination of those Other Construction Agreements, there is no Other Customer for a Segment (other than a Customer's Segment), that Segment will be taken not to be a Segment for the purposes of this Agreement on and from the date of the termination of the relevant Other Construction Agreements.
- (c) If an Other Construction Agreement (**Terminated OCA**) terminates under the OCA Termination Clause in the Terminated OCA, then on the date that the relevant Other Customer (**Terminated Customer**) pays to QR Network the full amount of the "Early Termination Payment" (as defined in the Terminated OCA) which is payable by the Terminated Customer to

QR Network under the OCA Termination Clause in the Terminated OCA, then:

- (i) in respect of any Customer's Segment for which the Terminated Customer was, prior to the termination of the Terminated OCA, a Relevant Other Customer – the portion of the "Early Termination Payment" (as defined in the Terminated OCA) paid by the Terminated Customer which is equal to the "Mobilisation Fee" (as defined in the Terminated OCA) for that Customer's Segment will be taken to be an amount recovered from a third party for that Customer's Segment under **paragraph (a)(ii)** of the definition of Extension Costs; and
- (ii) in respect of any Segment which is not a Customer's Segment and for which there is, as at the date that the "Early Termination Payment" (as defined in the Terminated OCA) is paid by the Terminated Customer, no Other Customer for that Segment (**Relevant Terminated Customer's Segment**) – the amount which is the Relevant Proportion for each other Segment of the portion of the "Early Termination Payment" (as defined in the Terminated OCA) paid by the Terminated Customer which is equal to the "Mobilisation Fee" (as defined in the Terminated OCA) for the Relevant Terminated Customer's Segment will be taken to be an amount recovered from a third party for that other Segment under **paragraph (a)(ii)** of the definition of Extension Costs.

9.5 Right to terminate Agreement and Other Construction Agreements – Customer default

- (a) Subject to **clause 9.5(b)**, QR Network may immediately terminate this Agreement by notice in writing to the Customer if:
 - (i) QR Network gives the Customer a Bank Guarantee Increase Notice in accordance with **clause 9.4(a)(ii)(C)**; and
 - (ii) the Customer does not deliver a further Bank Guarantee for the amount of the increase, or a replacement Bank Guarantee for the increased amount, under, and in the time required by, **clause 9.11(c)**.
- (b) QR Network may only terminate this Agreement under **clause 9.5(a)** if, at the same time, QR Network also terminates each Other Construction Agreement under:
 - (i) the provision in the Other Construction Agreement which is on substantially the same terms as this **clause 9.5**; or
 - (ii) the provision in the Other Construction Agreement which is on substantially the same terms as **clause 9.6**.

9.6 Right to terminate Agreement and Other Construction Agreements – Other Customer default

- (a) Subject to **clause 9.6(b)**, QR Network may immediately terminate this Agreement by notice in writing to the Customer if:
 - (i) QR Network gives an Other Customer (*relevant Other Customer*) under an Other Construction Agreement (*relevant Other Construction Agreement*) a “Bank Guarantee Increase Notice” (as defined in the relevant Other Construction Agreement) in accordance with the provision in the relevant Other Construction Agreement which is on substantially the same terms as **clause 9.4(a)(ii)(C)**; and
 - (ii) the relevant Other Customer does not deliver a further bank guarantee for the amount of the increase, or a replacement bank guarantee for the increased amount, under, and in the time required by, the provision in the relevant Other Construction Agreement which is on substantially the same terms as **clause 9.11(c)**.
- (b) QR Network may only terminate this Agreement under **clause 9.6(a)** if, at the same time, QR Network also terminates each Other Construction Agreement under:
 - (i) the provision in the Other Construction Agreement which is on substantially the same terms as **clause 9.5**; or
 - (ii) the provision in the Other Construction Agreement which is on substantially the same terms as this **clause 9.6**.

9.7 Payment of Early Termination Payment

- (a) If this Agreement is terminated by QR Network under:
 - (i) **clause 9.5**; or
 - (ii) **clause 9.6** but at the time that QR Network terminated this Agreement under **clause 9.6**, QR Network also had a right to terminate this Agreement under **clause 9.5**,then:
 - (iii) QR Network must promptly give the Customer an invoice for the Early Termination Payment;
 - (iv) the Customer must, within 10 Business Days after QR Network gives the Customer an invoice for the Early Termination Payment, pay the Early Termination Payment to QR Network as a liquidated debt due; and
 - (v) except for the amount payable under **clause 9.7(a)(iv)** and any interest accruing on that amount under **clause 7.9** and QR Network’s obligation under **clause 9.7(c)**, neither Party will have any liability to the other Party in connection with the termination of this Agreement under **clauses 9.5** or **9.6** (as applicable).

- (b) The Customer acknowledges that the Early Termination Payment is a genuine pre-estimate of the loss, cost, expense and damage to QR Network in the circumstance in which it is payable and constitutes not more than fair and reasonable compensation for the occurrence of such circumstance.
- (c) If QR Network terminates this Agreement under **clause 9.5** or **9.6** and each Other Construction Agreement under a provision in each Other Construction Agreement which is on substantially the same terms as **clause 9.5** or **9.6**, QR Network must reduce the amount of the capital expenditure which it might, following the termination of this Agreement and each Other Construction Agreement, but for this **clause 9.7**, otherwise seek to have included in the Regulatory Asset Base by the amount of the Total Recovered ETPs.
- (d) The promise in **clause 9.7(c)** is for the benefit of the Customer and each Other Customer.

9.8 Recourse to Bank Guarantee

QR Network may only draw on the Bank Guarantee in circumstances where the Customer fails to pay, by the due date, any amount that is payable by the Customer to QR Network under this Agreement or where this Agreement otherwise gives QR Network the express right to draw on the Bank Guarantee.

9.9 Requirements of Bank Guarantee

A Bank Guarantee must:

- (a) be an unconditional and irrevocable bank guarantee in favour of QR Network;
- (b) be issued by a trading bank holding a current Australian banking licence and having a credit rating equivalent to or better than a Standard & Poor's A rating;
- (c) require the issuing bank to pay on demand by QR Network, without recourse to the Customer or any other person, an amount or amounts up to the amount specified in the Bank Guarantee;
- (d) have no expiry date (or, if it is not possible for the Customer to obtain a bank guarantee with no expiry date, have an expiry date no earlier than 12 months after the date of issue of the Bank Guarantee);
- (e) state that it is assignable by QR Network to an assignee from QR Network under **clause 20** (subject to the relevant bank and the Customer being given notice of the identity of the assignee); and
- (f) otherwise be in a form and upon terms acceptable to QR Network (acting reasonably).

9.10 Replacement Bank Guarantee

If a Bank Guarantee has an expiry date, the Customer must, at least 20 Business Days prior to the expiry of the Bank Guarantee, deliver to QR

Network a replacement Bank Guarantee which satisfies the requirements of this **clause 9** in exchange for the existing Bank Guarantee.

9.11 Changes to amount of Bank Guarantee

(a) If at any time, from time to time, QR Network (acting reasonably) is of the opinion that the sum of:

- (i) the Estimated Outstanding Payments; and
- (ii) all amounts invoiced by QR Network but not yet paid by the Customer,

at that time (**Reviewed Amount**) exceeds the amount of the Bank Guarantee then required to be given by the Customer under this **clause 9 (Current Amount)**, then QR Network may, in its absolute discretion, by notice in writing to the Customer, increase the amount of the Bank Guarantee required to be given by the Customer under this **clause 9** up to the Reviewed Amount.

(b) Without limiting **clause 9.11(a)**, QR Network must review the amount of the Bank Guarantee required to be given by the Customer under this **clause 9** at intervals of not more than three months, at which time:

- (i) if the Current Amount exceeds the Reviewed Amount, QR Network must, by notice in writing to the Customer, decrease the amount of the Bank Guarantee required to be given by the Customer to the Reviewed Amount; or
- (ii) if the Reviewed Amount exceeds the Current Amount, QR Network may, by notice in writing to the Customer, increase the amount of the Bank Guarantee required to be given by the Customer up to the Reviewed Amount.

(c) If:

- (i) QR Network increases the amount of the Bank Guarantee required to be given by the Customer under **clause 9.11(a)** or **9.11(b)**, the Customer must deliver to QR Network a further Bank Guarantee for the amount of the increase or a replacement Bank Guarantee for the increased amount in exchange for the existing Bank Guarantee; or
- (ii) QR Network decreases the amount of the Bank Guarantee required to be given by the Customer under **clause 9.11(b)**, the Customer may deliver to QR Network a replacement Bank Guarantee for the Reviewed Amount in exchange for the existing Bank Guarantee,

within 10 Business Days after QR Network gives written notice of the increase or decrease of the amount of the Bank Guarantee.

9.12 Return of security

QR Network must, subject to its rights of recourse to the Bank Guarantee under this **clause 9**, return the Bank Guarantee to the Customer on the earlier of:

- (a) the date which is two months after the date of termination of this Agreement under **clauses 9.3, 9.5 or 9.6**;
- (b) the date of the expiration of this Agreement; and
- (c) 15 months after the Available Date for the last of the Customer's Segments to become Available.

10 Participation Agreement

10.1 Agreement to enter into Participation Agreement

QR Network and the Customer must enter into the Participation Agreement on the Commencement Date.

10.2 Participation Agreement taken to be entered into

If QR Network and the Customer do not enter into the Participation Agreement on the Commencement Date, the Participation Agreement will be taken to be in full force and effect between QR Network and the Customer on and from the Commencement Date and will bind QR Network and the Customer on and from that date whether or not QR Network and the Customer have executed the Participation Agreement.

