



QR Network's
Access
Undertaking
(2009)

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PART 1: PREAMBLE

QR Network is a wholly owned subsidiary of QR, a leading integrated national transport provider.

QR Network is responsible for providing, maintaining and managing access to, and operations on, its rail network and associated rail infrastructure. QR Network's rail network totals almost 10,000 kilometres and includes its metropolitan Citytrain network, regional freight and tourist lines, heavy haul tracks in central Queensland, and the interstate track between the New South Wales border and Brisbane.

QR Network works closely with its customers and industry partners to attract the largest possible share of the land transport market to rail.

QR Network has developed this access undertaking in accordance with section 136 of the *Queensland Competition Authority Act 1997* (Qld). In accordance with that Act, QR Network's access undertaking has been endorsed by the Queensland Competition Authority.

QR Network's access undertaking provides a framework for access to QR Network's rail network for the purposes of operating train services. It covers access to QR Network's rail network by train services other than interstate train services operating between the New South Wales border and Brisbane.

QR Network's access undertaking sets out the scope and intent of the document (Part 2) and QR Network's obligations in relation to:

- (a) ringfencing (Part 3);
- (b) the framework for negotiating access (Part 4);
- (c) the development of access agreements (Part 5);
- (d) pricing principles (Part 6);
- (e) the utilisation of network capacity (Part 7);
- (f) interface arrangements between QR Network and train operators (Part 8); and
- (g) reporting (Part 9).

In addition, a number of schedules have been developed to support QR Network's access framework, including reference access charges for coal carrying train services.

Information on obtaining access to QR Network's rail network is contained in QR Network's access undertaking and other supporting information held by QR Network. This information can be downloaded from QR Network's web-site. If you require further information on negotiating access pursuant to this access undertaking then please contact:

QR Network Pty Ltd
GPO Box 1429, Brisbane Qld 4001
Floor 21, 127 Creek Street, Brisbane Qld 4000

Tel: (07) 3235 3144
Fax: (07) 3235 3930
Email: qrnetwork@qr.com.au
Web: <http://www.qrnetwork.com.au/>

PART 2. INTENT AND SCOPE

2.1 DURATION OF UNDERTAKING

This Undertaking is effective from the Commencing Date to the Terminating Date.

2.2 INTENT

- (a) This Undertaking will be consistently applied to all Access Seekers, Access Applications and negotiations for Access.
- (b) The intent of this Undertaking is to:
 - (i) establish processes for Access negotiations and the utilisation of Capacity that are expeditious, efficient, timely, commercial and non-discriminatory;
 - (ii) establish processes and principles to provide guidance in relation to the pricing and the terms and conditions of Access;
 - (iii) provide an efficient, effective and binding Dispute resolution process;
 - (iv) provide that actions pursuant to this Undertaking are consistent with the objectives for rail under section 2(2)(d) of the TIA; and
 - (v) achieve an appropriate balance between:
 - (A) the legitimate business interests of QR Network, including:
 - (1) recovering all reasonable costs in connection with providing Access;
 - (2) receiving a reasonable return on QR Network's activities, assets and new investment (which fairly recognises QR Network's commercial risk);
 - (3) growing, developing and investing in QR Network's business to meet existing and forecast demand for Access; and
 - (4) operating an efficient and effective business;
 - (B) the public interest, including the public interest in having competition in markets; and
 - (C) the interests of Access Seekers, including in being:
 - (1) treated in a fair, consistent and non-discriminatory manner; and
 - (2) provided Access on reasonable commercial terms.

2.3 SCOPE

- (a) Subject to Clauses 2.3(b) to (f), this Undertaking provides only for the negotiation and provision of Access.
- (b) This Undertaking is not applicable:
 - (i) to the negotiation or provision of services other than Access to Rail Infrastructure;
 - (ii) to the extent that QR Network's compliance with this Undertaking is inconsistent with QR Network's compliance with its Passenger Priority Obligations; or

- (iii) in connection with any matter involving an Access Holder or an Access Agreement, to the extent that compliance with this Undertaking is inconsistent with the relevant Access Agreement.

In addition, nothing in this Undertaking can require QR Network or any other party to an Access Agreement, executed before the Commencing Date, to vary a term or provision of that Access Agreement.

- (c) Access Holders are responsible for the provision of any services other than Access, including Above Rail Services, required for the operation of Train Services.
- (d) If:
 - (i) the land upon which the Rail Infrastructure is situated is not owned by QR Network or a QR Party; and
 - (ii) any one of those entities does not, through a lease, licence or other arrangement with the owners of the land (including, for example, a sublease from Queensland Transport) or pursuant to the TIA, have the authority to authorise Access Seekers to access that land,then:
 - (iii) it is the responsibility of the Access Seeker to obtain the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated; and
 - (iv) the Preliminary Information provided by QR Network to the Access Seeker will provide information to assist the Access Seeker in obtaining such approval.
- (e) To the extent that QR Network sells or supplies a Related Operator with electric energy in connection with Access, QR Network cannot refuse to sell or supply electric energy to another Access Seeker or Access Holder. However, the sale or supply of electric energy is not part of Access and, except as specifically referred to in this Undertaking, is not subject to the provisions of this Undertaking. Further, despite any other provision of this Undertaking, QR Network will not be obliged to sell or supply electric energy to an Access Holder, or to agree to sell or supply electric energy to an Access Seeker:
 - (i) if QR Network is not lawfully entitled to sell or supply electric energy to the relevant Access Holder or Access Seeker under the *Electricity Act 1994 (Qld)* and the Rules; or
 - (ii) on terms that would be unreasonable or uncommercial.If a Dispute arises between an Access Holder or Access Seeker and QR Network regarding a refusal by QR Network to sell or supply electric energy or the proposed terms and conditions on which QR Network offers to sell or supply electric energy to the Access Holder or Access Seeker, the Dispute may be referred to Dispute resolution in accordance with Clause 10.1.
- (f) Nothing in this Undertaking affects the rights of QR Network under the Act.

PART 3: RINGFENCING ARRANGEMENTS

3.1 ORGANISATIONAL STRUCTURE

- (a) The structure of the QR corporate group facilitates the separation of the management of Rail Infrastructure from the operation of Train Services by separating QR Network from Related Operators. In addition, within QR there are service groups that provide support activities for both QR Network and Related Operators and core corporate functions.
- (b) The primary function of QR Network is to manage the provision of Below Rail Services. The responsibilities of QR Network include:
- (i) negotiating Access Agreements with Access Seekers and managing Access Agreements with Access Holders;
 - (ii) developing and managing agreements with Queensland Transport regarding the provision of Rail Infrastructure that are supported by Transport Service Payments;
 - (iii) providing and/or procuring appropriate levels of maintenance and investment for the Rail Infrastructure to ensure that the Rail Infrastructure is provided at the standard required to meet QR Network's obligations to Access Holders and Queensland Transport;
 - (iv) assessing, allocating and managing Capacity and Available Capacity;
 - (v) providing scheduling and Train Control Services for Rail Infrastructure in accordance with the Network Management Principles; and
 - (vi) providing electric transmission infrastructure on electrified sections of the Track to enable Access Holders to run electric Train Services, and (subject to Clause 2.3(e)) procuring electric energy for traction on electrified sections of the Track, including managing electric energy supply from other parties, where an Access Seeker or Access Holder requests QR Network to provide that electric energy.
- (c) QR Network may contract with Related Operators for the provision of the following services:
- (i) Field Incident Management; and
 - (ii) Yard Control services at yards other than Major Yards.
- (d) If Related Operators become responsible for matters integral to the provision of Below Rail Services, other than in accordance with Clause 3.1(c), then QR Network will submit a Draft Amending Undertaking to the QCA including, for example:
- (i) if this arises due to QR varying its corporate structure during the Term;
 - (ii) if QR Network wishes to assign to a Related Operator any of QR Network's existing Below Rail responsibilities; or
 - (iii) if QR Network has arrangements with:
 - (A) QR Services for any construction, maintenance or associated services for the purpose of providing Below Rail Services; or
 - (B) QR for any services (including safety and environmental services) for the purpose of processing Access Applications or providing Below Rail Services,

and QR Network seeks to terminate those arrangements and execute an agreement with a Related Operator for the provision of such services.

3.2 ACCOUNTING SEPARATION

3.2.1 Preparation of Financial Statements

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

3.2.2 Audit of Financial Statements

- (a) An audit of the Financial Statements will be conducted:
- (i) within six (6) months of the end of the Year to which the Financial Statements relate, or such longer time as agreed by the QCA;
 - (ii) subject to this Clause 3.2.2, in accordance with Clause 10.3; and
 - (iii) by a qualified auditor who should be, or have the assistance of, a person with expertise and experience in the area of costing of railway activities.
- (b) QR Network acknowledges that, in order to facilitate finalisation of the audit within the required timeframe, certain aspects of the audit may be undertaken by the auditor at different times throughout the relevant Year.
- (c) The auditor will:
- (i) examine whether the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual; and
 - (ii) prepare an audit report that specifies:
 - (A) the scope of the audit;
 - (B) the level of access that the auditor was provided to QR Network’s financial information, including the relevant information systems;
 - (C) whether or not the Financial Statements have been developed in all material respects in accordance with the processes outlined in the

Costing Manual and consistent with the format specified in the Costing Manual; and

- (D) if the auditor identifies that the Financial Statements have not been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, information regarding the relevant non-compliance or inconsistency.

3.3 MANAGEMENT OF CONFIDENTIAL INFORMATION

- (a) For the purpose of this Clause 3.3:
- (i) "Confidential Information", in addition to the meaning as defined in Clause 11.1, includes information or data collected by QR Network or an Access Holder in the performance of an Access Agreement where the disclosure of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement; and
 - (ii) that other party shall be deemed to be the owner of such Confidential Information.
- (b) The provisions in this Clause 3.3 apply in relation to the handling of Confidential Information:
- (i) disclosed by Third Party Access Seekers or Third Party Access Holders to QR Network, or disclosed by QR Network to Third Party Access Seekers or Third Party Access Holders, as part of an Access Application or Indicative Access Proposal (including any related discussions or disclosures of information), negotiations for Access and, unless otherwise agreed, as provided under, in accordance with or for the purpose of, an Access Agreement; or
 - (ii) collected by a Third Party Access Holder or QR Network in the performance of an Access Agreement with a Third Party,
- except that they do not apply to the handling of Confidential Information which relates solely in all material respects to services other than the provision of Access to Rail Infrastructure for the purpose of operating Train Services. Where a document or discussion is comprised of information only some of which would be information to which this Clause 3.3 applies, this Clause 3.3 will not apply to the remainder of the information in the document or discussion to the extent that QR Network can clearly separate this information from the information to which this Clause 3.3 applies.
- (c) At any time during the negotiation process, including prior to the submission of an Access Application by a Third Party Access Seeker in accordance with Clause 4.1, a Third Party Access Seeker may require QR Network to enter into a confidentiality deed with the Third Party Access Seeker. Similarly, at any time during the negotiation process, QR Network may require a Third Party Access Seeker to enter into a confidentiality deed with QR Network. A confidentiality deed entered into under this Clause 3.3(c) will be in the form agreed between QR Network and the Third Party Access Seeker provided that the confidentiality deed must include, if requested by the Third Party Access Seeker:
- (i) terms and conditions consistent with the provisions of this Undertaking in connection with ringfencing and the management of Confidential Information; and

- (ii) subject to Clause 3.3(c)(iii), a liquidated damages provision that requires the payment by QR Network to the Access Seeker of \$10,000 by way of liquidated damages in full and final settlement of any claim that the Access Seeker may have against QR Network in respect of a breach of the confidentiality deed that also constitutes a breach of this Undertaking; and
- (iii) a provision that allows the Access Seeker, if it can establish that it has suffered more than \$50,000 loss or damage due to the breach referred to in Clause 3.3(c)(ii), then:
- (A) the Access Seeker is not precluded from taking action to recover compensation from QR Network in any court of competent jurisdiction; but
- (B) if the Access Seeker does so, then QR Network is not liable to the Access Seeker for the payment of liquidated damages.
- (d) QR Network, Third Party Access Seekers, and Third Party Access Holders undertake at all times to keep confidential and not disclose any Confidential Information of the other party or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed by or engaged by a party) except in accordance with this Undertaking or a confidentiality deed entered into between the parties, and to use Confidential Information of the other party only for the purpose for which it is disclosed or collected, unless:
- (i) the owner of the Confidential Information provides its prior written approval, with such approval not to be unreasonably withheld; or
- (ii) the disclosure and/or use is:
- required or compelled by any law;
 - required or compelled by any order of a court;
 - required or compelled by notice validly issued by any Authority;
 - necessary for the conduct of any legal proceedings, including any dispute resolution process under this Undertaking or the Act;
 - required under any stock exchange listing requirement or rule;
 - to the Safety Regulator;
 - to the recipient's solicitors, barristers, or accountants under a duty of confidentiality;
 - to the recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the owner of the Confidential Information;
 - requested by QR's shareholding ministers;
 - for the purpose of facilitating Train Control directions where the disclosure of information is by QR Network in the usual course of undertaking Train Control Services;
 - by any person involved in clearing an incident or emergency that is preventing the operation of Train Services on the Rail Infrastructure; or

- to a QR Party provided that the disclosure is in accordance with Clause 3.3.2.