11 Access Agreement

11.1 Notice to enter into Access Agreement

- (a) Not more than three months before the last of the Estimated Available Dates for the Customer's Segments:
 - (i) if the Customer has not already notified QR Network under **clause 11.1(a)(ii)**, QR Network may notify the Customer in writing that it requires the Customer to, at the Customer's election:
 - (A) enter into an Access Holder Access Agreement with QR Network; or
 - (B) procure its nominated Railway Operator to enter into an Operator Access Agreement with QR Network; or
 - (ii) if QR Network has not already notified the Customer under **clause 11.1(a)(i)**, the Customer may notify QR Network in writing that it requires QR Network to, at the Customer's election:
 - (A) enter into an Access Holder Access Agreement with the Customer; or

- (B) enter into an Operator Access Agreement with its nominated Railway Operator (which must be specified in the notice).
- (b) If QR Network gives the Customer a notice under **clause 11.1(a)**, within 10 Business Days after the date of receipt of the notice, the Customer must notify QR Network whether it elects to:
 - (i) enter into an Access Holder Access Agreement with QR Network; or
 - (ii) procure its nominated Railway Operator (which must be specified in the Customer's notice) to enter into an Operator Access Agreement with QR Network.
- (c) If the Customer does not give a notice under, and within the time required by, **clause 11.1(b)**, the Customer will be deemed to have given a notice to QR Network notifying QR Network that it elects to enter into an Access Holder Access Agreement with QR Network.

11.2 Entering into Access Agreement

If a Party gives a notice under **clause 11.1(a)**, then:

- (a) if the Customer elects to enter into an Access Holder Access Agreement, QR Network and the Customer must enter into the Access Holder Access Agreement; or
 - (b) if the Customer elects to procure its nominated Railway Operator to enter into an Operator Access Agreement with QR Network:
 - (i) QR Network must enter into the Operator Access Agreement with the Customer's nominated Railway Operator; and
 - (ii) the Customer must procure its nominated Railway Operator to enter into the Operator Access Agreement with QR Network,
- in each case, on or before the Available Date for the last of the Customer's Segments to become Available.

11.3 Completion and modification of Access Agreement

The Customer irrevocably authorises and directs QR Network (or if the Customer elects to procure its nominated Railway Operator to enter into an Operator Access Agreement with QR Network, must procure its nominated Railway Operator to irrevocably authorise and direct QR Network) to:

- (a) complete the applicable Access Agreement by inserting the date of the applicable Access Agreement;
- (b) otherwise complete the applicable Access Agreement in accordance with **item 1 of schedule 9**; and
- (c) modify the applicable Access Agreement in accordance with **item 2 of schedule 9**.

11.4 Disputes regarding form of Access Agreement

- (a) If:
- (i) QR Network and the Customer dispute the final form and content of an Access Holder Access Agreement; or
 - (ii) QR Network and the Customer's nominated Railway Operator dispute the final form and content of an Operator Access Agreement,

then that dispute will constitute a Dispute for the purposes of **clause 17** which the Customer may refer to an Expert, provided that:

- (iii) in the absence of the Parties agreeing on the appointment of an Expert within 10 Business Days after the right to refer the matter to an Expert arises, the Expert will be a solicitor or barrister with at least 10 years experience who is nominated by the President (for the time being) of the Queensland Law Society, Inc;
 - (iv) QR Network and the Customer will each submit to the Expert their proposed form of the applicable Access Agreement; and
 - (v) the Expert will determine which of the proposed Access Agreements submitted by the Parties best reflects the intent of this Agreement, and whichever of the proposed Access Agreements submitted by the Parties is selected by the Expert will become the Access Agreement:
 - (A) in the case of an Access Holder Access Agreement, to be entered into between the Parties; or
 - (B) in the case of an Operator Access Agreement:
 - (1) to be entered into by QR Network and the Customer's nominated Railway Operator; and
 - (2) which the Customer must procure its nominated Railway Operator to enter into with QR Network.
- (b) The Parties agree that:
- (i) **clause 11.4(a)** does not apply to the extent that a Dispute about the final form and content of the Access Agreement relates to the final form and content of the Interface Risk Management Plan to be included in the Access Agreement;
 - (ii) an Expert does not have any authority to determine the form and content of the Interface Risk Management Plan to be included in the Access Agreement; and
 - (iii) any Dispute between the Parties in relation to the form and content of the Interface Risk Management Plan will be determined in accordance with the Access Agreement following the execution of it.

11.5 Default Access Agreement

If a Party gives a notice under **clause 11.1(a)** and:

- (a) QR Network and the Customer have not entered into an Access Holder Access Agreement; or
- (b) QR Network and the Customer's nominated Railway Operator have not entered into an Operator Access Agreement,

(as applicable) before the Available Date for the last of the Customer's Segments to become Available, then an Access Holder Access Agreement will be taken to be in full force and effect between QR Network and the Customer on and from the Available Date for the last of the Customer's Segments to become Available and will bind QR Network and the Customer on and from that date whether or not QR Network and the Customer have executed the Access Holder Access Agreement.

11.6 Survival

This **clause 11** survives the termination of this Agreement under **clause 15**.

12 Insurance

12.1 Contract works insurance

- (a) Within 10 Business Days after the Commencement Date, QR Network must effect and maintain until the Available Date for the last of the Segments to become Available a contract works material damage insurance policy covering physical loss or damage to the Extension.
- (b) The insurance policy referred to in **clause 12.1(a)** must be for an amount in respect of any one occurrence of not less than the maximum expected foreseeable loss from one occurrence of property damage with a deductible for any one claim of not more than \$1 million.

12.2 Public liability insurance

- (a) Within 10 Business Days after the Commencement Date, QR Network must effect and maintain until the Available Date for the last of the Segments to become Available a construction risk third party legal liability insurance policy covering legal liability to a third party from personal injury or property damage arising from an occurrence in connection with the carrying out of the Works for the Extension.
- (b) The insurance policy referred to in **clause 12.2(a)** must be for an amount in respect of any one occurrence of not less than \$50 million with a deductible for any one claim of not more than \$1 million.

12.3 Other insurances

Within 10 Business Days after the Commencement Date, QR Network must effect and maintain workers' compensation insurance and compulsory third party motor vehicle legal liability insurance as required by law.

12.4 General requirements

If requested to do so by the Customer (not more than once each year of this Agreement), QR Network must promptly provide the Customer with a certificate of currency for the insurance policies required to be effected and maintained under this **clause 12**.

12.5 Extension Costs

For the avoidance of doubt, any premiums and deductibles payable by QR Network in respect of the insurance policies or claims under the insurance policies required to be effected and maintained under this **clause 12** will be an Extension Cost Incurred by QR Network.

13 Force majeure

- (a) If QR Network is prevented or hindered by a Force Majeure Event from fully or partly performing any obligation (except for the payment of money) under this Agreement, then QR Network will be excused from performing that obligation for the period that QR Network is so prevented or hindered.
- (b) Upon the occurrence of any Force Majeure Event which prevents or hinders QR Network from fully or partly performing any obligation under this Agreement, QR Network must:
 - (i) give written notice of the event to the Customer as soon as reasonably practicable;
 - (ii) use all reasonable endeavors to mitigate the effect of the Force Majeure Event upon the performance of its obligations under this Agreement; and
 - (iii) resume full performance of its obligations under this Agreement as soon as reasonably practicable, and notify the Customer when it does so.

14 Limitation of liability

14.1 Limitation of QR Network's liability

Except to the extent:

- (a) that QR Network has been guilty of fraud, dishonesty or wilful default; or
- (b) otherwise prohibited by law,

QR Network's liability in respect of a claim arising out of, or in any way related to, this Agreement (excluding a claim in respect of the non-payment by QR Network of an amount that it is expressly required to pay under the terms of this Agreement) is limited to, and will in no event exceed, the total amount of \$1.00.

14.2 Exclusion of Consequential Loss

Despite any other provision of this Agreement, but without limiting the operation of **clause 14.1**, neither Party will be liable to the other for, nor will any indemnity by either Party under this Agreement extend to, any Consequential Loss suffered by or claimed against that other Party.

14.3 Scope of claim, liability or loss

For the avoidance of doubt and without limitation:

- (a) references in this **clause 14** to a claim, liability or loss include:
 - (i) a claim for, or liability or loss arising from, breach of contract, tort (including negligence), breach of statutory duty, breach of the *Trade Practices Act 1974 (Cth)* or otherwise; and
 - (ii) a claim, liability or loss arising out of the performance or non-performance of any obligation under this Agreement, or arising out of a termination of this Agreement for any reason (including breach, repudiation or otherwise); and
- (b) QR Network will not be liable for any matter of whatever nature concerning or in relation to the Customer's obligation to supply product from a mine to any third party or to make product available for transport.

14.4 Claims against QR Network

The Customer will not have, and must not make, any claim against QR Network in relation to or arising out of the entry into or the performance or non-performance of this Agreement unless the Customer first provides QR Network with a written notice of the purported claim and allows QR Network a reasonable period to rectify the relevant default and QR Network fails to rectify it within that reasonable period.

14.5 Survival

This **clause 14** will survive the termination of this Agreement.

15 Termination for default

15.1 Termination

- (a) QR Network may immediately terminate this Agreement by written notice to the Customer if:
 - (i) QR Network seeks to draw on a Bank Guarantee and the issuing bank does not pay to QR Network the amount which QR Network demands to be paid under the Bank Guarantee; and
 - (ii) the Customer does not:
 - (A) pay to QR Network the amount which QR Network demanded to be paid under the Bank Guarantee; and

(B) deliver a replacement Bank Guarantee (for the same amount as the Bank Guarantee less the amount paid under **clause 15.1(a)(ii)(A)**) to QR Network,

within three Business Days after QR Network gives the Customer written notice requiring the Customer to do so.

- (b) For the avoidance of doubt, where QR Network is entitled to terminate this Agreement under **clause 15.1(a)** due to a failure referred to in **clause 15.1(a)** by the issuing bank of a Bank Guarantee provided by one or more (but not all) of the JV Participants, QR Network will be entitled to terminate this Agreement under **clause 15.1(a)** in respect of all of the JV Participants. **[Drafting note: Optional clause to be included if the Customer is a Joint Venture.]**

15.2 Termination for Insolvency Event in respect of QR Network

- (a) The Customer may immediately terminate this Agreement by written notice to QR Network if an Insolvency Event occurs in respect of QR Network.
- (b) QR Network warrants, and the Customer acknowledges, that each Other Construction Agreement will contain a clause (**Insolvency Termination Clause**) on substantially the same terms as this **clause 15.2**.

15.3 Termination of Agreement and Other Construction Agreements

- (a) Subject to **clause 15.3(b)**, if an Other Customer terminates the Other Customer's Other Construction Agreement under the Insolvency Termination Clause in the Other Construction Agreement, QR Network may immediately terminate this Agreement by written notice to the Customer.
- (b) QR Network must only terminate this Agreement under **clause 15.3(a)** if, at the same time, QR Network also terminates each Other Construction Agreement under the provision in the Other Construction Agreements which is on substantially the same terms as this **clause 15.3**.
- (c) QR Network warrants, and the Customer acknowledges, that each Other Construction Agreement will contain a clause on substantially the same terms as this **clause 15.3**.

15.4 No other rights of termination

Despite any rule of law or equity to the contrary, neither Party may terminate, rescind or treat as repudiated this Agreement other than as expressly provided for in this Agreement.

15.5 Effect of termination

Nothing in this **clause 15** prejudices in any way a Party's right to claim and recover damages for any breach of this Agreement by the other Party.

16 Alternative payment arrangements

16.1 Application

This **clause 16** will commence to apply if:

- (a) the Customer does not deliver to QR Network a replacement Bank Guarantee under, and within the time required by, **clause 9.10**; or
- (b) the issuing bank of the Bank Guarantee exercises a right under the Bank Guarantee to request QR Network to draw on the full or remaining amount of the Bank Guarantee.

16.2 QR Network entitled to draw on Bank Guarantee

QR Network must promptly (and in any event within 15 Business Days) after this **clause 16** commences to apply:

- (a) draw on the full amount of the Bank Guarantee provided by the Customer;
- (b) establish a separate interest bearing bank account in QR Network's name (**Bank Account**); and
- (c) deposit the amount drawn by QR Network under **clause 16.2(a)** into the Bank Account.

16.3 Drawing and depositing funds

- (a) If an amount is due and payable by the Customer to QR Network under this Agreement:
 - (i) QR Network must draw from the Bank Account the amount that is due and payable (or part of the amount that is due and payable up to the balance of the Bank Account) as soon as reasonably practicable after the amount becomes due and payable; and
 - (ii) the amount drawn from the Bank Account under **clause 16.3(a)(i)** will be treated as payment by the Customer to QR Network of the amount that is due and payable (up to the amount drawn from the Bank Account) at the time it is drawn from the Bank Account.
- (b) If an amount is due and payable by the Customer to QR Network under this Agreement and QR Network cannot draw some or all of the amount from the Bank Account under **clause 16.3(a)** by the due date for payment because there is insufficient funds in the Bank Account:
 - (i) the outstanding amount (together with any interest accruing on that outstanding amount under **clause 7.9**) that cannot be drawn from the Bank Account by the due date for payment (**Outstanding Amount**) will, for the avoidance of doubt, continue to be due and payable by the Customer to QR Network under this Agreement; and
 - (ii) if, and when, funds are deposited into the Bank Account, QR Network must draw any Outstanding Amount from the Bank Account in accordance with **clause 16.3(a)** in priority to any other

amounts (including other later Outstanding Amounts) that become due and payable under this Agreement after the date the Outstanding Amount became due and payable.

- (c) If an amount is due and payable by QR Network to the Customer under this Agreement:
 - (i) QR Network must, subject to QR Network's right of set-off under **clause 7.11**, deposit into the Bank Account the amount that is due and payable within the time for payment of that amount under this Agreement; and
 - (ii) the amount deposited into the Bank Account will be treated as payment by QR Network to the Customer of the amount that is due and payable (up to the amount deposited into the Bank Account) on the date of payment of that amount under this Agreement.
- (d) If QR Network is required (or will be required) to pay tax on any interest earned on amounts in the Bank Account from time to time, QR Network may draw from the Bank Account the amount paid (or payable) in respect of such tax.

16.4 QR Network owns funds in Bank Account

- (a) The Customer acknowledges that QR Network will own all amounts in the Bank Account (including any interest earned on amounts in the Bank Account) from time to time.
- (b) Despite **clause 16.4(a)**, QR Network cannot:
 - (i) deposit amounts into the Bank Account except as permitted under **clauses 16.2, 16.3 and 16.6**; and
 - (ii) draw amounts from the Bank Account (including any interest earned on amounts in the Bank Account) except as permitted under **clauses 16.3 and 16.6**.

16.5 Statement

Within 15 Business Days after the end of each calendar month after this **clause 16** commences to apply, QR Network must give the Customer a statement for that month setting out:

- (a) any amounts drawn from the Bank Account during that month;
- (b) any amounts deposited into the Bank Account during that month;
- (c) any interest earned on the amount in the Bank Account during that month;
- (d) the balance of the Bank Account at the end of that month;
- (e) the sum of all amounts due and payable by the Customer to QR Network under this Agreement at the end of that month; and
- (f) the sum of all amounts due and payable by QR Network to the Customer under this Agreement at the end of that month.

16.6 Reconciliation

- (a) On the Bank Account Reconciliation Date, QR Network must draw from the Bank Account any amounts which it is entitled to draw from the Bank Account at that time in accordance with **clause 16.3**.
- (b) Within 15 Business Days after the Bank Account Reconciliation Date, QR Network must give to the Customer a statement (**Bank Account Reconciliation Statement**) setting out:
 - (i) the balance of the Bank Account as at the Bank Account Reconciliation Date;
 - (ii) the sum of all amounts due and payable by QR Network to the Customer under this Agreement as at the Bank Account Reconciliation Date;
 - (iii) the sum of all amounts due and payable by the Customer to QR Network under this Agreement as at the Bank Account Reconciliation Date; and
 - (iv) the total statement amount being the sum of the amounts specified in **clauses 16.6(b)(i)** and **16.6(b)(ii)** less the amount specified in **clause 16.6(b)(iii)** (which may be a positive or negative amount).
- (c) If the total statement amount specified in the Bank Account Reconciliation Statement is a positive amount, at the time that QR Network gives the Customer the Bank Account Reconciliation Statement, QR Network must pay the total statement amount to the Customer.

17 Disputes

17.1 Notification of Disputes

- (a) If any claim, dispute or question (**Dispute**) arises between the Parties under this Agreement, any Party may give to the other Party a notice in writing (**Dispute Notice**) specifying the Dispute and referring it for resolution in accordance with this **clause 17**.
- (b) Unless otherwise expressly provided to the contrary in this Agreement, a Dispute must be resolved in accordance with this **clause 17**.

17.2 Senior executive resolution

- (a) Within 10 Business Days after the giving of a Dispute Notice any Dispute must be referred in the first instance to the chief executive officer of QR Network (or his or her nominee) and the chief executive of the Customer (or his or her nominee) for the purposes of this **clause 17.2** for resolution.
- (b) If the Dispute is not resolved within 10 Business Days after the referral under **clause 17.2(a)** or in the event that either senior executive appoints a nominee that is unacceptable to the other Party, then the relevant Dispute:
 - (i) must, where this Agreement expressly requires referral to an expert; and

- (ii) may, by agreement of the Parties in any other case, be referred for resolution by an expert (**Expert**) in accordance with **clause 17.3**.

17.3 Expert determination

Where any matter is referred to an Expert pursuant to **clause 17.2** or otherwise in accordance with the terms of this Agreement then the following provisions of this **clause 17.3** will apply:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within 10 Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) where the Parties agree the Dispute is purely of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;
 - (ii) where the Parties agree the Dispute is purely of a financial or accounting nature, the President (for the time being) of The Institute of Chartered Accountants in Australia – Queensland Branch; and
 - (iii) in any other case, the President (for the time being) of the Queensland Law Society, Inc;
- (b) the Expert must:
 - (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 by written notice to the Parties before his or her appointment;
 - (iii) not be an employee of the Customer or QR Network or a Related Body Corporate of either Party;
 - (iv) not be permitted to act until he or she has given written notice to the Parties that he or she is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties;
 - (vi) provide both Parties with a copy of his or her determination in the form of a report within a reasonable time after his or her appointment;

- (vii) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties; and
 - (viii) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration including, without limitation, the *Commercial Arbitration Act 1990* (Qld) as amended, will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and
- (c) if the determination of a matter referred to the Expert would require the Expert to be provided with any Price Sensitive Information by QR Network, the Expert must enter into a confidentiality agreement in favour of QR Network requiring the Expert to keep the Price Sensitive Information confidential (including from the Customer and Other Customers).

17.4 Parties to assist Expert

The Parties must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute including producing information and materials requested by the Expert and attending any hearing convened by the Expert.

17.5 Decision of Expert

In the absence of manifest error, the decision of the Expert is final and binding upon the Parties.