3.3.1 External Flows of Confidential Information

- (a) QR Network may, if not reasonably avoidable, appoint an external consultant or independent advisor to provide advice in relation to a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, where that same external consultant or independent advisor is also advising a Related Operator in relation to the same or a related matter.
- (b) For the purposes of Clause 3.3(d)(i), it would be unreasonable for QR Network to refuse to approve the disclosure of its Confidential Information by a Third Party Access Seeker or Third Party Access Holder to that Third Party Access Seeker's or Third Party Access Holder's external consultant/s, independent adviser/s or Customer/s where the Third Party Access Seeker or Third Party Access Holder enters into a contract with the recipient of the Confidential Information on the following terms:
- (i) specifying the individual/s employed by the recipient who may have access to any QR Network Confidential Information provided under the contract;
 - (ii) specifying that those individual/s must not disclose any QR Network Confidential Information provided under the contract to any other person unless otherwise agreed by QR Network; and
 - (iii) if required by QR Network, requiring the recipient to execute a confidentiality deed in favour of QR Network on terms and conditions reasonably satisfactory to QR Network.
- (c) For the purposes of Clause 3.3(d)(i), it would be unreasonable for a Third Party Access Seeker or Third Party Access Holder to refuse to approve the disclosure of its Confidential Information by QR Network to QR Network's external consultant/s or independent adviser/s where QR Network enters into a contract with the recipient of the Confidential Information on the following terms:
- (i) advising the recipient that a conflict of interest may exist with respect to the recipient providing services on a related matter to a Related Operator;
 - (ii) specifying:
 - (A) the persons employed by the recipient who may have access to any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract; and
 - (B) that those persons must not disclose any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract to any person outside of QR Network;
 - (iii) if:
 - (A) the external consultant or independent advisor is also advising a Related Operator in relation to the same or a related matter in accordance with Clause 3.3.1(a); and
 - (B) QR Network has not been able to reasonably avoid appointing that external consultant or independent advisor to provide advice in relation to that Confidential Information,

- requiring the recipient to ensure that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a Related Operator on the same or a related matter; and
- (iv) if required by the Third Party Access Seeker or Third Party Access Holder in question, requiring the recipient to execute a confidentiality deed in favour of the Third Party Access Seeker or Third Party Access Holder on terms and conditions reasonably satisfactory to that Third Party Access Seeker or Third Party Access Holder.
- (d) For the purposes of this Undertaking, a person who has been a consultant or contractor to either QR Network or a Third Party Access Seeker or Third Party Access Holder for a continuous period of at least three (3) months, who works at least an average of thirty (30) hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.
 - (e) This Clause 3.3.1 does not apply to the disclosure or use of Confidential Information in accordance with Clause 3.3.2.

3.3.2 Flows of Confidential Information within the QR corporate group

- (a) Notwithstanding any other provision in this Clause 3.3.2, QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to:
 - (i) individuals within QR Network; and
 - (ii) the Chief Executive Officer of QR, the Chief Financial Officer of QR, the QR Board and persons providing clerical or administrative assistance to any of them including any Company Secretary and Assistant Company Secretary.
- (b) Subject to Clause 3.3.2(c), QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to persons:
 - (i) in the Rollingstock Engineering Division within QR Services in relation to Rollingstock or Rollingstock interface issues;
 - (ii) in the Property Division within QR in relation to property issues; and
 - (iii) in QR Services in management level 2, 3 or 4 positions in relation to Rail Infrastructure issues,provided that disclosure to each recipient is limited to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.
- (c) A Third Party Access Seeker may, in an Access Application, give notice to QR Network that it does not wish QR Network to disclose its Confidential Information to any one or more of the groups listed in Clause 3.3.2(b). If a Third Party Access Seeker gives such a notice to QR Network, then:
 - (i) upon receipt of such notice QR Network may not disclose Confidential Information to the groups so noted;
 - (ii) QR Network will make reasonable efforts to suggest a reasonable alternate mechanism whereby QR Network can obtain the information it requires to respond to the Access Application and the Third Party Access Seeker will not unreasonably withhold its agreement to this alternate mechanism;

- (iii) all:
 - (A) reasonable costs incurred by QR Network in obtaining information by means of an alternate mechanism agreed in accordance with Clause 3.3.2(c)(ii) may be recovered by QR Network from the Third Party Access Seeker as a debt due and owing; and
 - (B) relevant timeframes applicable to QR Network under this Undertaking will be extended by the same number of days as equals the number of days from QR Network's receipt of the Access Application to QR Network's receipt of the information it requires to respond to the Access Application; and
- (iv) if:
 - (A) the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR Network can obtain the information it requires to respond to the Access Application; or
 - (B) the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process,

QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Clause 4.6(a).
- (d) QR Network may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a Related Operator where:
 - (i) the Third Party Access Seeker or Third Party Access Holder approves such disclosure; or
 - (ii) such disclosure is required for the purpose of facilitating the performance of a service referred to in Clause 3.1(c), provided that any disclosure is limited to the extent required for this purpose.
- (e) Subject to Clause 3.3.2(h), if, for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement, QR Network wishes to disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to an employee or group of a QR Party not specified in Clauses 3.3.2(a), (b) or (d), or to a group specified in Clause 3.3.2(b) on an issue not specified in that clause, QR Network must:
 - (i) obtain the consent of the owner of the Confidential Information prior to making the disclosure; and
 - (ii) only disclose the Confidential Information to that employee or group to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.
- (f) QR Network may, if not reasonably avoidable, disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to an employee of a QR Party where that person is advising a Related Operator in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Clause 3.3.2(b), QR Network must obtain the consent of the owner of the Confidential Information prior to making the disclosure.
- (g) If, QR Network seeks the consent of an Access Seeker or Access Holder for the disclosure of Confidential Information pursuant to Clause 3.3.2(e) or (f):

- (i) during the process of responding to an Access Application or negotiating an Access Agreement:
 - (A) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then QR Network may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Clause 4.6(a); or
 - (B) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR Network's request for consent within five (5) days of its receipt of QR Network's written request (referred to as the "Consent Response Date"), then all relevant timeframes applicable to QR Network will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date; or
- (ii) during the process of administering an Access Agreement:
 - (A) such consent shall not be unreasonably withheld; and
 - (B) if the owner of the Confidential Information fails to respond to QR Network's request for consent within thirty (30) days of its receipt of QR Network's written request, then consent shall be deemed to have been given.

This Clause 3.3.2(g) does not apply where QR Network has requested consent to disclose the information to a Related Operator.

- (h) QR Network is permitted to disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to QR employees in Internal Audit, the Information Services Division and Insurance Management, to the extent necessary for those employees to perform their duties, without obtaining the consent of the Third Party Access Seeker or Third Party Access Holder.
- (i) Except where Clause 3.3.2(a) applies, QR Network may only disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR Party:
 - (i) if QR Network and the QR Party have entered into a legally enforceable agreement with provisions requiring keeping confidential and not disclosing (and not permitting any person employed or engaged by that QR Party to disclose) Confidential Information disclosed to the QR Party by QR Network; and
 - (ii) provided QR Network notifies the QCA of:
 - (A) any breach of such provisions of which QR Network becomes aware; and
 - (B) where there is a breach, the actions QR Network has taken, or proposes to take, to rectify that breach (to the extent possible) and prevent further improper use or disclosure.
- (j) QR Network will establish and maintain a ring fencing register for the purpose of recording the names of those persons within a QR Party (excluding those persons gaining access to Confidential Information in accordance with Clause 3.3.2(a) or (h)) to whom QR Network discloses Confidential Information

belonging to a Third Party Access Seeker or Third Party Access Holder. This register will record the acknowledgement of receipt of the Confidential Information by the recipient. Such acknowledgement will be by way of facsimile, hard copy of an electronic message, or the original signature of the recipient. A Third Party Access Seeker or Third Party Access Holder may, upon request, view the register relating to its Confidential Information.

3.3.3 Transfer of QR Network employees within the QR corporate group

- (a) QR Network will ensure that all QR Network employees receiving, or having access to in the course of performing their duties, a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, are aware of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.3, and have undergone a ring fencing training and awareness session.
- (b) Where QR Network employees leave QR Network to work for a QR Party, they will undergo, as part of any exit process, a debriefing to remind them of QR Network's obligations relating to the management of Confidential Information as set out in this Clause 3.3 and will be asked to sign an exit certificate (that includes an acknowledgement of having undergone such a debriefing process).
- (c) If the activities of:
 - (i) a project working group (whose members include staff from a Related Operator); or
 - (ii) a Related Operator,affect or could affect the Access of Third Party Access Holders or Third Party Access Seekers, then QR Network must ensure no QR Network employee:
 - (iii) works in such a working group; or
 - (iv) is temporarily transferred to such a Related Operator,unless QR Network is satisfied the employee has not had access, as an employee of QR Network, to any Confidential Information regarding the operations of a Third Party Access Holder or Third Party Access Seeker (whose Access will or could be affected by the activities of the working group or Related Operator) which, if disclosed to the relevant Related Operator, could provide that Related Operator with an advantage over the Third Party Access Holder or Third Party Access Seeker.
- (d) In making all decisions in relation to the temporary transfer of QR Network employees to roles in a QR Party, QR Network must have regard to the potential implications of any such transfer on QR Network's obligations under this Undertaking to manage Confidential Information.

3.4 COMPLAINT HANDLING

- (a) If a Third Party Access Seeker or Third Party Access Holder considers that QR Network has breached one or more of its obligations under Clause 3.3, they may lodge a written complaint with QR Network.
- (b) QR Network will advise the QCA, as soon as practicable, of any complaints it receives pursuant to Clause 3.4(a).
- (c) QR Network will:
 - (i) investigate complaints received pursuant to Clause 3.4(a); and

- (ii) advise the complainant and the QCA in writing of the outcome of that investigation and QR Network's proposed response, if any, and use reasonable endeavours to do so within twenty-eight (28) days after receiving such a complaint.

3.5 AUDITS

- (a) An audit of QR Network's compliance with its obligations under Clauses 3.3 and 3.4 will be conducted annually and, subject to this Clause 3.5, in accordance with Clause 10.3.
- (b) In considering QR Network's compliance with its obligations under Clauses 3.3 and 3.4, the auditor may take into account QR Network's compliance with any relevant internal procedures.
- (c) The auditor will compile an audit report identifying:
 - (i) whether QR Network has complied in all material respects with its obligations under Clauses 3.3 and 3.4 and, if not, details as to the relevant non-compliance; and
 - (ii) the process adopted for the conduct of the audit.

3.6 RESPONSIBILITY FOR RAIL INFRASTRUCTURE

- (a) The Line Diagrams indicate those parts of the Queensland rail network that are Rail Infrastructure.
- (b) During the Term, QR Network will review and amend the Line Diagrams as necessary, at intervals of no greater than six (6) months, to reflect changes that have been made to the configuration or ownership of the Queensland rail network and will publish on QR Network's website:
 - (i) the current version of the Line Diagrams; and
 - (ii) a description of the changes made since the immediately preceding version of the Line Diagrams.
- (c) Unless approved by the QCA, QR Network will not:
 - (i) assign or transfer ownership of existing or new Rail Infrastructure from QR Network to a QR Party; or
 - (ii) remove existing Rail Infrastructure (except where such Rail Infrastructure is already identified in the Line Diagrams for future removal) or amend the Line Diagrams to identify any existing Rail Infrastructure for future removal, except where the change:
 - (A) is minor or administrative in nature;
 - (B) reflects an agreement between Queensland Transport and QR Network to cease Queensland Transport funding for the provision of the relevant Rail Infrastructure through Transport Service Payments and to remove the relevant Rail Infrastructure; or
 - (C) does not reflect a permanent reduction in Capacity that would affect an Access Holder's Access other than in accordance with an Access Agreement or this Undertaking (for example, where level crossings are removed or reconfigurations of track are undertaken).
- (d) Where the QCA or an Access Seeker or Access Holder is reasonably of the opinion that Line Diagrams prepared and published in accordance with Clause 3.6(b):

- (i) do not indicate those parts of the Queensland rail network that are Rail Infrastructure; or
 - (ii) reflect a change to Rail Infrastructure that contravenes Clause 3.6(c), the QCA or that Access Seeker or Access Holder may request in writing that QR Network review and, if necessary, amend the Line Diagrams in accordance with Clause 3.6(b).
- (e) Where QR Network receives a request under Clause 3.6(d), QR Network must:
- (i) if the QCA made the request, review the Line Diagrams and make any necessary amendments to the Line Diagrams within thirty (30) days after receiving that request; and
 - (ii) if an Access Seeker or Access Holder made the request:
 - (A) notify the QCA in writing of that request;
 - (B) review the Line Diagrams; and
 - (C) within thirty (30) days after receiving the request, give the QCA and the Access Seeker or Access Holder written notice of whether QR Network accepts the matters set out in the request and, if so, the action that QR Network proposes to take; and
 - (D) undertake any required amendments to the Line Diagrams within fourteen (14) days after:
 - (1) where the matter has not been referred to Dispute resolution under Clause 10.1 and QR Network has accepted the matters set out in the request, the giving of the notice under Clause 3.6(e)(ii)(C); or
 - (2) if the matter is referred to Dispute resolution under Clause 10.1, the resolution of the Dispute in favour of the Access Seeker or Access Holder.
- (f) An Access Seeker or Access Holder may only refer a Dispute in relation to the Line Diagrams to the Dispute resolution process under Clause 10.1, if:
- (i) such a Dispute exists after QR Network has notified that party in accordance with Clause 3.6(e)(ii)(C); or
 - (ii) QR Network has failed to comply with Clause 3.6(e)(ii).

PART 4: NEGOTIATION FRAMEWORK

4.1 ACCESS APPLICATION

- (a) Requests for Access must be submitted to QR Network in the form of an Access Application.
- (b) Prior to submitting an Access Application, the Access Seeker may seek initial meetings with QR Network to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and, in particular, the Application Requirements.
- (c) QR Network will make publicly available on QR Network's website an application form for Access Applications and, to the extent reasonably practicable, the Preliminary Information (except for the QR Network Rollingstock Interface Standards).
- (d) An Access Seeker may request a copy of any Preliminary Information that is not provided on QR Network's website (including the QR Network Rollingstock Interface Standards for the rail corridor for which it is interested in seeking Access Rights). QR Network will use reasonable endeavours to make that requested information available to the Access Seeker within fourteen (14) days after QR Network receives the Access Seeker's request and is entitled to levy the charge specified in Schedule D for that information.
- (e) QR Network will use reasonable endeavours to keep the Preliminary Information current.
- (f) If a request for Access specifies:
 - (i) the Customer that the request relates to; and
 - (ii) the contact details for that Customer,then QR Network will provide to the Customer copies of all notices that are required to be given to the Access Seeker in accordance with this Undertaking and relating to the progress of that request for Access, provided that QR Network will not provide the Customer with a copy of the Indicative Access Proposal (or any revision of that document).