17.6 Costs

- (a) The costs of the Expert and any advisers engaged by the Expert will be borne equally by the Parties to the Dispute.
- (b) Each Party to the Dispute will bear its own legal costs and the costs of any advisers to it in respect of the Dispute resolution process under this **clause 17**.
- (c) Any costs borne by QR Network under this **clause 17** will be deemed to be Extension Costs, unless the Expert determines that the position which QR Network had taken in relation to the Dispute was unreasonable, in which case such costs will be deemed not to be Extension Costs.

17.7 Determination by Court

If any Dispute is not otherwise resolved in accordance with this **clause 17**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane, subject to the following:

- (a) the Parties irrevocably agree that the courts of the State are to have exclusive jurisdiction to settle disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this Agreement may be brought in, and only in, such courts; and

- (b) each Party irrevocably waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in such courts and any claim that any such Proceedings have been brought in an inconvenient forum and further irrevocably agrees that a final judgment in any Proceedings brought in such courts will be final and binding upon such Party and may be enforced in the courts of any other jurisdiction.

17.8 Injunctive relief

Nothing in this Agreement will prevent a Party from seeking urgent injunctive relief from a court.

17.9 Disputes involving Other Customers

If QR Network is of the opinion that:

- (a) a Dispute which arises under this Agreement, or the outcome or consequences of that Dispute, may be relevant to one or more Other Customers under Other Construction Agreements; or
- (b) a "Dispute" (as defined under an Other Construction Agreement) which arises under the Other Construction Agreement, or the outcome or consequences of that Dispute, may be relevant to the Customer under this Agreement,

then:

- (c) QR Network may, as applicable, join:
 - (i) the relevant Other Customers to the dispute resolution process under this Agreement; or
 - (ii) the Customer to the dispute resolution process under the relevant Other Construction Agreement; and
- (d) QR Network, the Customer and each relevant Other Customer joined to participate in the dispute resolution process under this Agreement or an Other Construction Agreement (as applicable) will be bound by the outcome of the resolution of the Dispute irrespective of whether or not the Customer and the relevant Other Customers (as applicable) choose to actively participate in the dispute resolution process.

17.10 Warranty and acknowledgement

QR Network warrants, and the Customer acknowledges, that each Other Construction Agreement will contain a clause on substantially the same terms as this **clause 17**.

18 Confidentiality

18.1 Confidentiality obligations

A Party (**Recipient**):

- (a) may use Confidential Information of the other Party (**Disclosing Party**) only for the purposes of this Agreement; and

- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 18.2**.

18.2 Disclosure of Confidential Information

A Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to any person, where the Disclosing Party has consented in writing to such disclosure (such consent not to be unreasonably withheld, and may be given subject to reasonable conditions, such as the signing of an appropriate confidentiality undertaking);
- (b) to the extent necessary to progress negotiations with any other person relevant to matters contemplated in this Agreement (for example, another intended user of the Extension Land);
- (c) to the extent necessary to effect the administration or enforcement of this Agreement, or further negotiations pursuant to this Agreement, by employees, professional advisers (including legal advisers) and consultants of the Recipient;
- (d) to any Related Body Corporate of the Recipient to the extent necessary for reporting purposes within a relevant group of companies, governance and oversight of the relevant group of companies and obtaining any approval or consent (whether or not directly from that Related Body Corporate) in relation to the Recipient entering into this Agreement;
- (e) to potential purchasers, assignees or transferees of the rights or obligations of the Recipient under this Agreement who execute a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (f) to a bank or other financial institution (and its professional advisers and any security trustee or agent for it) in connection with and for the purpose of any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;
- (g) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information;
- (h) to any officers or employees of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement or an Access Agreement (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;

- (i) to any person who owns or operates the Terminal, provided that the disclosure is expressly made on a confidential basis;
- (j) if, and to the extent, the Recipient is required to do so by law, any taxation authority or by any rules or regulations of a recognised stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);
- (k) if disclosure is lawfully required by the QCA, or in accordance with the Access Undertaking;
- (l) to an Auditor or Expert under this Agreement or an “Auditor” or “Expert” (as defined in an Other Construction Agreement) under an Other Construction Agreement;
- (m) where QR Network is the Recipient, to Other Customers to the extent:
 - (i) expressly provided in this Agreement; or
 - (ii) reasonably required for the purposes of this Agreement, including in connection with:
 - (A) the resolution of Disputes under this Agreement or “Disputes” (as defined under an Other Construction Agreement) under an Other Construction Agreement;
 - (B) variations under **clauses 4 and 5**; and
 - (C) the provision of reports under **clause 6**; or
- (n) where QR Network is the Recipient, to the party which is the “Funder” under the Participation Agreement to the extent that the Participation Agreement requires QR Network to disclose the Confidential Information to the Funder.

19 GST

19.1 Construction

In this **clause 19**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*; and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

19.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

19.3 Payment of GST

If GST is payable on any supply made by a party (or any entity through which that party acts) (**Supplier**) under or in connection with this Agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

19.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 19.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

19.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 19.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

19.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 19.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

19.7 Reimbursements

Where a party is required under this Agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

20 Assignment

20.1 Assignment

- (a) Subject to **clauses 20.2** and **20.3**, a Party [(and in the case of the Customer, a JV Participant in the Joint Venture)] (**Assigning Party**) must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber (**Deal With**) all or any of its rights or liabilities under this Agreement (or procure or permit any of those things)

without the prior written consent of the other Party (**Non-Assigning Party**).

- (b) Subject to **clauses 20.2** and **20.3**, the Non-Assigning Party must not withhold its consent to a proposed assignment or transfer of all of the Assigning Party's rights and liabilities under this Agreement if:
 - (i) the Assigning Party reasonably satisfies the Non-Assigning Party that the proposed assignee or transferee (**Proposed Assignee**) is respectable, responsible and financially secure, and has the ability to comply with the Assigning Party's obligations under this Agreement;
 - (ii) there are no unremedied breaches of this Agreement by the Assigning Party; and
 - (iii) in the case of an assignment or transfer by the Customer, the Proposed Assignee provides, if QR Network so requires, security or (if applicable) a replacement security in accordance with the requirements of **clause 9**.
- (c) Notwithstanding any other provision of this **clause 20.1**, an assignment or transfer by an Assigning Party of any of its rights or liabilities under this Agreement is conditional upon, and will only take effect upon, the execution by the Proposed Assignee and the Parties of a deed of novation in a form acceptable to the Non-Assigning Party (acting reasonably), the terms of which include agreement by the Proposed Assignee to be bound by and to perform the obligations of the Assigning Party under this Agreement.
- (d) Following an assignment or transfer by an Assigning Party of any of its rights or liabilities under this Agreement, the Assigning Party must, upon demand by the Non-Assigning Party, promptly pay to the Non-Assigning Party, its reasonable legal and other costs in connection with the proposed assignment or transfer (including the cost of preparing and executing the deed of novation), whether or not the proposed assignment or transfer receives consent or is completed.
- (e) An assignment or transfer in accordance with this **clause 20.1** does not operate to release the Assigning Party from any liability for any breach of this Agreement prior to the assignment or transfer (as applicable).

20.2 Assignment by Customer before last Available Date

Where the Assigning Party is the Customer [or JV Participant in a Joint Venture], before the Available Date for the last of the Customer's Segments to become Available, the Assigning Party must not assign or transfer any of its rights or obligations under this Agreement unless the Assigning Party contemporaneously assigns and transfers to the Proposed Assignee all of the Assigning Party's rights and obligations under the Participation Agreement.

20.3 Charges

The Customer [or a JV Participant in the Joint Venture] (**Chargor**) may mortgage, charge or encumber (**Charge**) all or any of its rights and obligations under this Agreement in whole or in part, in favour of any financier, mortgagee or chargee (**Chargee**), provided that the Chargor, the Chargee and QR Network execute any reasonable form of deed of covenant required by QR Network including terms to the effect that QR Network acknowledges the existence of the Charge, and that the Chargee will comply with this **clause 20** in the exercise of its rights under the Charge.

20.4 Access Agreement

The Customer acknowledges that it (or its nominated Railway Operator, as applicable) cannot Deal With all or any of its (or its nominated Railway Operator's) rights or liabilities under the Access Agreement except as permitted by the Access Agreement.

21 Notices

21.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this Agreement must be in writing in English and may be given by an agent of the sender.

21.2 How to give a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the Party's current business address for Notices;
- (c) sent to the Party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the Party's current fax number for Notices.

21.3 Particulars for giving of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **item 2 of schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by notice to each other Party.

21.4 Notices by post

Subject to **clause 21.2**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting.

21.5 Notices by fax

Subject to **clause 21.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

21.6 After hours Notices

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

21.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 21** or in accordance with any applicable law.

22 Representations and warranties

Each Party warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Agreement are enforceable in accordance with their terms;
- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it which would have a material adverse effect on its ability to observe its obligations under this Agreement; and
- (f) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Agreement.

23 Tax

23.1 Acknowledgements

- (a) The Parties acknowledge that it is their intention that this Agreement will constitute a long term construction contract within the meaning contemplated by *Income Tax Ruling IT 2450*.

- (b) The Customer acknowledges that, on or before the date of this Agreement, it has received copies of:
- (i) the application for a private binding ruling lodged by QR Network or the Head Company in relation to the application of the principles set out in *Income Tax Ruling IT 2450* to this Agreement; and
 - (ii) correspondence between QR Network or the Head Company and the Government Agency in respect of the application referred to in **clause 23.1(b)(i)**, including a copy of the private binding ruling issued by the Government Agency.

[Drafting note: This clause 23.1(b) is included based on the assumption that:

- the Customer requires such a private binding ruling to be provided; and
- such a private binding ruling has been issued by the Government Agency as at the date of this Agreement.]