4.2 ACKNOWLEDGMENT OF ACCESS APPLICATION

- (a) Subject to Clause 4.8, within ten (10) Business Days after receiving a request for Access, QR Network may give the Access Seeker a notice that either or both of the following are required:
 - (i) additional information, if reasonably needed to prepare an Indicative Access Proposal (either because the request for Access did not satisfy the Application Requirements, or because there are special circumstances which result in the additional information being reasonably necessary for QR Network to prepare an Indicative Access Proposal); or
 - (ii) clarification of the information that has been provided in the request for Access,and including, in either case, the extent to which that additional information or clarification is required in order for QR Network to be reasonably satisfied that the request for Access provides a reasonable description of the proposed Train Service for the purpose of preparing an Indicative Access Proposal.

- (b) If QR Network gives an Access Seeker a notice under Clause 4.2(a):
- (i) the Access Seeker must provide the required additional information and clarification of information within:
 - (A) thirty (30) days after the date on which that notice was given to the Access Seeker; or
 - (B) such longer period as QR Network and the Access Seeker agree is reasonably necessary,to the extent that the additional information or clarification is required for QR Network to be satisfied that the request for Access provides a reasonable description of the proposed Train Service for the purpose of preparing an Indicative Access Proposal; and
 - (ii) the additional information or clarification when provided by the Access Seeker to QR Network forms part of the request for Access.
- (c) If QR Network is reasonably satisfied that the request for Access:
- (i) satisfies all of the Application Requirements; or
 - (ii) does not satisfy all of the Application Requirements but that the Access Seeker's request for Access provides a reasonable description of the proposed Train Service,
- then QR Network will give the relevant Access Seeker a written notice:
- (iii) where Clause 4.2(c)(i) applies, acknowledging receipt of the Access Application:
 - (A) if additional information or clarification was not required under Clause 4.2(a), within ten (10) Business Days after the request for Access was received by QR Network; or
 - (B) if additional information or clarification was required under Clause 4.2(a), within ten (10) Business Days after the additional information or clarification from the Access Seeker was received by QR Network; or
 - (iv) where Clause 4.2(c)(ii) applies, within ten (10) Business Days after the request for Access was received by QR Network:
 - (A) acknowledging receipt of the Access Application; and
 - (B) stating that QR Network will prepare an Indicative Access Proposal conditional upon assumptions made by QR Network relating to the information not provided by the Access Seeker.
- (d) If, after the period within which the Access Seeker is required to provide additional information or clarification under Clause 4.2(b)(i), QR Network is not reasonably satisfied of the matters under either Clause 4.2(c)(i) or (ii), QR Network may reject the request for Access by giving a notice in writing to the Access Seeker stating the reasons for that rejection.
- (e) If a request for Access is for Capacity which cannot be provided in the absence of QR Network investing in a Major Project or which significantly impacts on a Major Project that is being investigated, then QR Network shall follow the process set out in Clause 4.8.
- (f) If QR Network is required to give an Acknowledgement Notice in accordance with Clause 4.2(c), the date when the relevant Access Application was received by QR Network is, for the purposes of this Undertaking, deemed to be the date

when the relevant Access Seeker's request for Access was received by QR Network (subject to Clause 4.4(c)).

4.3 INDICATIVE ACCESS PROPOSAL

- (a) Subject to Clause 4.3(b), QR Network will provide an Indicative Access Proposal to an Access Seeker within thirty (30) days after the date on which QR Network gives an Acknowledgement Notice to the Access Seeker.
- (b) QR Network:
 - (i) prior to the end of the thirty (30) day period under Clause 4.3(a), may by written notice to the Access Seeker, extend that period by not more than a further thirty (30) days, if QR Network considers that, due to the complexity of the Access Application or other extenuating circumstances, it is not reasonable to provide an Indicative Access Proposal within the thirty (30) day period under Clause 4.3(a); and
 - (ii) may, in addition to Clause 4.3(b)(i), further extend that period but only with the written agreement of the Access Seeker.
- (c) The Indicative Access Proposal will set out:
 - (i) the Rollingstock and Train Configurations to which the Indicative Access Proposal applies;
 - (ii) a summary of the applicable operating characteristics (for example, frequency, transit time, commodity carried);
 - (iii) an Initial Capacity Assessment (which is subject to confirmation by a Capacity Analysis prepared in accordance with Clause 4.5.2(a)(vi)) except to the extent that either the System Rules indicate or QR Network considers that such an assessment is not required;
 - (iv) advice in respect of the existence of other Access Seekers who have submitted an Access Application in respect of Access which, if it were to be provided, would limit the ability of QR Network to provide Access in accordance with the Indicative Access Proposal and whether a queue has been formed (provided that a failure to do so is neither a default under this Undertaking nor does it invalidate or prejudice any Access Agreement executed by QR Network provided that QR Network has acted in good faith);
 - (v) an initial estimate of the Access Charge for the requested Access Rights, based on the pricing principles set out in Part 6, including advice as to whether QR Network has applied Clause 6.1.2(b)(i) or 6.1.2(c) in determining the estimate of the Access Charge and, if so:
 - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
 - (B) the impact that the factor has on the Access Charge; and
 - (C) how that impact on the Access Charge was determined;
 - (vi) details of the additional information required for QR Network to progress the proposal and develop the Access Charge and terms and conditions for acceptance; and
 - (vii) the expiry date of the Indicative Access Proposal, which will be ninety (90) days following the date that QR Network dispatches the Indicative Access Proposal to the Access Seeker, or such later date as QR Network specifies.

- (d) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige QR Network to provide Access in accordance with the specific terms and conditions, including any Access Charge, contained within it.
- (e) If, after the period within which QR Network is required to give an Indicative Access Proposal to an Access Seeker under Clauses 4.3(a) and (b), the Access Seeker believes that QR Network is not making reasonable progress in the preparation of the Indicative Access Proposal, then the Access Seeker may refer the matter to dispute resolution in accordance with Clause 10.1.
- (f) If the Access Seeker believes that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate basis for continuing with the negotiation process under this Undertaking, the Access Seeker will notify QR Network of its concerns in writing within thirty (30) days after being given the Indicative Access Proposal, or such other timeframe as QR Network and the Access Seeker may agree.
- (g) QR Network will use reasonable efforts to respond to the concerns of an Access Seeker notified under Clause 4.3(f), including, where appropriate, by making revisions to the Indicative Access Proposal, within:
 - (i) fourteen (14) days after being notified under Clause 4.3(f); or
 - (ii) if QR Network considers that due to the complexity of the concerns or other extenuating circumstances, it is not reasonable to provide a response within that fourteen (14) day period, such reasonable period as QR Network notifies to the Access Seeker in writing within five (5) Business Days after the Access Seeker's notice to QR Network under Clause 4.3(f).
- (h) If, after being given a response from QR Network under Clause 4.3(g) (including any revision to the Indicative Access Proposal), the Access Seeker:
 - (i) is satisfied with that response, it must notify QR Network of its intention to proceed with negotiations before the expiry of the Indicative Access Proposal or such other timeframe as QR Network and the Access Seeker may agree; or
 - (ii) is not satisfied with that response and seeks to resolve the Dispute in accordance with Clause 10.1, it must:
 - (A) commence that Dispute resolution process within thirty (30) days after being given QR Network's response or such other timeframe as QR Network and the Access Seeker may agree; and
 - (B) within fourteen (14) days of resolution of the Dispute, or such other timeframe that QR Network and the Access Seeker may agree, notify QR Network in writing whether the Access Seeker wishes to proceed further with its Access Application, on the basis of the arrangements outlined in the Indicative Access Proposal including any amendments made as a result of the resolution of the Dispute.

4.4 NOTIFICATION OF INTENT

- (a) Subject to Clause 4.3(h), if the Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the Indicative Access Proposal.

- (b) Subject to Clause 4.3(h), if the Access Seeker gives a notification of its intention to progress its Access Application after the expiry date of the Indicative Access Proposal but not later than six (6) months after that date, QR Network will review the Indicative Access Proposal and, if considered necessary by QR Network, prepare a revised Indicative Access Proposal in accordance with Clause 4.3.
- (c) Where:
- (i) a revised Indicative Access Proposal is prepared and the Access Seeker intends to progress its Access Application on the basis of the arrangements outlined in the revised Indicative Access Proposal, the Access Seeker must notify QR Network of its intention in writing, prior to the expiry date of the revised Indicative Access Proposal; or
 - (ii) a revised Indicative Access Proposal is not considered necessary by QR Network, the Access Seeker's notification of its intention under Clause 4.4(b) is taken to be validly given even though it is given after the expiry date of the Indicative Access Proposal,

provided that if a queue has been established, or is subsequently established, for the Access Rights in accordance with Clause 7.3.5, the date on which QR Network received the Access Application is deemed to be (notwithstanding Clause 4.2(f)) the date on which the Access Seeker gave QR Network its notification of intent under Clause 4.4(b).

4.5 NEGOTIATION PROCESS

4.5.1 Negotiation Period

- (a) Once the Negotiation Period has commenced both parties shall commence negotiations as soon as reasonably possible to progress towards an Access Agreement. Subject to Clause 4.5.1(b), the Negotiation Period shall commence upon the Access Seeker providing a notification of intent in accordance with Clause 4.4.
- (b) If QR Network has established a queue in accordance with Clause 7.3.5, QR Network may negotiate with any Access Seeker in that queue, but QR Network is only obliged to do so if:
- (i) at that time, QR Network can provide the requested Access Rights to the Access Seeker within two (2) years; and
 - (ii) were QR Network to execute an Access Agreement with that Access Seeker, QR Network's ability to provide Access Rights to any Access Seeker earlier in the queue would not be adversely affected.
- (c) If QR Network decides not to commence negotiations with an Access Seeker in accordance with Clause 4.5.1(b), then that Access Seeker's Negotiation Period is put on hold until such time as either QR Network commences negotiations with that Access Seeker or QR Network is obliged to negotiate with that Access Seeker in accordance with Clause 4.5.1(b).
- (d) If, after commencing negotiations with an Access Seeker, QR Network notifies that Access Seeker that it is suspending negotiations on the basis that it is not obliged to negotiate with that Access Seeker in accordance with Clause 4.5.1(b), then:
- (i) where QR Network has, until that time, been obliged to negotiate with that Access Seeker, QR Network will provide that Access Seeker with the reasons why it is no longer obliged to negotiate in accordance with

- Clause 4.5.1(b) and give that Access Seeker thirty (30) days within which to demonstrate to QR Network's satisfaction that QR Network continues to be obliged to negotiate with the Access Seeker; and
- (ii) that Access Seeker's Negotiation Period is put on hold until such time as:
 - (A) QR Network recommences negotiations; or
 - (B) either:
 - (1) the Access Seeker demonstrates to QR Network's satisfaction that QR Network continues to be obliged to negotiate with that Access Seeker; or
 - (2) QR Network becomes obliged to negotiate with that Access Seeker in accordance with Clause 4.5.1(b).
 - (e) An Access Seeker's Negotiation Period ceases on:
 - (i) the execution of an Access Agreement in respect of the Access sought by the Access Seeker;
 - (ii) QR Network receiving written notification by the Access Seeker that it no longer wishes to proceed with its Access Application;
 - (iii) QR Network issuing a Negotiation Cessation Notice to the Access Seeker pursuant to Clause 4.6(a);
 - (iv) the expiration of nine (9) months from the commencement of the Negotiation Period unless:
 - (A) both parties agree to extend the Negotiation Period, in which case the Negotiation Period will continue until the expiration of the agreed extended period, provided that agreement to extend the Negotiation Period is not unreasonably withheld by either party; or
 - (B) a Dispute arises between the parties that either party has sought to resolve in accordance with Clause 10.1, in which case the Negotiation Period will continue until the resolution of the Dispute and for any further time agreed by the parties or determined during the Dispute resolution process; or
 - (v) the Available Capacity being reduced (for example, due to another Access Seeker finalising an Access Agreement), such that QR Network's ability to offer Access to the Access Seeker under the terms of the Indicative Access Proposal is adversely affected.
 - (f) If a Negotiation Period ceases where Clause 4.5.1(e)(v) applies, QR Network will, if requested by the affected Access Seeker, review the Indicative Access Proposal and prepare a revised Indicative Access Proposal in accordance with Clause 4.3, and the negotiation process outlined in this Part 4 will recommence from that point.
 - (g) If a Negotiation Period ceases and the Access Seeker was in a queue established by QR Network in accordance with Clause 7.3.5, the Access Seeker will be removed from the queue.