- (c) QR Network acknowledges that it is its intention that it will, or will use its reasonable endeavours to procure that the Head Company will, prepare income tax returns to account for its income and expenditure under this Agreement consistent with the principles set out in *Income Tax Ruling IT 2450*.
- (d) QR Network acknowledges that it is not entitled to make a claim under **clause 23.2** to the extent that QR Network, or the Head Company, is required to account for the income and expenditure under this Agreement consistent with the principles set out in *Income Tax Ruling IT 2450*.

23.2 Indemnity

- (a) The Customer must indemnify and keep indemnified QR Network and the Head Company in accordance with the Compensation Method.
- (b) QR Network must promptly give to the Customer written notice of any Tax Enquiry or Tax Demand received by QR Network or the Head Company including a copy of the Tax Enquiry or Tax Demand (as the case may be).
- (c) Unless otherwise agreed, QR Network and the Customer must, acting in good faith, liaise with each other for no longer than 15 Business Days from the day the notice referred to in **clause 23.2(b)** is provided to the Customer regarding the proposed response (if any) to the Tax Enquiry or Tax Demand.
- (d) On receipt of a Tax Demand, QR Network may, after the consultation referred to in **clause 23.2(c)**, give to the Customer written notice of:
- (i) the amount of any Additional Charge; and
 - (ii) the amount of QR Network Compensation that it has calculated and reasonable particulars in relation to that calculation.

- (e) The Customer must notify QR Network within 15 Business Days of receipt of the notice given by QR Network pursuant to **clause 23.2(d)** as to whether or not it agrees with the calculation of the QR Network Compensation contained in such notice and, if not, what corrections it proposes (**Tax Notice**).
- (f) If, on receipt of a Tax Notice in which the Customer notifies QR Network that it proposes corrections to the calculation of QR Network Compensation, and after engaging in good faith discussions, QR Network and the Customer, within 15 Business Days after the day on which the Customer gives the Tax Notice to QR Network, reach agreement in respect of corrections to the calculation of QR Network Compensation, the amount of QR Network Compensation will be adjusted accordingly.
- (g) If, on receipt of a Tax Notice in which the Customer notifies QR Network that it proposes corrections to the calculation of QR Network Compensation, and after engaging in good faith discussions, QR Network and the Customer cannot, within 15 Business Days after the day on which the Customer gives the Tax Notice to QR Network, agree to the QR Network Compensation calculated under the Compensation Method:
 - (i) the QR Network Compensation is to be determined by a Tax Reviewer. In so acting, the Tax Reviewer:
 - (A) must be instructed to review the calculation of the QR Network Compensation using the Compensation Method; and
 - (B) will act as an expert and not as an arbitrator, and his or her decision will be final and binding on the parties with the amount of QR Network Compensation being adjusted accordingly;
 - (ii) the Customer will pay the Tax Reviewer's costs and expenses in respect of any such reference unless the Tax Reviewer determines that the calculation of the QR Network Compensation notified by QR Network under **clause 23.2(d)** is objectively unreasonable in the circumstances, in which case QR Network will pay the Tax Reviewer's costs and expenses in respect of any such reference.

23.3 Payment

- (a) The Customer must pay to QR Network an amount equal to:
 - (i) an Additional Charge notified by QR Network pursuant to **clause 23.2(d)** by no later than the day that is 5 Business Days preceding the due date (or any extended date for payment permitted by the relevant Government Agency) specified in the Tax Demand to which the Additional Charge relates;
 - (ii) if the Customer gives a Tax Notice to QR Network under **clause 23.2(e)** and agrees with the amount of QR Network Compensation

notified by QR Network under **clause 23.2(d)** or Customer does not comply with its obligation under **clause 23.2(e)** to provide a Tax Notice within the time required by that clause, the amount of QR Network Compensation so notified by QR Network within 5 Business Days after the day that the Customer gives the Tax Notice to QR Network or if Customer does not comply with its obligation under **clause 23.2(e)** to provide a Tax Notice within the time required by that clause, 5 Business Days after the day that the Customer was required to give the Tax Notice to QR Network;

- (iii) if **clause 23.2(f)** applies, the amount of the adjusted QR Network Compensation referred to in that clause within 5 Business Days of reaching the agreement regarding the QR Network Compensation referred to in that clause; and
 - (iv) if **clause 23.2(g)** applies, an amount equal to the adjusted QR Network Compensation referred to in **clause 23.2(g)(i)(B)** within 5 Business Days of the Tax Reviewer notifying the parties of the amount of the adjusted QR Network Compensation.
- (b) If one or more of **clauses 23.3(a)(ii)**, **23.3(a)(iii)** or **23.3(a)(iv)** apply:
- (i) the Customer must pay interest to QR Network which will accrue on the amount of QR Network Compensation payable under this **clause 23.3** from the date that is 20 Business Days after receipt of the notice given by QR Network pursuant to **clause 23.2(d)** until that amount of QR Network Compensation, together with the interest thereon, has been paid to QR Network; and
 - (ii) the interest referred to in **clause 23.3(b)(i)** will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each month will be capitalised and will thereafter itself bear interest.

23.4 Tax effect

- (a) If any payment by the Customer to QR Network under **clause 23.3** would require QR Network or the Head Company to include an amount in its Assessable Income (for the avoidance of doubt, including any amount calculated under Parts 3-1 to 3-3 of the *Income Tax Assessment Act 1997* (Cth)) as a result of the amount received by QR Network, the Customer must pay to QR Network, within 5 Business Days of a demand from QR Network, an additional amount calculated as follows:

$$AA = \left[\frac{P}{(1 - T)} \right] - P$$

where:

AA = the additional amount to be paid;

P = the amount QR Network or the Head Company is required to include in its Assessable Income as contemplated by this **clause 23.4(a)** reduced by the amount of any Tax Relief

available to QR Network or the Head Company (as the case may be) for amounts paid by QR Network or the Head Company (as the case may be) and to which the receipt from the Customer relates; and

T = the income tax rate that would apply to QR Network or the Head Company (for the purposes of section 4-10 of the Tax Act and determined in accordance with section 23 of the *Income Tax Rates Act 1986* (Cth)) at the time that the calculation is performed, expressed as a decimal.

- (b) If there is a dispute as to whether QR Network or the Head Company is required to include an amount in its Assessable Income or whether any Tax Relief is available to QR Network or the Head Company as contemplated by **clause 23.4(a)** and QR Network and the Customer cannot reach an agreement within 15 Business Days from the date of the demand issued by QR Network pursuant to **clause 23.4(a)**:
- (i) the matter is to be referred to a Tax Reviewer for determination of the dispute. In so acting, the Tax Reviewer will act as an expert and not as an arbitrator, and his or her decision will be final and binding on the parties;
 - (ii) if the Tax Reviewer determines that QR Network or the Head Company is required to include an amount in its Assessable Income (after taking into account any Tax Relief available to QR Network or the Head Company) as contemplated by **clause 23.4(a)**, the Customer must pay the additional amount calculated pursuant to that clause within 5 Business Days of the Tax Reviewer notifying the parties of that determination; and
 - (iii) the Customer will pay the Tax Reviewer's costs and expenses in respect of any such reference unless the Tax Reviewer determines that the calculation of the amount demanded by QR Network under **clause 23.4(a)** is objectively unreasonable in the circumstances, in which case QR Network will pay the Tax Reviewer's costs and expenses in respect of any such reference.

23.5 Appointment of a Tax Reviewer

- (a) For the purposes of this **clause 23**, subject to **clause 23.5(b)**:
- (i) a Tax Reviewer will be an independent Tax expert that QR Network and the Customer agree to appoint; and
 - (ii) if the agreement required by **clause 23.5(a)(i)** cannot be reached within a reasonable time, the independent Tax expert will be nominated by the President for the time being of the Taxation Institute of Australia (or any successor institution).
- (b) If QR Network is of the opinion, acting reasonably, that a matter that is to be referred to a Tax Reviewer:

- (i) under **clause 23.2(g)** or **clause 23.4(b)** of this Agreement may be relevant to one or more Other Customers under Other Construction Agreements; or
 - (ii) under the clauses corresponding to **clause 23.2(g)** or **clause 23.4(b)** in one or more Other Construction Agreements may be relevant to the Customer under this Agreement,
- then one Tax Reviewer will be appointed to determine the matters in dispute.
- (c) Any Tax Reviewer appointed for the purposes of this **clause 23** must be engaged jointly by the Customer and QR Network.

24 Managing contractor to manage construction

24.1 Warranty and acknowledgement

QR Network warrants, and the Customer acknowledges, that each Other Construction Agreement will contain a provision on substantially the same terms as this **clause 24**.

24.2 Unnecessary delayed construction

For the purpose of this **clause 24**, QR Network will be taken to have unnecessarily delayed the construction of the Extension at a point in time if (and only if), subject to **clause 24.3**, at that time:

- (a) the Estimated Available Date for any Customer's Segment is more than six months later than the Latest Target Available Date at that time;
- (b) for each Other Construction Agreement, the "Estimated Available Date" for any "Customer's Segment" is more than six months later than the "Latest Target Available Date" (each as defined in the Other Construction Agreement) at that time;
- (c) the Estimated Available Date for any Customer's Segment is more than three months later than the Estimated Terminal Available Date at that time; and
- (d) for each Other Construction Agreement, the "Estimated Available Date" for any "Customer's Segment" (each as defined in the Other Construction Agreement) is more than three months later than the Estimated Terminal Available Date at that time.