4.5.2 Issues to be addressed during Negotiation

- (a) During the Negotiation Period, QR Network and the Access Seeker will negotiate and endeavour to agree on the elements comprising the Access Agreement. In order to facilitate this process:

- (i) QR Network will provide to the Access Seeker Additional Information relevant to the rail corridor applicable to the Access Seeker's Access Application and will use reasonable endeavours to ensure such information is the most current available to QR and is provided within a reasonable timeframe;
 - (ii) an Operating Plan is to be prepared by the Access Seeker in accordance with Clause 8.1.4;
 - (iii) an Interface Risk Assessment is to be undertaken by the Access Seeker, jointly with QR Network, in accordance with Clause 8.1.2 and an IRMP is to be developed and agreed in accordance with Clause 8.1.3;
 - (iv) an EIRMR must be undertaken and prepared by the Access Seeker in accordance with Clause 8.2.1;
 - (v) an Access Charge, determined in accordance with the pricing principles set out in Part 6, is to be provided by QR Network including advice as to whether QR Network has applied Clause 6.1.2(b)(i) or 6.1.2(c) in determining the Access Charge and if so:
 - (A) the factor associated with the Access Seeker's proposed Access that results in a different cost or risk to QR Network;
 - (B) the impact that the factor has on the Access Charge; and
 - (C) how that impact on the Access Charge was determined;
 - (vi) a Capacity Analysis and an investigation of operational impacts are to be undertaken by QR Network and any necessary Infrastructure Enhancements to accommodate Access by the Access Seeker are to be advised by QR Network except to the extent that either the System Rules indicate or QR Network considers that such matters are not required;
 - (vii) the definition of the relevant Train Service Entitlement and, where applicable, advice of the initial timetable is to be provided by QR Network, consistent with Clause 7.2;
 - (viii) the Access Seeker is to demonstrate that the Rollingstock and Train Configurations for which the Access Rights are applicable are consistent with the Rollingstock Interface Standards incorporated in the IRMP in accordance with Clause 8.1.6; and
 - (ix) other terms and conditions comprising the Access Agreement are to be provided by QR Network consistent with Clause 5.1.
- (b) During the Negotiation Period, the Access Seeker may review and revise the information in its Access Application, provided that such revision does not substantially alter the nature of the Access Rights sought by the Access Seeker. If QR Network is reasonably of the view that such revision does substantially alter the nature of the Access Rights sought by the Access Seeker, QR Network will notify the Access Seeker in writing of QR Network's view. If, within five (5) Business Days of QR Network giving that notice:
- (i) the Access Seeker gives QR Network a notice in writing that it wishes to continue negotiating on the original Access Application without the proposed revisions, the negotiation process under this Undertaking will continue; or

- (ii) if the notice in Clause 4.5.2(b)(i) is not given:
 - (A) the provision of the revised information will be deemed to be a written notice referred to and given under Clause 4.5.1(e)(ii) in respect of the original Access Application; and
 - (B) the original Access Application and revised information will together comprise a new request for Access deemed to have been submitted to QR Network on the date five (5) Business Days after QR Network gave the notice under this Clause 4.5.2(b).
- (c) QR Network will be entitled to levy an appropriate charge for the provision of Additional Information commensurate with the cost of preparation and supply of the information.
- (d) In respect of the details required to be developed by the parties in accordance with Clause 4.5.2(a), the parties may agree:
 - (i) to finalise certain aspects after the execution of the Access Agreement;
 - (ii) to make the Access Agreement subject to the satisfaction of conditions (including, for example, the completion of schedules to the Access Agreement or the securing of port capacity); or
 - (iii) to include mechanisms in the Access Agreement to address any subsequent cost or operating impacts arising in connection with the matters referred to in Clauses 4.5.2(d)(i) and (ii).
- (e) QR Network will be responsible for the investigation and design of any necessary Infrastructure Enhancements to accommodate Access by an Access Seeker to Rail Infrastructure. However, if prior to entering into an Access Agreement, the Access Seeker requires detailed scoping of the enhancements that are required directly to facilitate the Access Rights under negotiation, QR Network will be entitled to require that the Access Seeker pay QR Network's reasonable costs for such investigation and design.

4.6 NEGOTIATION CONDITIONS

- (a) At any time during a Negotiation Period, QR Network may, within fourteen (14) days of deciding that it will not enter into an Access Agreement with the relevant Access Seeker, give a Negotiation Cessation Notice to that Access Seeker if:
 - (i) the Access Seeker does not comply with the relevant obligations and processes contained in this Undertaking, and QR Network considers on reasonable grounds that such non-compliance is material;
 - (ii) QR Network is of the reasonable opinion that there is no reasonable likelihood that the Access Seeker will comply with the terms and conditions of an Access Agreement in a material way;
 - (iii) QR Network is of the reasonable opinion that the Access Seeker has no genuine intention of obtaining Access Rights or has no reasonable likelihood of utilising Access at the level sought;
 - (iv) QR Network gives a Negotiation Cessation Notice under Clause 3.3.2(c)(iv) or 3.3.2(g)(i)(A);
 - (v) subject to Clause 10.1.3(c), the Access Seeker does not comply with a determination of an expert pursuant to Clause 10.1.3 in relation to the Access Seeker's Access Application; or

- (vi) the Access Seeker does not comply with a determination of the QCA pursuant to Clause 10.1.4 in relation to a Dispute about the Access Seeker's Access Application.
- (b) Without limitation, it will be reasonable for QR Network to form the opinion that the circumstances in Clause 4.6(a)(ii) apply, if:
 - (i) the Access Seeker is Insolvent; or
 - (ii) the Access Seeker, or a Related Party of the Access Seeker, is currently, or has in the previous two (2) years been, in Material Default of any Access Agreement or any other agreement and where its performance under that agreement is relevant to its likely performance under an Access Agreement.
- (c) Without limitation, when QR Network is forming an opinion as to whether the circumstances in Clause 4.6(a)(iii) apply, QR Network may consider any one or more of the following factors:
 - (i) whether the Access Seeker has secured or is reasonably likely to secure the rights required to leave the QR Network rail network in order to unload at its destination, for instance, port capacity or capacity to unload at a power station;
 - (ii) whether the Access Seeker (if they are seeking to be an Access Holder and not an operator) has secured or is reasonably likely to secure a rail haulage agreement required to operate the Train Services the subject of the Access Application; and
 - (iii) the speed and timeliness of the Access Seeker in conducting its negotiations, including whether QR Network has determined under Clause 4.6(d) that the Access Seeker has taken an unreasonable or excessive amount of time negotiating an Access Agreement.
- (d) An Access Seeker who is in a queue but is not an Access Seeker with whom QR Network is obliged to negotiate in accordance with Clause 4.5.1(b) may notify QR Network that it considers the time taken by such an Access Seeker to negotiate an Access Agreement with QR Network is unreasonable or excessive. If QR Network receives such a notice, QR Network will determine whether the time taken by the applicable Access Seeker is unreasonable or excessive having regard to the complexity of the Access Application and Indicative Access Proposal or the existence of other extenuating circumstances. QR Network will make its determination and advise both Access Seekers of its decision within seven (7) Business Days of receiving the notification.
- (e) If an Access Seeker disputes that QR Network was entitled to give it a Negotiation Cessation Notice and seeks to resolve the Dispute in accordance with Clause 10.1, for the purposes of Clause 4.6(a), the Negotiation Cessation Notice will be deemed to have been issued only if and when the Dispute is resolved in QR Network's favour. If the resolution of the Dispute identifies that QR Network was not entitled to give the Access Seeker a Negotiation Cessation Notice, QR Network will recommence negotiations with that Access Seeker immediately.
- (f) QR Network shall have the right at its option to recover its costs incurred in negotiations with the Access Seeker where it ceases negotiations in accordance with Clause 4.6(a)(iii). QR Network may seek acknowledgement of the Access Seeker's liability for costs as part of the negotiation for Access.

4.7 CAPACITY NOTIFICATION REGISTER

- (a) If QR Network ceases negotiations with an Access Seeker in accordance with Clause 4.5.1(e)(v) and Clause 4.5.1(f) does not apply, then QR Network will include:
- (i) if requested by the Access Seeker, that Access Seeker's details; and
 - (ii) if specified by the applicable request for Access in accordance with Clause 4.1(f) and requested by the Customer, that Customer's details,
- in the Capacity Notification Register.
- (b) QR Network will maintain a Capacity Notification Register that identifies:
- (i) each person referred to in Clause 4.7(a) who requests inclusion in the register;
 - (ii) the nature of each person's interest in seeking Access Rights; and
 - (iii) the date on which the applicable Access Application (in respect of which negotiations ceased in accordance with Clause 4.5.1(e)(v)) was or was deemed to have been received by QR Network for queuing purposes.
- (c) Every six (6) months after the date on which QR Network received a person's request in accordance with Clause 4.7(a), that person must notify QR Network that they wish to continue to remain in the Capacity Notification Register (provided that such a notice can be given no more than one (1) month prior to the due date for that notice).
- (d) If Capacity becomes Available Capacity or Available Capacity is or is to be created, then QR Network will notify each person indicated in the Capacity Notification Register as being interested in seeking Access Rights applicable to such Available Capacity, of the nature and extent of that Available Capacity.
- (e) If a person notified under Clause 4.7(d) submits a request for Access within one (1) month of being given that notice, then that request for Access is deemed, for the purposes of a queue, to have been received by QR Network on the date recorded in the Capacity Notification Register, in accordance with Clause 4.7(b)(iii), in respect of that person for the relevant Access Rights.
- (f) A person will remain on the Capacity Notification Register until:
- (i) that person fails to comply with Clause 4.7(c); or
 - (ii) QR Network notifies that person in accordance with Clause 4.7(d).
- (g) This Clause 4.7 does not apply:
- (i) where Clause 4.8 applies; or
 - (ii) where Available Capacity will exist as a result of a Major Project, except to the extent that a Capacity Allocation Process is not developed or does not apply in respect of that Available Capacity in accordance with Clause 4.8.

4.8 REQUESTS FOR ACCESS FOR MAJOR PROJECTS

- (a) For the purposes of this Clause 4.8, "Interested Party" means each person notified under Clause 4.8(e) in respect of the relevant Capacity Allocation Process.

- (b) Notwithstanding Clauses 4.1 to 4.7, if a request for Access is for Capacity:
- (i) which cannot be provided in the absence of QR Network investing in a Major Project; or
 - (ii) which significantly impacts on a Major Project that is being investigated, then QR Network may reject that request for Access.
- (c) If QR Network rejects a request for Access in accordance with Clause 4.8(b), QR Network will give a notice in writing to the Access Seeker that:
- (i) the request for Access relates to a Major Project;
 - (ii) no requests for Access are being accepted by QR Network in respect of that Major Project;
 - (iii) the Access Seeker's details (and, if provided with the request for Access, the details of its Customer) will be retained by QR Network so that QR Network can advise them of future developments in relation to the Major Project (including the process, if any, for the allocation of Capacity arising from that Major Project); and
 - (iv) outlines the process for QR Network's investigation of the Major Project (including any requirements in accordance with Clause 4.8(d)).
- (d) QR Network may require either or both of the following in relation to costs incurred by QR Network in connection with the investigation of a Major Project:
- (i) that Access Seekers (or their Customers) agree to underwrite, pay or otherwise reimburse to QR Network such costs; or
 - (ii) if the Major Project relates to coal carrying Train Services, that the prudence of scope for those costs be pre-approved in accordance with Clause 3.1 of Schedule A, as capital expenditure,
- prior to QR Network proceeding with any investigations in relation to a Major Project.
- (e) QR Network may develop a process ("Capacity Allocation Process") whereby QR Network will allocate Capacity to be created by a Major Project, if undertaken. If QR Network develops such a process, it will notify:
- (i) if a relevant request for Access has been rejected in accordance with Clause 4.8(b), the Access Seeker and, where specified in the request for Access, the Customer for that request for Access; and
 - (ii) any existing or potential Customer, Access Seeker or Access Holder who QR Network reasonably determines may be affected by the allocation of Capacity to be created by the Major Project,
- of that proposed Capacity Allocation Process seeking submissions by a specified due date that is at least fifteen (15) Business Days after that notice is given by QR Network.
- (f) After considering all submissions received by QR Network from Interested Parties prior to the specified due date, QR Network will notify the Interested Parties of the outcome of its consideration including any changes to the proposed Capacity Allocation Process.
- (g) If more than forty percentage points (40%) of the Interested Parties, by number, are not satisfied with the proposed Capacity Allocation Process, then those Interested Parties, within fifteen (15) Business Days after being given a notice by QR Network in accordance with Clause 4.8(f), may collectively refer the

matter to the QCA for determination as a Dispute in accordance with Clause 10.1.4.

- (h) If QR Network reasonably considers that two or more Interested Parties have an interest in substantially the same traffic task (for example, two or more persons in a partnership, joint venture or similar arrangement or an Access Seeker and that Access Seeker's Customer), then those Interested Parties are treated as a single Interested Party for the purpose of calculating whether the threshold under Clause 4.8(g) has been reached.
- (i) QR Network will not publish a Capacity Allocation Process:
 - (i) unless and until any Dispute commenced in accordance with Clause 4.8(g) is resolved and then only if the Capacity Allocation Process is in accordance with the determination of the Dispute; and
 - (ii) until after the due date for commencing such a Dispute.
- (j) A Capacity Allocation Process may include a process for its amendment.
- (k) A Capacity Allocation Process prepared in accordance with this Clause 4.8 (and as amended from time to time) takes precedence over this Undertaking to the extent of any inconsistency and QR Network will comply with that Capacity Allocation Process as though it were part of this Undertaking.
- (l) Neither the development of a Capacity Allocation Process nor anything in this Clause 4.8 affects QR Network's commercial discretion as to whether it will undertake a Major Project.

PART 5: ACCESS AGREEMENTS

5.1 DEVELOPMENT OF ACCESS AGREEMENTS

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

5.2 DEVELOPMENT OF NEW OR AMENDED STANDARD ACCESS AGREEMENT

- (a) QR Network will submit a Proposed Standard Access Agreement:
 - (i) within sixty (60) days after receiving a notice from the QCA in accordance with Clause 5.2(b); or

- (ii) otherwise at QR Network's discretion.
- (b) The QCA may give QR Network a notice requiring it to submit a Proposed Standard Access Agreement if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a pro forma Access Agreement for a specified type of Train Service not covered by a Standard Access Agreement.
- (c) The QCA may develop a Proposed Standard Access Agreement that is consistent with the Undertaking and the principles contained in Schedule E if:
 - (i) QR Network does not comply with a notice given by the QCA under Clause 5.2(b) or 5.2(h)(ii) for it to submit, or resubmit, a Proposed Standard Access Agreement (whichever is applicable); or
 - (ii) the QCA refuses to approve a Proposed Standard Access Agreement resubmitted by QR Network in accordance with a notice given by the QCA under Clause 5.2(h)(ii).
- (d) Where QR Network submits, or the QCA develops, a Proposed Standard Access Agreement, the QCA will:
 - (i) publish the Proposed Standard Access Agreement;
 - (ii) invite persons to make submissions on the Proposed Standard Access Agreement to the QCA within a reasonable period of time specified by the QCA; and
 - (iii) consider any submission it receives within the time.
- (e) The QCA may approve a Proposed Standard Access Agreement (including a Proposed Standard Access Agreement developed by the QCA) only if the QCA:
 - (i) is satisfied that the Proposed Standard Access Agreement is consistent with this Undertaking and the principles contained in Schedule E;
 - (ii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
 - (iii) has complied with Clause 5.2(d).
- (f) The QCA will consider a Proposed Standard Access Agreement given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives a Proposed Standard Access Agreement under this Clause 5.2 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.
- (g) If the QCA approves a Proposed Standard Access Agreement submitted under Clause 5.2(a), or resubmitted under Clause 5.2(h)(ii):
 - (i) the Standard Access Agreement will apply from the date of the QCA decision, or any other date following the date of the QCA decision that the QCA determines;
 - (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
 - (iii) QR Network must:
 - (A) publish that Standard Access Agreement; and
 - (B) advise Access Holders and Access Seekers, in respect of the specified Train Services to which the Standard Access Agreement applies, that a Standard Access Agreement has been approved.