24.3 Variations to Target Available Dates

- (a) **Clause 24.2(a)** will not be taken to be satisfied if:
 - (i) at the relevant time QR Network has given a Variation Notice which requests consent to vary the Target Available Date for a Customer's Segment under **clause 4.3**;
 - (ii) **clause 24.2(a)** would not be satisfied if the Target Available Date for the relevant Customer's Segment was, at that time, varied as proposed in the relevant Variation Notice; and

- (iii) there remains a possibility, at that time, that the Target Available Date for the relevant Customer's Segment may be varied as proposed in the relevant Variation Notice by operation of **clause 4**.
- (b) **Clause 24.2(a)** will not be taken to be satisfied if:
 - (i) at the relevant time QR Network has given a notice under **clause 5.7** varying the Target Available Date for a Customer's Segment; and
 - (ii) **clause 24.2(a)** would not be satisfied if the Target Available Date for the relevant Customer's Segment was, at that time, varied as notified by QR Network.
- (c) **Clause 24.2(b)** will not be taken to be satisfied if:
 - (i) at the relevant time QR Network has given a "Variation Notice" which requests consent to vary the "Target Available Date" for a "Customer's Segment" (each as defined in an Other Construction Agreement) under the provision in the Other Construction Agreement which is on substantially the same terms as **clause 4.3**;
 - (ii) **clause 24.2(b)** would not be satisfied if the "Target Available Date" for the relevant "Customer's Segment" was, at that time, varied as proposed in the relevant "Variation Notice" (each as defined in the Other Construction Agreement); and
 - (iii) there remains a possibility, at that time, that the "Target Available Date" for the relevant "Customer's Segment" may be varied as proposed in the relevant "Variation Notice" (each as defined in the Other Construction Agreement) by operation of the provision in the Other Construction Agreement which is on substantially the same terms as **clause 4**.
- (d) **Clause 24.2(b)** will not be taken to be satisfied if:
 - (i) at the relevant time QR Network has given a notice under the provision in an Other Construction Agreement which is on substantially the same terms as **clause 5.7** varying the "Target Available Date" for a "Customer's Segment" (each as defined in the Other Construction Agreement); and
 - (ii) **clause 24.2(b)** would not be satisfied if the "Target Available Date" for the relevant "Customer's Segment" (each as defined in the Other Construction Agreement) was, at that time, varied as notified by QR Network.

24.4 Unnecessary Delay Notice and Election Notice

- (a) If QR Network is taken to have unnecessarily delayed the construction of the Extension under **clause 24.2**, the Customer may give QR Network a notice stating that QR Network has unnecessarily delayed the construction of the Extension (**Unnecessary Delay Notice**).

- (b) If QR Network Disputes that it has unnecessarily delayed the construction of the Extension as claimed in an Unnecessary Delay Notice:
 - (i) QR Network may give the Customer a Dispute Notice under **clause 17.1**; and
 - (ii) if the Dispute is not resolved in accordance with **clause 17.2**, QR Network may refer the Dispute to an Expert to determine whether QR Network is taken to have unnecessarily delayed the construction of the Extension under **clause 24.2**.
- (c) Within five Business Days after the date that:
 - (i) the Customer gives QR Network an Unnecessary Delay Notice (or, if QR Network Disputes that it has unnecessarily delayed the construction of the Extension as claimed in the Unnecessary Delay Notice, the date it is agreed or the Expert determines that QR Network has unnecessarily delayed construction of the Extension); or
 - (ii) an Other Customer gives QR Network an “Unnecessary Delay Notice” (or if QR Network “Disputes” that it has unnecessarily delayed the construction of the “Extension” as claimed in the “Unnecessary Delay Notice”, the date it is agreed or the “Expert” determines that QR Network has unnecessarily delayed the construction of the “Extension” (each as defined in the Other Customer’s Other Construction Agreement)),

QR Network must give a notice (**Election Notice**) to the Customer and each Other Customer requesting each of them to notify QR Network:

 - (iii) if it elects for QR Network to engage a managing contractor nominated by it to assume responsibility for the management of the construction of the Extension in accordance with **clause 24.5**; and
 - (iv) if so, the managing contractor nominated by it to be engaged by QR Network.

24.5 Assumption of responsibility for the management of the construction of Extension

- (a) This **clause 24.5** applies if (and only if):
 - (i) QR Network gives an Election Notice to the Customer and each Other Customer under **clause 24.4**;
 - (ii) within five Business Days after QR Network gives the Election Notice to the Customer and each Other Customer, the Customer and each Other Customer has:
 - (A) notified QR Network that it elects for QR Network to engage a managing contractor to assume responsibility for the management of the construction of the Extension in accordance with this **clause 24.5**; and

- (B) each nominated the same managing contractor to be engaged by QR Network.

[Drafting note: This **clause 24.5** will provide for QR Network to engage a managing contractor nominated by the Customer and each Other Customer to assume responsibility for the management of the construction of the Extension. This clause will require QR Network to use its best endeavours to facilitate the managing contractor assuming responsibility for the management of the construction of the Extension including, to the extent it can do so, by doing the things specified in paragraphs 26(a) to (g) of the Investment Framework Principles in Schedule J of the 2010 Access Undertaking. All costs and expenses incurred by QR Network in connection with the engagement of the nominated managing contractor, QR Network's dealings with the nominated managing contractor and under the managing contractor agreement with QR Network will be Extension Costs.

For the avoidance of doubt, despite the nominated managing contractor assuming responsibility for the management of the construction of the Extension:

- QR Network will operate, manage and maintain the Extension once constructed; and
- the nominated managing contractor must ensure the Extension is constructed to QR Network's standards and otherwise as specified in the managing contractor agreement between the nominated managing contractor and QR Network.]

25 General

25.1 Survival

This **clause 25** and **clauses [#]** and **[#]** survive the termination of this Agreement.

25.2 Applicable law

- (a) This Agreement will be governed by and construed in accordance with the laws applicable in the State.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

25.3 Waiver

- (a) Waiver of any right arising from a breach of this Agreement or any right arising from a default under this Agreement must be in writing and signed by the Party granting the waiver.

- (b) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A failure or delay in exercise, or partial exercise, of a right arising from a breach of this Agreement does not result in a waiver of that right.

25.4 Duty

- (a) As between the Parties, the Customer is liable for and must pay all duty (including any fine or penalty except where it arises from default by QR Network) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If QR Network pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it, the Customer must pay that amount to QR Network on demand.

25.5 Legal costs

- (a) Except as expressly stated otherwise in this Agreement, each Party must pay its own legal costs and expenses of the drafting, negotiating and execution of this Agreement.
- (b) The Parties acknowledge that any legal costs borne by QR Network under this **clause 25.5** will be deemed to be Extension Costs.

25.6 Property in Extension

- (a) Nothing in this Agreement is to be construed as vesting in the Customer any proprietary or other interest in the Extension or the Extension Land.
- (b) Following the commissioning of the Extension (or a part of it), QR Network must:
 - (i) exercise its right of election under the applicable Infrastructure Lease for the Extension (or the part of it) to be included as "Infrastructure" for the purposes of the applicable Infrastructure Lease; and
 - (ii) following the exercise of that right of election, transfer ownership of the Extension (or the part of it) to the applicable lessor and otherwise do all things required under the applicable Infrastructure Lease for the Extension (or the part of it) to be included as "Infrastructure" for the purposes of the applicable Infrastructure Lease.

[Drafting note: Clause 12 of the Coal Network Infrastructure Lease gives QR Network a right to elect to have particular assets included as "Infrastructure" for the purpose of that lease. QR Network is seeking to negotiate the inclusion of a similar right of election in the North Coast Line Infrastructure Lease. The above clause has been drafted on the basis that both Infrastructure Leases will contain similar rights of election. The above clause will need to be revised if

QR Network is not able to negotiate the inclusion of a similar right of election in the North Coast Line Infrastructure Lease.]

25.7 Amendments to be in writing

Except for variations under **clauses 4 and 5**, an amendment or variation of this Agreement will only be effective if it is in writing and executed by all Parties to this Agreement.

25.8 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

25.9 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

25.10 Further assistance

Each Party must promptly sign, execute and complete all additional documents which may be necessary and do whatever else is reasonably required to effect, perfect, or complete the provisions of this Agreement and to perform its obligations under it.

25.11 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

25.12 Entire understanding

- (a) This Agreement contains the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

25.13 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

25.14 Severability

- (a) Subject to **clause 25.14(b)**, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) **Clause 25.14(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or
 - (B) relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

25.15 Survival of representations and warranties

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

25.16 Enurement

The provisions of this Agreement will, subject as otherwise provided in this Agreement, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

25.17 Merger

The obligations contained in this Agreement will continue until satisfied in full.

25.18 Powers of attorney

An attorney by executing this Agreement declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Agreement.

26 JV Participants and liability

[Drafting note: Optional clause to be included if the Customer is a Joint Venture.]

26.1 Warranty

The Customer warrants that it enters into this Agreement as agent for the JV Participants in their respective percentage interests in the Joint Venture from time to time.

26.2 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified in writing by the Customer to QR Network from time to time.
- (b) As at the date of this Agreement, the respective percentage interests of the JV Participants in the Joint Venture are as specified in **item 3.2 of schedule 1**.

26.3 Liability of JV Participants

- (a) The liability of each JV Participant under this Agreement will, subject to **clause 26.3(c)**, be several in respect of Financial Obligations in proportion to their respective percentage interests.
- (b) Each JV Participant will be jointly and severally liable in respect of the performance of any obligations under this Agreement that are not Financial Obligations.
- (c) If a JV Participant is in default of a Financial Obligation, and the Customer has not given notice to QR Network identifying the defaulting JV Participant within five Business Days after the date of QR Network giving a notice to the Customer identifying the default, all JV Participants will be jointly and severally liable for the performance of the Financial Obligation.
- (d) Any notice given by the Customer under **clause 26.3(c)** is conclusive evidence that the JV Participant specified in the notice is the JV Participant that is in default and the notice binds all JV Participants.