- (h) If the QCA refuses to approve a Proposed Standard Access Agreement, the QCA will give QR Network a notice in writing:
 - (i) stating the reasons for its refusal and the way in which the QCA considers that the Proposed Standard Access Agreement should be amended; and
 - (ii) where the Proposed Standard Access Agreement has been submitted by QR Network in response to a notice given by the QCA under Clause 5.2(b), requiring QR Network to amend the Proposed Standard Access Agreement in the way the QCA considers appropriate and resubmit the amended Proposed Standard Access Agreement to the QCA within 30 days after the giving of that notice.
- (i) If QR Network complies with the notice given under Clause 5.2(h)(ii), the QCA may approve the resubmitted Proposed Standard Access Agreement in accordance with Clause 5.2(j).
- (j) The QCA may approve the resubmitted Proposed Standard Access Agreement only if the QCA:
 - (i) is satisfied that it is in accordance with the notice under Clause 5.2(h);
 - (ii) is satisfied that it is consistent with this Undertaking and the principles contained in Schedule E; and
 - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act.
- (k) A Proposed Standard Access Agreement may be withdrawn at any time by the party who developed the Proposed Standard Access Agreement, except that if the Proposed Standard Access Agreement relates to a notice given by the QCA under Clause 5.2(b), then that withdrawal will only take effect if approved by the QCA.
- (l) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a Proposed Standard Access Agreement, if:
 - (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
 - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (m) If the QCA grants QR Network an extension of time under Clause 5.2(l), QR Network must submit, or resubmit, a Proposed Standard Access Agreement, (whichever is applicable) within the time specified by the QCA.

5.3 DISCLOSURE OF ACCESS AGREEMENTS

- (a) Upon request by the QCA, QR Network will provide to the QCA the Below Rail aspects of Access Agreements (including Access Charges).
- (b) Except as provided for in Clause 5.3(c), QR Network will permit the public disclosure of the Below Rail aspects of Access Agreements (including Access Charges) for all coal carrying Train Services for new or renewed Train Services.
- (c) Where a party to an Access Agreement considers that specified parts of the Access Agreement should not be publicly disclosed, it may make a request to the QCA for non-disclosure of those specified parts. The QCA must agree to the request where it is satisfied that disclosure of the information would be

likely to damage that party's commercial activities and that disclosure would not be in the public interest.

- (d) For the purposes of Clauses 5.3(a) and (b), the Below Rail aspects of Access Agreements will not include:
- (i) the insurance provisions;
 - (ii) the contact details included in the Interface Coordination Plan;
 - (iii) the Rollingstock and Train Configuration performance characteristics;
 - (iv) the IRMP; and
 - (v) the EIRMR.

PART 6: PRICING PRINCIPLES

6.1 PRICE DIFFERENTIATION

6.1.1 Application of pricing principles

In developing Access Charges and Reference Tariffs, QR Network:

- (a) will apply the pricing principles set out in this Part 6; and
- (b) to the extent of any conflict, will do so in the following order of precedence (from highest to lowest):
 - (i) Limits on Price Differentiation (Clause 6.1.2);
 - (ii) Pricing Limits (Clause 6.2);
 - (iii) Rail Infrastructure Utilisation (Clause 6.3.1); and
 - (iv) Revenue Adequacy (Clause 6.3.2).

6.1.2 Limits on Price Differentiation

- (a) QR Network will not differentiate Access Charges between Access Seekers or between Access Seekers and Access Holders within a relevant market except as provided for in this Clause 6.1.2.
- (b) Where a Reference Tariff is applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker may only vary from the Reference Tariff:
 - (i) to reflect differences in cost or risk to QR Network of providing Access for that Train Service compared to the Reference Train Service; or
 - (ii) where the Access Charge is for a Train Service travelling from a mine on the corridor between Burngrove and Coppabella to the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone), to be less than the applicable Reference Tariff provided that:
 - (A) this is for the purpose of reducing QR Network's asset stranding risk on the corridor between Burngrove and Gladstone; and
 - (B) where Access Seekers are directly competing with each other for the purpose of operating the new or renewed Train Service, the Access Charge offered to each of those Access Seekers will only vary between the Access Seekers so as to reflect differences in the cost or risk to QR Network of providing Access as a result of differences in the type of Train Services proposed by the relevant Access Seeker.
- (c) Where there is no Reference Tariff applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker seeking to transport a specified commodity in a specified geographic area may only vary from the Access Charge for other Access Seekers seeking to transport the same commodity in the same geographical area, on a unit rate basis, either:
 - (i) to reflect differences in cost or risk to QR Network of providing Access for that Train Service compared to other Train Services of that type; or
 - (ii) over time, to reflect:
 - (A) changes in the cost or risk to QR Network of providing Access;

- (B) changes in relevant Transport Service Payments, where such changes have the result that QR Network can no longer commercially provide Access to Train Services in that specified geographic area at the current Access Charges;
 - (C) Changes in Market Circumstances; or
 - (D) limitations on Available Capacity in accordance with Clause 6.3.1(b).
- (d) QR Network will give Access Seekers the opportunity to incorporate rate review provisions in Access Agreements as follows:
- (i) where a Reference Tariff is applicable for the Train Service type, to enable the Access Charge to be reviewed (whether upwards or downwards) to be consistent with changes in the applicable Reference Tariff over time; or
 - (ii) where there is no Reference Tariff applicable for the Train Service type, to enable the Access Charge to be reviewed (whether upwards or downwards) to be consistent with changes in the Access Charges offered to other Access Seekers over time for that specified commodity in that specified geographic area,
- provided that QR Network will be entitled to incorporate such rate review provisions in any Access Agreement which has a term in excess of five (5) years.
- (e) In addition to any rate review provision that may be incorporated in its Access Agreement in accordance with Clause 6.1.2(d), if an Access Holder (“Aggrieved Access Holder”) can demonstrate to QR Network’s reasonable satisfaction that after entering into an Access Agreement with the Aggrieved Access Holder, QR Network has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this Clause 6.1.2, and if QR Network is not able to alter the Access Charge contained in the subsequent Access Agreement to ensure that it is in accordance with the limits on price differentiation set out in this Clause 6.1.2, then QR Network will alter the Access Charge for the Aggrieved Access Holder in accordance with the pricing principles set out in this Part 6.

6.2 PRICING LIMITS

6.2.1 Application of Pricing Limits

- (a) In determining Access Charges, QR Network will observe price limits in respect of the following elements:
- (i) upper and lower limits for Access Charges for individual Train Services, established at levels which ensure there is no Cross Subsidy between Train Services and determined in accordance with Clause 6.2.2; and
 - (ii) upper and lower limits for Access Charges in respect of combinations of Train Services, established at levels which ensure that there is no Cross Subsidy between combinations of Train Services and determined in accordance with Clause 6.2.3.

- (b) Subject to the approval of the QCA, QR Network may:
- (i) establish a new Reference Tariff; or
 - (ii) vary an existing Reference Tariff in a way,
that is inconsistent with Clause 6.2.2(a)(ii) or Clause 6.2.3(a)(ii), for the primary purpose of promoting efficient investment by either QR Network or another person in the relevant transport supply chain.

6.2.2 Price Limits for Individual Train Services

- (a) Price limits will apply to establishing Access Charges for a Train Service such that, over the Evaluation Period, the relevant Access Charge for a Train Service:
- (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for that Train Service; and
 - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that Train Service,
- provided that, if that Train Service is the only Train Service using part of the Rail Infrastructure, compliance with these price limits will be assessed after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Clause 6.2.2(a)(ii), a Maximum Allowable Revenue will be established for the Train Service. The Maximum Allowable Revenue for a Train Service will reflect the Stand Alone Cost of providing Access for that Train Service over the Evaluation Period. The Maximum Allowable Revenue will be determined in accordance with Clause 6.2.4.

6.2.3 Price Limits on Train Service Combinations

- (a) In addition to Clause 6.2.2, price limits will apply in respect of Access Charges to be established for a Train Service such that, over the Evaluation Period, the expected Access revenue (determined in accordance with Clause 6.2.3(c)) for any combination of Train Services incorporating a Train Service:
- (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for that combination of Train Services; and
 - (ii) subject to Clause 6.2.1(b), will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that combination of Train Services,
- provided that compliance with these price limits will be assessed after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Clause 6.2.3(a)(ii), a Maximum Allowable Revenue will be established for identified combinations of Train Services. The Maximum Allowable Revenue for a combination of Train Services will reflect the Stand Alone Cost of providing Access for the combination of Train Services over the Evaluation Period. The Maximum Allowable Revenue for the combination of Train Services will be determined in accordance with Clause 6.2.4.
- (c) Expected Access revenue for a combination of Train Services will be determined as the aggregate of revenue reasonably expected from the application of Access Charges for all the Train Services comprising the

combination of Train Services, where the Access Charges for different Train Service types will be identified as follows:

- (i) where a Reference Tariff is to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with the Reference Tariff proposed; and
 - (ii) where a Reference Tariff is not intended to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a basis consistent with current applicable Access Charges, except as provided in Clause 6.3.1(b)(ii).
- (d) If QR Network incorporates an Access Charge in the Access Agreement for an Access Holder that, at the time of development, is in contravention of either Clause 6.2.2(a)(i) or 6.2.3(a)(i), then provided that QR Network observes the limits on price differentiation set out in Clause 6.1.2 in subsequently developing an Access Charge for an Access Seeker for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), QR Network shall be deemed not to be in breach of Clause 6.2.2 or 6.2.3.

6.2.4 Definition of Maximum Allowable Revenue

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

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

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

where:

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

n is the number of years in the Evaluation Period;

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

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

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

- M_t is the Efficient Cost, including operating and maintenance costs, business and corporate overheads and QCA Levy, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;
- ROA is the allowable rate of return expressed in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by QR Network and the QCA or, failing such agreement, as determined by the QCA;
- T is the tax expense assessed through the application of the statutory tax rate for corporations to the taxable income reasonably expected to be earned through the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period, where such tax expense is reduced in each year by the application of the gamma factor, reflecting the market value of dividend imputation, as agreed by QR Network and the QCA or, failing such agreement, as determined by the QCA; and
- AV_n is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with Clause 6.2.4(c), at the end of the Evaluation Period.
- (b) In order to determine the amount of each of the variables set out in Clause 6.2.4(a), it will be necessary to identify the assumed traffic task resulting from the Train Service(s) over the Evaluation Period. The assumed traffic task shall be the forecast reasonably determined for the traffic task resulting from the Train Service(s) over the Evaluation Period, except where changes in traffic task are the result of the commencement of projects that individually impact significantly on the traffic task. In such circumstances, expected increases in traffic task shall be incorporated into the forecast following service commitment.
- (c) The value of assets used in Clause 6.2.4(a) will be determined using:
- (i) where applicable, the value of the assets for the relevant area of the network contained in the Regulatory Asset Base, where the value of those assets is maintained in accordance with Schedule A; or
 - (ii) where there is no value for the assets for the relevant area of the network contained in the Regulatory Asset Base, the Depreciated Optimised Replacement Cost methodology.

6.3 PRICING OBJECTIVES

6.3.1 Rail Infrastructure Utilisation

- (a) Access Holders serve a number of different markets that have different abilities to support Access Charges that contribute in excess of the Incremental Cost and towards the Common Costs of providing the Rail Infrastructure. Accordingly, QR Network will be entitled to establish different Access Charges for Access Holders serving different markets in order to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs of providing the Rail Infrastructure.
- (b) Where Available Capacity is limited, and QR Network reasonably considers in accordance with Clause 7.3.3 that expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not commercially justified:

- (i) QR Network may establish an Access Charge based on the highest Access Charge QR Network is likely to achieve from the current or likely Access Seekers (provided that the highest Access Charge is developed in accordance with the pricing principles set out in this Part 6), i.e. the Access Charge which incorporates the highest contribution to the Common Costs of providing the Rail Infrastructure (referred to in this Clause 6.3.1(b) as the "Maximum Access Charge"). The Maximum Access Charge may then be quoted to all Access Seekers seeking Access in respect of the relevant Available Capacity, irrespective of a particular Access Seeker's ability to contribute to the Common Costs of providing the Rail Infrastructure or the Access Charges payable in existing Access Agreements for similar Train Services; and
- (ii) if QR Network:
 - (A) has received mutually exclusive Access Applications; and
 - (B) chooses to allocate Available Capacity to an Access Application where the Access Seeker will pay an Access Charge that is less than the Maximum Access Charge in preference to an Access Application where the Access Seeker would pay an Access Charge that is equal to the Maximum Access Charge and would otherwise be able to utilise that Available Capacity,then for the purpose of assessing a Maximum Allowable Revenue in accordance with Clause 6.2.4 for all Train Services using that constrained section of Rail Infrastructure, the Access Charge for the Access Seeker will be assumed to be the Maximum Access Charge.

6.3.2 Revenue Adequacy

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

6.4 REFERENCE TARIFFS

6.4.1 Application of Reference Tariffs

- (a) It is recognised that there may be a large range between the price limits established in Clause 6.2 within which Access Charges for individual Train Services may be determined. Therefore, to assist in the facilitation of an efficient Access negotiation process, QR Network may develop Reference Tariffs for certain types of Train Services.
- (b) Each Reference Tariff will be developed as an Access Charge for a Reference Train Service.
- (c) Reference Tariffs will not be required to be consistent with the actual Access Charges for the relevant type of Train Services applicable under existing Access Agreements. However, QR Network will give Access Holders the opportunity to incorporate rate review provisions in Access Agreements in accordance with Clause 6.1.2(d).

- (d) Reference Tariffs for nominated Reference Train Services, including the conditions associated with the application of those Reference Tariffs, are set out in Schedule F.
- (e) Where the QCA has approved a Reference Tariff submitted to it by QR Network, that Reference Tariff will be an acceptable means by which QR Network provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the Act, as provided for in accordance with section 101(4) of the Act.

6.4.2 Establishment of Reference Tariffs for new Reference Train Services

- (a) QR Network will submit a proposed Reference Tariff for a new Reference Train Service to the QCA:
 - (i) if required in accordance with Clause 6.4.2(b);
 - (ii) subject to Clause 6.4.2(d), within sixty (60) days after receiving a notice from the QCA in accordance with Clause 6.4.2(c); or
 - (iii) otherwise at QR Network's discretion.
- (b) Unless otherwise agreed with the QCA, where a new coal mine is developed and Train Services servicing that mine will utilise Rail Infrastructure in the Central Queensland Coal Region or Western System, the Train Services travelling between the mine and its most common destination will be incorporated in a new or existing Reference Train Service in a manner consistent with the requirements of Schedule F.
- (c) The QCA may give QR Network a notice requiring it to submit a proposed Reference Tariff for a new Reference Train Service if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of such a Reference Tariff.
- (d) The QCA may grant QR Network an extension of the time for submitting, or resubmitting, a proposed Reference Tariff, if:
 - (i) QR Network provides a written request to the QCA for an extension of time which outlines the reasons why QR Network requires the extension of time; and
 - (ii) the QCA, acting reasonably, considers that an extension of time is appropriate.
- (e) The QCA may develop a proposed Reference Tariff that is consistent with this Undertaking if:
 - (i) QR Network does not comply with a notice given by the QCA under Clause 6.4.2(c) or 6.4.2(j)(ii) for it to submit, or resubmit, a proposed Reference Tariff (whichever is applicable); or
 - (ii) the QCA refuses to approve a proposed Reference Tariff resubmitted by QR Network in accordance with a notice given by the QCA under Clause 6.4.2(j)(ii).
- (f) Where QR Network submits, or the QCA develops, a proposed Reference Tariff for a new Reference Train Service, the QCA will:
 - (i) publish the proposed Reference Tariff;
 - (ii) invite persons to make submissions on the proposed Reference Tariff to the QCA within a reasonable period of time specified by the QCA; and
 - (iii) consider any submission it receives within the time.

- (g) The QCA may approve a proposed Reference Tariff for a new Reference Train Service (including a proposed Reference Tariff developed by the QCA) only if the QCA:
- (i) is satisfied that the proposed Reference Tariff is consistent with this Undertaking;
 - (ii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
 - (iii) has complied with Clause 6.4.2(f).
- (h) The QCA will consider a proposed Reference Tariff given to it by QR Network and either approve or refuse to approve it within sixty (60) days after the QCA receives that proposed Reference Tariff under this Clause 6.4.2 or such further period as the QCA and QR Network may agree or as the QCA may reasonably determine and notify to QR Network.
- (i) If the QCA approves a proposed Reference Tariff submitted under Clause 6.4.2(a), or resubmitted under Clause 6.4.2(j)(ii):
- (i) the proposed Reference Tariff will apply from the earlier of:
 - (A) the date of the QCA decision;
 - (B) where Clause 6.4.2(b) applies, the date of the first Train Service servicing the new coal mine; and
 - (C) where Clause 6.4.2(c) applies, the date when the relevant notice is given by the QCA,except where the QCA specifies a later date in its decision, in which case the proposed Reference Tariff will apply from that date.
 - (ii) the QCA will give QR Network a notice in writing stating the reasons for its decision; and
 - (iii) QR Network must:
 - (A) publish a new version of Schedule F which includes the Reference Tariff; and
 - (B) advise Access Holders and Access Seekers, in respect of the Train Services to which the Reference Tariff applies, that the Reference Tariff has been approved.
- (j) If the QCA refuses to approve a proposed Reference Tariff the QCA will give QR Network a notice in writing:
- (i) stating the reasons for its refusal and the way in which the QCA considers that the proposed Reference Tariff should be amended; and
 - (ii) where the proposed Reference Tariff has been submitted by QR Network in response to a notice given by the QCA under Clause 6.4.2(c), requiring QR Network to amend the proposed Reference Tariff in the way the QCA considers appropriate and resubmit the amended proposed Reference Tariff to the QCA within thirty (30) days after the giving of that notice.
- (k) If QR Network complies with the notice given under Clause 6.4.2(j)(ii), the QCA may approve the resubmitted proposed Reference Tariff in accordance with Clause 6.4.2(l).

- (l) The QCA may approve the resubmitted proposed Reference Tariff only if the QCA:
 - (i) is satisfied that the proposed Reference Tariff is in accordance with the QCA's decision;
 - (ii) is satisfied that the proposed Reference Tariff is consistent with this Undertaking; and
 - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act.
- (m) A proposed Reference Tariff may be withdrawn at any time by the party who developed the proposed Reference Tariff except that if the proposed Reference Tariff was required to be submitted in accordance with Clauses 6.4.2(a)(i) or (ii), then that withdrawal will only take effect if approved by the QCA.
- (n) If the QCA grants QR Network an extension of time under Clause 6.4.2(d), QR Network must submit, or resubmit, the proposed Reference Tariff, (whichever is applicable) within the time specified by the QCA.
- (o) For the purposes of this Clause 6.4.2:
 - (i) a new Reference Tariff submitted by QR Network or developed by the QCA in accordance with this Clause 6.4.2 must include a review of System Allowable Revenue to the extent applicable to that new Reference Tariff; and
 - (ii) the QCA in approving a new Reference Tariff must also approve the corresponding variation of the applicable System Allowable Revenue.

6.4.3 Review of Reference Tariffs

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

6.5 STRUCTURE OF ACCESS CHARGES AND ACCESS CONDITIONS

6.5.1 Structure of Access Charges

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

on the QCA Levy levied by the QCA to QR Network and allocated amongst Train Service types in a manner approved by the QCA.

6.5.2 Access Conditions

- (a) QR Network may require an Access Seeker to agree to Access Conditions before being granted Access Rights, to the extent that this is reasonably required in order to mitigate QR Network's exposure to the financial risks associated with providing Access for the Access Seeker's proposed Train Service.
- (b) For the purposes of Clause 6.5.2(a), Access Conditions are deemed to be reasonably required:
 - (i) where:
 - (A) QR Network is to develop Infrastructure Enhancements (for example, a new branch line or increasing the height of tunnels to accommodate a single Customer's taller than usual trains);
 - (B) there will be no more than one Customer using those Infrastructure Enhancements; and
 - (C) those Infrastructure Enhancements would not be required had that Access Seeker not sought Access for its Train Services;
 - (ii) if QR Network requires those Access Conditions pursuant to Clause 6.5.2(e)(ii); or
 - (iii) where QR Network cannot provide the Access sought unless it invests in a Major Project.
- (c) For the purposes of Clause 6.5.2(a) and subject to Clause 6.5.2(b), Access Conditions are presumed not to be reasonably required where QR Network is to construct Infrastructure Enhancements:
 - (i) that are likely to be used by a number of Customers, Access Seekers or Access Holders such that QR Network's risk of being unable to recover the costs of the Infrastructure Enhancements if any one of those Customers, Access Seekers or Access Holders ceases to require all or part of the relevant Train Services is not material; or
 - (ii) that are for the purpose of increasing Capacity for the operation of Reference Train Services and that will form part of the Central Queensland Coal Region Mainline except where the Infrastructure Enhancement is part of a Major Project.
- (d) If an Access Condition results in QR Network earning revenue from the Access Seeker's Access that is in addition to the ongoing Access Charge (for example, an upfront contribution or Access Facilitation Charge), QR Network will:
 - (i) negotiate an agreement separate from the Access Agreement with the party who agreed to pay such additional revenue (or their nominee Access Seeker) which will provide for payment of a rebate to that party or their nominee, where the rebate is equivalent to the amount provided in the Access Charge for a cost component to the extent that this component is separately funded through the additional revenue (for example, depreciation and the non-diversifiable component of the return on any relevant Infrastructure Enhancements); or
 - (ii) exclude the cost components separately funded through the additional revenue (for example, the value of any relevant Infrastructure Enhancements to the extent supported by the additional revenue) from

the cost base (including the asset base) used to determine the ongoing Access Charge.

- (e) Where the Access of an Access Holder (“First Party”) is subject to an Access Condition in relation to the construction of Infrastructure Enhancements and Access is sought by an Access Seeker (“Subsequent Party”) to operate Train Services using all or part of those Infrastructure Enhancements, QR Network will use reasonable endeavours to either:
- (i) negotiate an agreement with the First Party where a rebate paid in accordance with Clause 6.5.2(d)(i) includes the amount provided in the Access Charge paid by the Subsequent Party for the cost component to the extent that the component is separately funded through the additional revenue (for example, depreciation and the non-diversifiable component of the return on the relevant Infrastructure Enhancements); or
 - (ii) renegotiate the terms of the First Party’s Access Conditions and impose Access Conditions on the Subsequent Party, so that the First Party and the Subsequent Party share the responsibility that was originally borne by the First Party.
- (f) For the purposes of determining for this Clause 6.5.2 whether another Customer or a Subsequent Party uses (or will use) an Infrastructure Enhancement, the Customer or Subsequent Party is deemed not to do so unless the particular characteristics of the Train Service for the Customer or the Subsequent Party’s Train Service would also have resulted in the Infrastructure Enhancement being required for Access to be provided in relation to the Customer or to the Subsequent Party. (For example, if QR Network increased the height of tunnels to provide Access to an Access Seeker using taller than usual trains, Train Services for Customers or of Subsequent Parties operating through those tunnels will not use that Infrastructure Enhancement unless they use trains of a height that would also have required the height of the tunnels to be increased.)

6.5.3 Access Conditions Register

- (a) QR Network will maintain a register (“Access Conditions Register”) of any Access Conditions that result in:
- (i) QR Network earning revenue from an Access Holder’s Access that is in addition to the ongoing Access Charge (in accordance with Clause 6.5.2(d));
 - (ii) revenue being paid by a party other than an Access Holder to QR Network in order to directly fund capital expenditure on the Rail Infrastructure incurred by QR Network; or
 - (iii) Rail Infrastructure assets being given to QR Network or sold to QR Network at significantly less than market value (except where such assets are given to or sold to QR Network by a QR Party).
- (b) The Access Conditions Register will identify:
- (i) the person paying revenue or providing the assets;
 - (ii) the nature of the Access Conditions (if applicable);
 - (iii) the date when the arrangement commenced;
 - (iv) the costs and assets to which the arrangement relates;
 - (v) the amount of the additional revenue; and

- (vi) the action that QR Network has taken in accordance with Clause 6.5.2(d).
- (c) The QCA may, within one (1) month of the end of a Year, request QR Network in writing to conduct an audit of the Access Conditions Register.
- (d) The audit will follow a process agreed to by QR Network and the QCA (acting reasonably) or, failing such agreement, QR Network will make the information from the Access Conditions Register available to the QCA for the QCA to review.

PART 7: CAPACITY MANAGEMENT

7.1 NETWORK MANAGEMENT PRINCIPLES

QR Network will:

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

7.2 SERVICE SPECIFICATION AND TRAIN SCHEDULING

- (a) Each Train Service Entitlement will have specified scheduling constraints. Scheduling constraints are likely to vary significantly between different types of Train Services and may include, without limitation, the following:
 - (i) the specified days of operation and times at the origin and/or destination and where appropriate, specified arrival/departure times at intermediate locations, with an allowable variation around these specified time(s) for the scheduling of the Train Service;
 - (ii) the maximum time period between Train Services;
 - (iii) the minimum time period between Train Services;
 - (iv) the average Below Rail Transit Time;
 - (v) the agreed threshold for on-time running of the Train Services;
 - (vi) the regularity of timetable reviews and the applicable review process; and
 - (vii) the allowable modifications of timetable (for example, cancellation or deferral of services).
- (b) In respect of Timetabled Traffics, the Train Service Entitlement will be used to develop an initial timetable, which QR Network and the Access Holder will then be required to adhere to except to the extent that the timetable is varied in accordance with the Network Management Principles.
- (c) QR Network will, subject to the Network Management Principles, be able to manage the scheduling of train plans, including the MTP, ITP and DTP, to optimise the use of the Rail Infrastructure as circumstances change from time to time. QR Network will use reasonable endeavours to consult with other relevant infrastructure providers directly affected by the scheduling of particular train plans.

7.3 CAPACITY ALLOCATION

7.3.1 Allocation of Capacity

Subject to Clause 7.3.4, Access Rights will be allocated to the first Access Seeker with whom QR Network can negotiate and execute an acceptable Access Agreement. QR Network will provide all Access Seekers with a consistent level of service and opportunity to obtain Access Rights subject to the express provisions of this Undertaking.

7.3.2 Competing Applications

In respect of Competing Applications, QR Network will:

- (a) commence negotiations with each of the Access Seekers and progress those negotiations to a stage where QR Network has provided each Access Seeker

with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and both parties accepting a Standard Access Agreement (if applicable) or otherwise an Access Agreement consistent with the principles outlined in Schedule E; and

- (b) complete negotiations and execute an Access Agreement with the Access Seeker who demonstrates to QR Network's reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s for the Customer for which the Access Rights are sought, and that the Customer is agreeable to QR Network's execution of the Access Agreement with that Access Seeker.