Schedule 1

Agreement details

1 Bank guarantee

[\$insert]

[Drafting note: The amount of the Bank Guarantee will be the amount which is the sum of the Customer's Proportion of the Target Costs for all Customer's Segments less the amount of the Total Mobilisation Fee.]

2 Particulars for Notices

2.1 Customer

Business address [insert]

Postal address [insert]

Facsimile No. [insert]

Attention: [insert]

2.2 QR Network

Business address Level 5
192 Ann Street
BRISBANE QLD 4000

Postal address GPO Box 456
BRISBANE QLD 4001

Facsimile No. (07) 3235 3439

Attention: Business General Manager, Network Development & Regulation

3 Customer

[Drafting Note: Optional item to be included if the Customer is a Joint Venture.]

3.1 Joint Venture

[insert name of Joint Venture]

3.2 JV Participants in Joint Venture

Name	Percentage interest
[insert]	[insert]
[insert]	[insert]
[insert]	[insert]

4 Extension Investigation Reports

[Insert details of the reports of the project investigation studies.]

Schedule 2

Extension and Segments

1 Extension

[insert]

[Drafting note: QR Network to include a high level outputs orientated description of the Extension. For example: "The enhancement of the rail infrastructure on the Alpha and Beta systems in order to facilitate the transportation of coal to the ~ 25 Mtpa proposed coal terminal at Zenith."]

2 Segments and details of Customer's Segments

2.1 Segment # [1] – [Name of Segment]

Description of Segment	Is the Segment a Customer's Segment?	Details of Customer's Segment (if the Segment is a Customer's Segment)				
		Customer's Capacity	Relevant Other Customers [#]	Total Other Customers' Capacity [#]	Total Incremental Capacity [#]	Customer's Proportion [#]
[insert]	[Yes / No]	[insert]	[insert name] [Insert name]	[insert]	[insert]	[insert]

Note #: Initially, as at the Commencement Date.

2.2 Segment # [2] – [Name of Segment]

Description of Segment	Is the Segment a Customer's Segment?	Details of Customer's Segment (if the Segment is a Customer's Segment)				
		Customer's Capacity	Relevant Other Customers [#]	Total Other Customers' Capacity [#]	Total Incremental Capacity [#]	Customer's Proportion [#]
[insert]	[Yes / No]	[insert]	[insert name] [Insert name]	[insert]	[insert]	[insert]

Note #: Initially, as at the Commencement Date.

[Drafting note: Complete template table in item 2.2 above for each additional Segment.]

Schedule 3

Scope of Works

[insert]

Schedule 4

Target Costs

Segment		Target Cost (\$m)
Segment #	Name of Segment	
[insert]	[insert]	\$(insert)
[insert]	[insert]	\$(insert)
Total for all Segments		\$(insert)

[Drafting note: Target Cost for all Segments (not just Customer's Segments) to be included.]

Schedule 5

Target Available Dates, Weather Delay Periods and Reference Program

1 Target Available Dates

Customer's Segment		Target Available Date
Segment #	Name of Segment	
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]

2 Weather Delay Periods

Customer's Segment		Weather Delay Period
Segment #	Name of Segment	
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]

3 Reference Program

[insert]

Schedule 6

Procurement Methodology

[insert]

Schedule 7

Extension Costs and Cost Allocation Principles

1 Extension Costs

- (a) The Extension Costs include costs and expenses in connection with the following:
- (i) the acquisition, lease, sublease or licence of any land required for the purpose of the Extension and the Works for the Extension (including for procuring, designing, constructing or commissioning infrastructure enhancements);
 - (ii) conducting project investigation studies (however described) in connection with the Extension;
 - (iii) the designing, procuring, constructing and commissioning of the Extension and the Works for the Extension, including amounts paid or payable to contractors (after taking account of any performance penalties or bonuses), amounts paid or payable to suppliers of materials, legal costs, statutory fees and charges, compliance costs, insurance premiums and any insurance excess or deductible payable on insurance;
 - (iv) obtaining professional, financial, legal, technical or other advice in connection with the Extension and the Works for the Extension;
 - (v) obtaining Approvals relating to the Extension and the Works for the Extension or procuring that such Approvals are obtained;
 - (vi) the management of QR Network's tax position in connection with this Agreement, the Other Construction Agreements, the Participation Agreement and the Other Participation Agreements and the Extension and the Works for the Extension;
 - (vii) organising, chairing, participating in and funding of any forums or meetings to the extent that they relate to this Agreement, the Extension and the Works for the Extension;
 - (viii) the resolution of any disputes with third parties to the extent that they relate to the Extension and the Works for the Extension;
 - (ix) subject to **clause 17.6(c)**, the resolution of a Dispute or a "Dispute" (as defined in an Other Construction Agreement) under the Other Construction Agreement;
 - (x) travel and accommodation relating to the Extension and the Works for the Extension;

- (xi) the preparation, negotiation and execution of this Agreement, the Other Construction Agreements, the Participation Agreement, the Other Participation Agreements and any agreements entered into with any person to the extent that those agreements are associated with the Extension and the Works for the Extension;
 - (xii) any works to rectify any defects in the design, construction or commissioning of the Extension or the Works for the Extension;
 - (xiii) QR Network complying with **clause 25.6(b)**, including any duty payable by QR Network on or relating to the transfer of ownership of the Extension (or part of it) in accordance with **clause 25.6(b)**;
 - (xiv) obtaining the agreement of the relevant existing users of QR Network's existing rail system to reductions of the existing contracted train paths (including payment of compensation) **[Drafting note: This paragraph to be included as necessary on an Extension-by-Extension basis.]**; and
 - (xv) the upgrade of loading or unloading facilities in respect of QR Network's existing rail system as a result of or in connection with the Extension **[Drafting note: This paragraph to be included as necessary on an Extension-by-Extension basis.]**.
- (b) For the avoidance of doubt, the Extension Costs include QR Network's reasonable internal administrative and overhead costs and expenses to the extent that they relate to the Extension and the Works for the Extension.
 - (c) For the avoidance of doubt, the Extension Costs include:
 - (i) amounts referred to in **paragraph (a)** of this definition which are paid or payable to Related Bodies Corporate of QR Network; and
 - (ii) amounts referred to in **paragraph (a)** of this definition which are internal costs or expenses Incurred by QR Network.
 - (d) The Extension Costs do not include the GST component of any costs, expenses or liabilities to the extent that QR Network (or the representative member of the GST group of which it is part) is entitled to claim an input tax credit.
 - (e) The Pre-Commencement Extension Costs include interest on the Pre-Commencement Extension Costs at the rate of 10.76% per annum calculated on daily rests and capitalised monthly, from the date the Pre-Commencement Extension Costs were Incurred by QR Network to and including the date which is 15 Business Days after the date on which QR Network gives the Customer the first Monthly Statement under **clause 7.2**.
 - (f) The Extension Costs include any costs and expenses which this Agreement provides are taken to be Extension Costs.

2 Cost Allocation Principles

[insert]

Schedule 8

Monthly Reports

1 Progress

Each Monthly Report must provide reasonable information in relation to the progress of the carrying out of the Works for each of the Customer's Segments during the relevant month.

2 Scope of Works

- (a) Each Monthly Report must specify for each Customer's Segment, all proposed, approved and rejected variations to the Scope of Works for the Customer's Segment under **clause 4**, setting out for each variation:
 - (i) its unique reference number;
 - (ii) its approval status;
 - (iii) a brief description of the variation and the reason for its initiation;
 - (iv) the effect (if any) of the variation on the Target Available Date for the Customer's Segment;
 - (v) the effect (if any) of the variation on the Target Cost for the Customer's Segments.
- (b) Each Monthly Report must also provide reasonable details of any variations to the Scope of Works for the Customer's Segments under **clause 4** which are under consideration by QR Network.

3 Cost

Each Monthly Report must specify for each of the Customer's Segments:

- (a) the Target Cost as at the end of the relevant month;
- (b) the Extension Costs for the relevant month;
- (c) the total Extension Costs up to the end of the relevant month;
- (d) commitments during the relevant month;
- (e) all commitments up to the end of the relevant month;
- (f) earned value up to the end of the relevant month;
- (g) QR Network's forecast of life-of-project costs and an associated S-curve,

together with a concise commentary on cost-related issues during relevant month.

4 Time

- (a) Each Monthly Report must provide for each Customer's Segment:
- (i) the Target Available Date for the Customer's Segment (as varied under **clauses 4 and 5**) as at the end of the relevant month;
 - (ii) the difference (in days) between the Target Available Date for the Customer's Segment as at the Commencement Date and the Target Available Date for the Customer's Segment (as varied under **clauses 4 and 5**) as at the end of the relevant month;
 - (iii) the Estimated Available Date for the Customer's Segment as at the end of the relevant month; and
 - (iv) a statused program showing QR Network's forecast progress against the Reference Program current as at the end of the relevant month,

together with a concise commentary on time-related issues for the relevant month.