7.3.3 Capacity Expansion

QR Network will undertake Infrastructure Enhancements to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker, if QR Network reasonably considers that its expected net additional revenue less any expected costs associated with the Infrastructure Enhancements, is sufficient to commercially justify QR Network undertaking the Infrastructure Enhancements (including QR Network's incurring of those costs and exposure to financial and other risks).

7.3.4 Requests for mutually exclusive Access Rights

- (a) If, at any time:
 - (i) QR Network has received Access Applications in respect of mutually exclusive Access Rights¹; and
 - (ii) QR Network has received notification from Access Seekers, in accordance with Clause 4.4, of the intention to progress two or more of those Access Applications on the basis of the arrangements outlined in the relevant Indicative Access Proposal,

then Clause 7.3.5 applies to those Access Applications except where all of those Access Applications are Competing Applications.

- (b) QR Network will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it is no longer an Access Application in respect of mutually exclusive Access Rights.
- (c) This Clause 7.3.4 does not apply to an Access Application:
 - (i) by a Transferee to the extent that the Access Application relates to Nominated Access Rights; or
 - (ii) if Clause 7.3.8 applies, by an Access Seeker in respect of Transferred Access Rights.

7.3.5 Formation of a queue

- (a) If, in accordance with Clause 7.3.4(a), this Clause 7.3.5 applies in respect of Access Applications for mutually exclusive Access Rights, QR Network will form a queue to determine which Access Seeker will be allocated those Access Rights. The order of that queue will initially be determined based upon the time

¹ Access Applications received by QR Network are for mutually exclusive Access Rights where, if QR Network granted Access to one or more of the Access Applications, it would not then be able to grant Access to the other Access Applications. That is, the relevant Access Seekers are effectively competing for Access where there is insufficient Capacity to satisfy all of the Access Applications. For example, Access Seekers seeking Access to the last remaining Train Path on particular Rail Infrastructure or seeking Access to Capacity to be created by Infrastructure Enhancements but where the total Capacity sought exceeds that to be provided by the Infrastructure Enhancements.

when QR Network received each Access Application such that, for example, the Access Application received by QR Network at the earliest time is first in the queue and the Access Application received next by QR Network is second in the queue, and so on.

- (b) Access Applications to be included in a queue that are Competing Applications will be collectively positioned in the queue in accordance with Clause 7.3.5(a) as though they were a single application received by QR Network, for the purposes of the queue, at the time the earliest of the Competing Applications was received by QR Network.
- (c) Once formed, QR Network may change the order of a queue where:
 - (i) the Negotiation Period for an Access Seeker has ceased in accordance with Clause 4.5.1(e);
 - (ii) QR Network reasonably considers that an Access Seeker has no genuine intention of obtaining Access Rights or is unlikely to be able to utilise Access at the level sought, taking into account in both instances and without limitation, the factors listed in Clauses 4.6(c)(i) to (iii);
 - (iii) subject to Clause 7.3.5(d), QR Network reasonably considers that its commercial performance is better served by allocating Access to an Access Seeker who is in the queue but not first in the queue; or
 - (iv) QR Network receives a notification of intent in accordance with Clause 4.4 in relation to a further Access Application which is added to the queue.
- (d) Without limiting Clause 7.3.5(c)(iii), QR Network may reasonably consider that its commercial performance is better served by allocating Access to an Access Seeker who is in the queue but not first in the queue:
 - (i) if:
 - (A) that Access Seeker's Access Application ("Higher NPV Application") has a NPV Value that is 2% or more higher than the NPV Value of an earlier Access Application ("Lower NPV Application") in that queue; and
 - (B) no more than one of the Higher NPV Application and the Lower NPV Application is an Access Application for coal carrying Train Services operating in the Central Queensland Coal Region ("CQCR Application");
 - (ii) if:
 - (A) that Access Seeker has a CQCR Application seeking Access Rights for a term of at least ten (10) years and is ready and willing to execute an Access Agreement that is consistent with a Standard Access Agreement; and
 - (B) there are one or more other CQCR Applications with a higher position in the queue seeking Access Rights for a term of less than ten (10) years (excluding any Renewal Application for an existing mine with a proposed term representing a reasonable estimate of the remaining life that existing mine) ("Earlier CQCR Applications"); or
 - (iii) if that Access Seeker has an Access Application seeking Access Rights for a term that is substantially longer than the term sought by one or more

of the other Access Applications higher in the queue (“Shorter Term Applications”),

provided that:

- (iv) if Clause 7.3.5(d)(i) applies, QR Network moves the Higher NPV Application so that it is above the Lower NPV Application in the queue;
 - (v) if Clause 7.3.5(d)(ii) applies, QR Network moves that Access Seeker’s CQCR Application so that it is above the Earlier CQCR Application in the queue; or
 - (vi) if Clause 7.3.5(d)(iii) applies, QR Network moves that Access Seeker’s Access Application so that it is above the Shorter Term Application in the queue.
- (e) If QR Network, in determining the NPV Value for an Access Application for the purposes of Clause 7.3.5(d), took into account a contribution from other sources of revenue that would reduce or be eliminated as a consequence of QR Network not providing Access to the particular Train Service, QR Network must, on request, provide an Access Seeker adversely affected by that assessment with a copy of the reasons for the assessment.
 - (f) Without limiting Clause 7.3.5(c)(iv), if the further Access Application is a Renewal Application, then QR Network will initially place that Renewal Application in the first position in the queue.
 - (g) QR Network will notify each Access Seeker who has an Access Application in a queue of the initial position of their Access Application in the queue and thereafter of any change to that position in the queue and the reason/s for that change.
 - (h) An Access Seeker may only assign its position in a queue to another party where:
 - (i) that party is a Railway Operator and the Access Seeker has entered into an agreement with that Railway Operator to provide the Train Services and wishes that operator to hold the Access Rights; or
 - (ii) that party has acquired the whole or a substantial part of the assets of the Access Seeker.
 - (i) If a Dispute concerning positions in a queue or any other aspect of QR Network’s management of a queue is referred to the QCA for resolution under Clause 10.1.4, QR Network will not implement any change to any Access Seeker’s position in that queue unless and until that Dispute is resolved in favour of such a change in position.

7.3.6 Capacity Resumption

- (a) Where an Access Holder, for any reason other than the occurrence of a Force Majeure Event or the failure of QR Network to make the Access Holder’s Access Rights available, does not:
 - (i) for Cyclic Traffic, operate at least ninety percentage points (90%) of the Train Services allowed under its Train Service Entitlement for each of four (4) consecutive Quarters; or
 - (ii) for Timetabled Traffic, operate a Train Service on a Scheduled Train Path seven (7) or more (not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular Scheduled Train Path exists,

QR Network may, within forty (40) Business Days, give that Access Holder written notice (“Resumption Notice”) of:

- (iii) that underutilisation;
 - (iv) that QR Network is considering reducing the Access Holder’s Access Rights from a nominated date (“Date of Resumption”) to the extent of that underutilisation; and
 - (v) requesting the Access Holder to demonstrate a sustained requirement for the Access Rights that have not been utilised.
- (b) If a Resumption Notice is given to an Access Holder, QR Network may reduce that Access Holder’s Access Rights from the Date of Resumption by:
- (i) for Cyclic Traffic, reducing the Access Holder’s Access Rights to the extent that the Access Holder’s Train Service Entitlement was underutilised; or
 - (ii) for Timetabled Traffic, deleting the Scheduled Train Path referred to in Clause 7.3.6(a)(ii) from the Access Holder’s Train Service Entitlement, provided that:
 - (iii) the Access Holder has not demonstrated, to QR Network’s reasonable satisfaction, a sustained requirement for the Access Rights that were not utilised; and
 - (iv) QR Network is satisfied that it can demonstrate that it has a reasonable expectation of:
 - (A) a sustained alternative demand for the Capacity used by the Access Rights in question; or
 - (B) a commercial benefit sufficiently material to justify the resumption of the Capacity used by the Access Rights in question.
- (c) QR Network may withdraw a Resumption Notice prior to the later of the Date of Resumption and fourteen (14) days after the determination of a Dispute in relation to the Resumption Notice in accordance with Clause 10.1.
- (d) If QR Network resumes an Access Holder’s Access Rights in accordance with this Clause 7.3.6, then the Access Charge payable by the Access Holder will be varied in accordance with the terms of the relevant Access Agreement and the Access Agreement will be varied accordingly.
- (e) If there is a Dispute in connection with a decision by QR Network to resume an Access Holder’s Access Rights in accordance with Clause 7.3.6:
- (i) that Dispute may only be referred to the dispute resolution process contained in the relevant Access Agreement by that Access Holder if it does so within twenty-eight (28) days after receiving the relevant Resumption Notice; and
 - (ii) if so, QR Network will not implement the resumption until the dispute resolution process has been concluded, and then only to the extent that such resumption is consistent with the outcomes of the dispute resolution process.

7.3.7 Capacity Relinquishment and Transfer

- (a) Unless otherwise specified in the Access Holder's Access Agreement, an Access Holder may relinquish Access Rights in accordance with this Clause 7.3.7.
- (b) An Access Holder who intends to relinquish Access Rights must give QR Network reasonable notice of its intention to do so ("Notice of Intention to Relinquish"):
 - (i) specifying the Access Rights to be relinquished ("Nominated Access Rights");
 - (ii) subject to Clause 7.3.7(c), the date ("Relinquishment Date") on which and the period for which the Nominated Access Rights are to be relinquished; and
 - (iii) if the Access Holder wishes to affect a transfer of part (or all) of the Nominated Access Rights to an Access Seeker ("Transferee"), the identity of the Transferee and the Access Rights proposed to be transferred.
- (c) The period from the giving of the Notice of Intention to Relinquish until the Relinquishment Date must not:
 - (i) exceed two (2) years, where:
 - (A) Access Rights are to be relinquished under an Access Agreement that was executed on or after 30 June 2006; and
 - (B) that Access Agreement is for coal carrying Train Services (including those Train Services in relation to the Access Rights that are to be relinquished) operating in the Central Queensland Coal Region; or
 - (ii) exceed six (6) months, where Clause 7.3.7(c)(i) does not apply.
- (d) The Access Holder immediately prior to paying the Relinquishment Fee (but not less than 5 Business Days prior to the Relinquishment Date), must request QR Network to calculate the Relinquishment Fee and, if so requested, QR Network will, subject to Clause 7.3.7(e), notify the Access Holder as soon as reasonably practical of the Relinquishment Fee and how it was calculated.
- (e) If the calculation of the Relinquishment Fee in accordance with this Undertaking changes during the period from the time QR Network notifies the Access Holder under Clause 7.3.7(d) to the Access Holder seeking to pay the Relinquishment Fee, then QR Network:
 - (i) may refuse to accept that payment; and
 - (ii) must advise the Access Holder of the correct Relinquishment Fee and the circumstances giving rise to the change in the calculation.
- (f) The relinquishment of the Nominated Access Rights is subject to the Access Holder's payment of the Relinquishment Fee to QR Network.
- (g) The terms of the applicable Access Agreement will continue to apply in respect of the Nominated Access Rights until the later of:
 - (i) the Access Holder paying the Relinquishment Fee to QR Network; and
 - (ii) the Relinquishment Date.
- (h) Where QR Network identifies an opportunity for it to enter into an Access Agreement with an Access Seeker that would result in a lessening of a

Relinquishment Fee, QR Network will not unreasonably delay the process for negotiating and executing an Access Agreement with that Access Seeker.

- (i) To the extent that a Notice of Intention to Relinquish identifies a Transferee, QR Network will transfer the applicable Nominated Access Rights provided that:
 - (i) the Access Rights sought by the Transferee are for the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic) as the Nominated Access Rights;
 - (ii) corresponding Access Rights are included in a new or varied Access Agreement with the Transferee;
 - (iii) QR Network's obligation to provide Access under that new or varied Access Agreement in respect of the relevant Access Rights commences on and from the Relinquishment Date for all or part of the period specified in Clause 7.3.7(b)(ii);
 - (iv) QR Network is satisfied that the new or varied Access Agreement has been developed in accordance with the requirements of this Undertaking;
 - (v) the Access Holder complies with Clauses 7.3.7(b) to (f); and
 - (vi) the nature and extent of Capacity available to existing Access Seekers and QR Network's ability to satisfy obligations to existing Access Holders are not adversely affected.

7.3.8 Customer Initiated Capacity Transfer

- (a) Subject to Clause 7.3.8(b), where an Access Holder has a Customer or Customers, who has or have provided written notification to QR Network requesting the transfer to a specified Access Seeker of some or all of the Access Holder's Access Rights for which they are the Customer or Customers, then:
 - (i) QR Network will reduce the Access Rights of the Access Holder in accordance with that request, provided that:
 - (A) the equivalent Access Rights ("Transferred Access Rights") are included in a new or varied Access Agreement with that specified Access Seeker ("New Access Agreement"); and
 - (B) that New Access Agreement commences at the same time as the Access Holder's Access Agreement ("Old Access Agreement") is varied or terminated (whichever is applicable); and
 - (ii) the terms of the Old Access Agreement relating to Take or Pay and Relinquishment Fees will apply to the New Access Agreement:
 - (A) to the extent that the New Access Agreement relates to the Transferred Access Rights; and
 - (B) until the date that the Transferred Access Rights would have terminated under the Old Access Agreement.

For the purpose of this Clause 7.3.8(a), Access Rights are deemed to be equivalent if those Access Rights relate to Train Services with the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic), the same origin and destination and transporting the same net tonnage of the same commodity.