- (b) Each Monthly Report must provide for each Segment which is not a Customer's Segment:
- (i) the "Target Available Date" (as defined in an Other Construction Agreement for which the Segment is specified as a "Customer's Segment") for the Segment (as varied under the provisions in the Other Construction Agreement which are on substantially the same terms as **clauses 4 and 5**) as at the end of the relevant month;
 - (ii) the difference (in days) between the "Target Available Date" for the Segment as at the "Commencement Date" and the "Target Available Date" (each as defined in an Other Construction Agreement for which the Segment is specified as a "Customer's Segment") for the Segment (as varied under the provisions in the Other Construction Agreement which are on substantially the same terms as **clauses 4 and 5**) as at the end of the relevant month;
 - (iii) the "Estimated Available Date" (as defined in an Other Construction Agreement for which the Segment is specified as a "Customer's Segment") for the Segment as at the end of the relevant month; and
 - (iv) a statused program showing QR Network's forecast progress against the Reference Program current as at the end of the relevant month,

together with a concise commentary on time-related issues for the relevant month.

5 Procurement

Each Monthly Report must provide:

- (a) a list of each proposed, awarded or completed procurement contract that has a consideration of at least 1% of the aggregate of the Target Cost for all Segments;
- (b) details in respect of each such proposed contract, including:
 - (i) the Works to be covered by the contract;
 - (ii) the budgeted consideration for those Works;
 - (iii) the procurement methodology; and
 - (iv) the status of the procurement process;
- (c) details in respect of each such awarded (but not completed) contract:
 - (i) the Works covered by the contract;
 - (ii) the contract price for those Works;
 - (iii) the procurement methodology; and
 - (iv) any material issues with the relevant contractor; and
- (d) details in respect of each such completed contract:
 - (i) the Works covered by the contract;
 - (ii) the contract price for those Works;
 - (iii) the actual consideration for those Works; and
 - (iv) the Procurement Methodology,

together with a concise commentary on procurement-related issues for the relevant month.

6 General

Each Monthly Report must provide a concise commentary on the following matters for the relevant month:

- (a) occupational safety and health;
- (b) environmental;
- (c) community and government affairs; and
- (d) incidents,

in accordance with QR Network's then standard practices.

Schedule 9

Access Agreement

1 Completion of Access Agreement

The Access Agreement is to be completed by including in the Access Agreement the particulars specified in **annexure A**.

[Drafting note: The “Commencement Date” of the Access Agreement will be the later of:

- (a) a specified date; and
- (b) a specified period (for example, [10] Business Days) after the Available Date for the last of the Customer’s Segments to become Available.]

2 Modification to terms of Access Agreement

The Access Agreement is to be modified as follows:

- (a) the Access Agreement will include a provision which provides that if this Agreement is terminated by QR Network under **clause 15.1**, then unless otherwise agreed in writing by the parties to the Access Agreement, the Access Agreement will automatically terminate without the need for either party to the Access Agreement to give notice of termination to the other party to the Access Agreement.

[Drafting note: If the Access Agreement is renewed under the terms of the Access Agreement, the terms of the renewed Access Agreement will be also modified as set out in this item.]

Schedule 10

Participation Agreement

[insert]

Schedule 11

Construction incentive payment adjustments

1 Provisional construction incentive payment adjustment

1.1 Calculation of Provisional CIP Adjustment Amount

The Provisional CIP Adjustment Amount for a Customer's Segment is the amount which is the Provisional CIP Percentage for the Customer's Segment of the Customer's Proportion of the Target Cost for the Customer's Segment.

1.2 Calculation of Provisional CIP Percentage

(a) In this **item 1.2** of **schedule 11**:

Provisional Cost Measure or **PCM** for a Customer's Segment means the amount (expressed as a percentage) calculated in accordance with the following formula:

$$\text{PCM} = \frac{\text{AEC} + \text{EEC}}{\text{TC}}$$

Where:

PCM = the PCM for the Customer's Segment

AEC = the Extension Costs for the Customer's Segment Incurred or recovered by QR Network prior to the end of the Construction Period

EEC = the Extension Costs for the Customer's Segment which QR Network reasonably estimates, as at the end of the Construction Period, will be Incurred or recovered after the end of the Construction Period

TC = the Target Cost for the Customer's Segment

Provisional Time Measure or **PTM** for a Customer's Segment means:

- (i) if the Available Date for the last of the Customer's Segments to become Available (**relevant Available Date**) is the same or earlier than the Latest Target Available Date – zero;
- (ii) if the relevant Available Date is later than the Latest Target Available Date – the period (expressed as a number of calendar days) from the Latest Target Available Date to the relevant Available Date.

- (b) The Provisional CIP Percentage for a Customer's Segment is the percentage specified in the cell in the following table located in the row in which the PCM for the Customer's Segment occurs and the column in which the PTM for the Customer's Segment occurs:

PCM for Customer's Segment (%)	PTM for Customer's Segment				
	0	+1 to +45	+46 to +90	+91 to +180	>+180
<90	[8.0]	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	0.0
≥90 & <95	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	0.0
≥95 & <100	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	0.0
≥100 & <105	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	0.0
≥105 & <110	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	0.0	0.0
≥110 & <115	> 0 & < [8.0]	> 0 & < [8.0]	0.0	0.0	0.0
≥115 & <120	> 0 & < [8.0]	0.0	0.0	0.0	0.0
≥120	0.0	0.0	0.0	0.0	0.0

2 Final construction incentive payment adjustment

2.1 Calculation of Final CIP Adjustment Amount

The Final CIP Adjustment Amount for a Customer's Segment is the amount which is the Final CIP Percentage for the Customer's Segment of the amount which is the Customer's Proportion of the Target Cost for the Customer's Segment.

2.2 Calculation of Final CIP Percentage

- (a) In this **item 2.2** of **schedule 11**:

Final Cost Measure or **FCM** for a Customer's Segment means the amount (expressed as a percentage) calculated in accordance with the following formula:

$$\text{FCM} = \frac{\text{FEC}}{\text{TC}}$$

Where:

FCM = the FCM for the Customer's Segment

FEC = the Extension Costs for the Customer's Segment Incurred or recovered by QR Network prior to the date that QR Network gives the Final Certificate to the Customer

TC = the Target Cost for the Customer's Segment

Final Time Measure or **FTM** for a Customer's Segment means:

- (i) if the Available Date for the last of the Customer's Segments to become Available (**relevant Available Date**) is the same or earlier than the Latest Target Available Date – zero;
- (ii) if the relevant Available Date is later than the Latest Target Available Date – the period (expressed as a number of calendar days) from the Latest Target Available Date to the relevant Available Date.
- (b) The Final CIP Percentage for a Customer's Segment is the percentage specified in the cell in the following table located in the row in which the FCM for the Customer's Segment occurs and the column in which the FTM for the Customer's Segment occurs:

FCM for Customer's Segment (%)	FTM for Customer's Segment				
	0	+1 to +45	+46 to +90	+91 to +180	>+180
<90	[8.0]	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	0.0
≥90 & <95	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	0.0
≥95 & <100	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	0.0
≥100 & <105	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	0.0
≥105 & <110	> 0 & < [8.0]	> 0 & < [8.0]	> 0 & < [8.0]	0.0	0.0
≥110 & <115	> 0 & < [8.0]	> 0 & < [8.0]	0.0	0.0	0.0
≥115 & <120	> 0 & < [8.0]	0.0	0.0	0.0	0.0
≥120	0.0	0.0	0.0	0.0	0.0

Schedule 12

Compensation Method

QR Network Compensation will be calculated as follows:

$$\text{QRNC} = \text{A} - \text{B} + \text{C}$$

where:

QRNC = the QR Network Compensation.

A = The sum of the present values of the tax effect of the income tax deductions, excluding any income tax deductions disallowed under a Tax Demand in respect of the Income Year(s) to which the Tax Demand relates (**Tax Exclusions**), in respect of the Extension Costs incurred by QR Network under this Agreement that relate to the Customer and to which QR Network or the Head Company would have been entitled in each Income Year had the principles set out in *Income Tax Ruling IT 2450* applied.

B = The sum of the present values of the tax effect of the income tax deductions, excluding any income tax deductions allowed under a Tax Demand in respect of the Income Year(s) to which that Tax Demand relates and were previously not claimed by QR Network or the Head Company (**Tax Inclusions**), in respect of the Extension Costs incurred by QR Network under this Agreement that relate to the Customer and are claimable by QR Network or the Head Company in each Income Year in accordance with any Tax Demand.

C = the tax effect of the difference between the Tax Exclusions and, if applicable, the Tax Inclusions, calculated as follows:

$$(\text{Tax Exclusions} - \text{Tax Inclusions}) \times \text{income tax rate.}$$

In determining the tax effect of the income tax deductions or the amount referred to in **C** above, the income tax rate will be that which would apply to QR Network or the Head Company (for the purposes of section 4-10 of the Tax Act and determined in accordance with section 23 of the *Income Tax Rates Act 1986* (Cth)) at the time that the calculation is performed, expressed as a decimal.

For the purpose of calculating the present values of the tax effect of the income tax deductions in the above Compensation Method, the

discount rate to be used will be the nominal pre-tax discount rate, expressed in % pa, that is determined, using the standard capital asset pricing method, to be equivalent to the weighted average cost of capital in the Access Undertaking.

In calculating the QR Network Compensation, it is to be assumed that QR Network or the Head Company:

- (a) has assessable income at least equal to the amount of the income tax deduction it is entitled to claim in respect of each Income Year in respect of which QR Network or the Head Company is entitled to claim income tax deductions for Extension Costs incurred by QR Network under this Agreement that relate to the Customer; and
- (b) the benefit to QR Network or the Head Company of any income tax deduction in respect of an Income Year will be treated as arising on 31 March of that Income Year.

Annexure A

Particulars of Access Agreement

[Drafting note: The particulars to be completed in the Access Agreement are still being considered. QR Network's intention is that this schedule will, as a minimum, include all of the particulars relating to the Customer's capacity under the Access Agreement.]