- (b) The transfer of Access Rights in accordance with Clause 7.3.8(a) will only be permitted to proceed if:
- (i) the relevant Customer or Customers has or have warranted to QR Network in writing that they either are the sole end Customer or collectively constitute one hundred percentage points (100%) of the Customers, in respect of any Train Services operated by the Access Holder pursuant to the Access Rights that they are requesting QR Network to transfer from the Access Holder;
 - (ii) where there is more than one Customer in respect of the Train Services operated by the Access Holder pursuant to those Access Rights, all the Customers warrant to QR Network in writing that they have agreed to request QR Network to transfer those Access Rights from the Access Holder;
 - (iii) the Access Holder's rail haulage agreement or rail haulage agreements with its Customer or Customers:
 - (A) was or were signed after 1 March 2002; or
 - (B) where a relevant rail haulage agreement was signed on or before 1 March 2002 and the particulars of that agreement (such as the parties and term) were notified to the QCA prior to 30 June 2006, the agreement has been varied after 1 March 2002 to extend the term of the agreement and the period that is the extension of that term has commenced;
 - (iv) QR Network is satisfied that the New Access Agreement has been developed in accordance with the requirements of this Undertaking;
 - (v) the Customer or Customers has or have provided QR Network with a legally enforceable written undertaking (including security, if required by QR Network) indemnifying QR Network for costs, expenses or other losses incurred by QR Network in connection with the transfer (including any costs arising in respect of any Claim by the Access Holder);
 - (vi) the Customer or Customers has or have paid to QR Network, where applicable, the Relinquishment Fee (calculated as though the relevant Access Holder were relinquishing those Access Rights and transferring those Access Rights to the specified Access Seeker in accordance with Clause 7.3.7);
 - (vii) where information is provided by the Access Holder pursuant to Clause 7.3.8(c), the information provided, in QR Network's reasonable opinion, does not show that the transfer of the Access Rights would not comply with Clauses 7.3.8(a) and (b); and
 - (viii) where a Dispute has been referred to the QCA in accordance with Clause 7.3.8(d), the Dispute has been resolved in favour of the transfer of Access Rights being permitted.
- (c) An Access Holder may, within fifteen (15) Business Days of being given a notice under Clause 7.3.8(a), notify QR Network in writing of any reasons and supporting evidence as to why Clauses 7.3.8(b)(i), (ii) or (iii) are not satisfied.

- (d) Where:
- (i) a transfer of Access Rights is initiated in accordance with Clause 7.3.8(a); and
 - (ii) a Dispute arises between the Customer or Customers initiating the transfer and the Access Holder as to whether Clauses 7.3.8(b)(i), (ii) and (iii) are satisfied and therefore whether the transfer should be permitted,
- then:
- (iii) either the Customer or Customers or the Access Holder may refer the Dispute to the QCA for the determination in accordance with Clause 10.1.4; and
 - (iv) QR Network will:
 - (A) subject to paragraph (C) below, not be a party to that Dispute resolution process;
 - (B) abide by the QCA's determination of the Dispute; and
 - (C) participate in that Dispute resolution process, if the QCA considers that such participation is necessary to resolve the Dispute, provided that QR Network's costs will be borne by the Customer or Customers initiating the transfer and the Access Holder in the proportions determined by the QCA.

7.4 COMMITTED CAPACITY

- (a) An Access Holder does not have Access Rights beyond the term of its Access Agreement.
- (b) Where an Access Seeker requests Access which will:
 - (i) commence within two (2) years of the expiration of an existing Access Right (other than an Access Right in respect of coal carrying Train Services operating in the Central Queensland Coal Region); and
 - (ii) utilise Capacity that will only become available following the expiration of that Access Right,

QR Network will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the Committed Capacity Register established in accordance with Clause 7.4(c) as having an interest in the existing Access Rights of the existence of the Access Application. Failure to give such notification is not a default under this Undertaking and does not invalidate or prejudice any Access Agreement that may have been entered into by QR Network provided that QR Network has acted in good faith.

- (c) QR Network will maintain a Committed Capacity Register that identifies:
 - (i) a party who has notified QR Network of an interest in the Committed Capacity or Access Rights (other than Committed Capacity or an Access Right in respect of coal carrying Train Services in the Central Queensland Coal Region);
 - (ii) the Committed Capacity or Access Rights in which they have an interest; and
 - (iii) the nature of that interest.

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

- (d) QR Network will notify an Access Holder for coal carrying Train Services operating in the Central Queensland Coal Region and the Customer of that Access Holder (if any):
- (i) no more than three (3) years and no less than two (2) years prior to the expiration of an Access Right of that Access Holder; or
 - (ii) as soon as reasonably practicable, if an Access Seeker requests Access that will utilise Capacity that would be Available Capacity due to the expiration of an Access Right of that Access Holder,

that, if the Access Holder or the Customer wishes to seek to retain the applicable Access Right beyond the expiry date for that Access Right, then the Access Holder or the Customer should submit an Access Application to QR Network.

PART 8: INTERFACE CONSIDERATIONS

8.1 INTERFACE RISK MANAGEMENT PROCESS

8.1.1 General Interface Responsibilities

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

8.1.2 The Interface Risk Assessment

- (a) QR Network will publish a sample IRMP which specifies a list of safety and Rollingstock issues that should, at a minimum, be addressed by the parties during the Interface Risk Assessment, along with suggested controls for the identified safety and Rollingstock issues. The IRMP developed by the parties may cover additional safety and/or Rollingstock issues and associated controls depending on the circumstances of the particular operation.
- (b) Prior to undertaking the Interface Risk Assessment, the Access Seeker or Access Holder will provide a draft Operating Plan to QR Network in accordance with Clause 8.1.4.
- (c) In addition, the Access Seeker or Access Holder will evaluate its planned operation and consider any unique issues that will need to be assessed and prior to undertaking the Interface Risk Assessment, provide to QR Network a checklist of safety hazards, the risks of which are to be evaluated as part of the Interface Risk Assessment. The list of issues included in the safety checklist and the sample IRMP are not intended to be exhaustive of the issues considered as part of the Interface Risk Assessment.

- (d) The safety checklist, the sample IRMP and the Access Seeker's or Access Holder's draft Operating Plan will support the hazard identification and risk assessment process undertaken through the Interface Risk Assessment.
- (e) The Access Seeker or Access Holder and QR Network will identify all reasonably foreseeable Interface Risks.
- (f) The parties will then analyse and evaluate the possibility of the Interface Risks occurring and the safety and commercial consequences of such, before agreeing which of QR Network's Safeworking Procedures and Safety Standards are applicable to the proposed operation, and determining the additional control measures, including Rollingstock Interface Standards, required to manage the applicable Interface Risks.
- (g) The parties must consider and agree controls appropriate to the Interface Risks in question. QR Network may propose compliance with relevant QR Network Rollingstock Interface Standards, or equivalent standards, as control measures.
- (h) Along with the Safety Standards, Safeworking Procedures, and Rollingstock Interface Standards, QR Network and the Access Seeker or Access Holder will agree the audit, inspection and review measures to be implemented to ensure that the relevant standards and procedures are complied with at all times and continue to be effective in managing the applicable Interface Risks. Clause 8.1.7 specifies QR Network's minimum audit, inspection and review requirements.

8.1.3 The Interface Risk Management Plan

- (a) Once the Interface Risk Assessment is complete, the Access Seeker or Access Holder and QR Network must jointly develop and agree the IRMP.
- (b) The IRMP must reflect the outcome of the Interface Risk Assessment. In particular, the IRMP will detail the controls agreed between QR Network and the Access Seeker or Access Holder for the Interface Risks identified and assessed during the Interface Risk Assessment. As such, it will specify:
 - (i) which Safeworking Procedures and Safety Standards are applicable to the proposed operation;
 - (ii) the additional controls, including Rollingstock Interface Standards, agreed between the parties for the proposed operation;
 - (iii) the audit, inspection and review regime agreed between the parties; and
 - (iv) the particular party responsible for ensuring that the various elements of the IRMP are implemented and that the IRMP remains effective in addressing the Interface Risks it was developed to address.
- (c) Prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, QR Network shall ensure that its Safety Management System incorporates the elements agreed with the Access Seeker or Access Holder in the IRMP, that QR Network is responsible for implementing.
- (d) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, the Access Seeker or Access Holder (or where relevant, a Railway Operator appointed by the Access Seeker or Access Holder) will incorporate into its Safety Management System:
 - (i) the elements agreed in the IRMP, that the Access Seeker or Access Holder is responsible for implementing; and
 - (ii) necessary processes for ensuring that the Access Seeker or Access Holder, its Rollingstock, Train Configurations and Train Services, at all

times comply with the requirements of the Access Agreement, including the agreed IRMP.

- (e) The IRMP will become a schedule to the Access Seeker's or Access Holder's Access Agreement. If an Access Agreement has already been negotiated before the finalisation of the IRMP, the implementation of the IRMP may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and the EIRMR.
- (f) If the Access Seeker or Access Holder and QR Network cannot agree any aspect of the IRMP, then either party may give to the other party notice in writing of the dispute ("IRMP Dispute Notice"), whereupon either party may then refer the matter to an expert for resolution in accordance with Clause 10.1.3. If the matter is not referred to an expert for resolution within fourteen (14) days after a party gives an IRMP Dispute Notice to the other party, then at any time thereafter:
 - (i) if the matter has not been referred to the Safety Regulator in accordance with Clause 8.1.3(f)(ii) or the QCA in accordance with Clause 8.1.3(f)(iii), either party may still refer the matter to an expert for resolution in accordance with Clause 10.1.3;
 - (ii) if the matter has not been referred to an expert in accordance with Clause 8.1.3(f)(i), or to the QCA in accordance with Clause 8.1.3(f)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either party may refer the matter to the Safety Regulator through any process that the Safety Regulator considers appropriate; and
 - (iii) if the matter has not been referred to an expert in accordance with Clause 8.1.3(f)(i), or to the Safety Regulator in accordance with Clause 8.1.3(f)(ii), then either party may refer the matter to the QCA (acting with the advice of the Safety Regulator) for resolution in accordance with Clause 10.1.4,

provided that if the matter is in the first instance referred to an expert for resolution (whether this occurs during or after the relevant fourteen (14) day period) and either party is not satisfied with the determination which the expert makes, then notwithstanding Clause 10.1.3(c), either party may, within twenty-one (21) days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Clause 8.1.3(f)(ii) or the QCA under Clause 8.1.3(f)(iii). Any determination made by the QCA or the Safety Regulator (whether or not following a determination by an expert) shall be final and binding upon the parties.

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

8.1.4 Operating Plan

- (a) In order to analyse the impacts and requirements of the operations proposed by an Access Seeker or Access Holder on the Rail Infrastructure, the Access Seeker or Access Holder must submit a draft Operating Plan to QR Network during the negotiation process.

- (b) While the draft Operating Plan may be subject to change during the negotiation process, an Access Seeker or Access Holder must finalise its Operating Plan during the Interface Risk Management Process, as the IRMP must be consistent with the Operating Plan.
- (c) The Operating Plan will be utilised by QR Network to refine and finalise the Train Service Entitlement, Interface Coordination Plan, Access Charge and other terms and conditions of the Access Agreement. It will also be used as a basis for the Capacity Analysis.
- (d) If, during the course of an Access Agreement, an Access Holder wishes to change its Operating Plan, QR Network and the Access Holder will undertake a further Interface Risk Assessment in respect of such change in accordance with the process outlined in Clause 8.1.2 and jointly develop and agree any necessary revisions to the IRMP in accordance with Clause 8.1.3.

8.1.5 Provision of Assistance by QR Network

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

8.1.6 Rollingstock Authorisation

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

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

- (c) Authorisation of Rollingstock and Train Configurations may be sought concurrently.
- (d) Where QR Network is not satisfied, on the basis of the documentation provided by an Access Seeker or Access Holder or a certifier in accordance with Clause 8.1.6(b), that the Rollingstock and/or Train Configurations comply with the terms of the agreed IRMP, either QR Network or the Access Seeker or Access Holder may refer the adequacy of the documentation and whether the Rollingstock and/or Train Configurations comply with the terms of the agreed IRMP for resolution by an expert in accordance with Clause 10.1.3.

8.1.7 Audit, Inspection and Review

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

- (D) prohibited from disclosing that commercially sensitive information to QR Network; and
- (iv) if QR Network carries out the inspection or audit, QR Network:
 - (A) must not interfere unreasonably with the Access Holder's Rollingstock or Trains; and
 - (B) must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the Access Holder's business activities.
- (f) Where the Access Holder has reasonable grounds to believe that QR Network has not or is not complying with any aspect of the relevant IRMP, then the Access Holder may require the conduct of an audit or inspection of the relevant aspect of the Rail Infrastructure provided that:
 - (i) the Access Holder advises QR Network in writing of the reasonable grounds upon which it requires the audit or inspection prior to the audit or inspection;
 - (ii) any such inspection or audit is conducted by the Access Holder, its appointed representative or by a suitably qualified person reasonably acceptable to both parties;
 - (iii) If:
 - (A) the audit or inspection requires access to commercially sensitive information of QR Network; and
 - (B) QR Network has a legitimate commercial reason for wanting to withhold access to that information from the Access Holder, then the audit or inspection must be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be:
 - (C) given access to the commercially sensitive information by QR Network; and
 - (D) prohibited from disclosing that commercially sensitive information to the Access Holder; and
 - (iv) if the Access Holder carries out the inspection or audit, the Access Holder:
 - (A) must not interfere unreasonably with the provision of Above Rail Services and Below Rail Services; and
 - (B) must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the business activities of QR Network or other Access Holders.
- (g) Any other rights of inspection or audit will be specified in the Access Agreement.
- (h) At any time that either party has reasonable grounds to believe that the IRMP is no longer effective either in managing the Interface Risks that it was intended to manage or in managing new Interface Risks, QR Network and the Access Holder will, in accordance with the Access Agreement, jointly review the effectiveness of the IRMP in addressing the Interface Risks posed by the Access Holder's operations on the Rail Infrastructure.
- (i) The Access Holder's Access Agreement will specify the obligations of both QR Network and the Access Holder in relation to the implementation of the

outcomes of inspections, audits and/or reviews conducted in accordance with the processes outlined in this Clause 8.1.7.

- (j) The Access Holder's Access Agreement will specify the circumstances in which QR Network may suspend the operation of an Access Holder's Rollingstock or Trains, or the right of an Access Holder's Train Services to operate on the relevant part of the Rail Infrastructure during the course of the Access Holder's Access Agreement.
- (k) The Access Holder's Access Agreement will specify the circumstances in which QR Network may vary System-wide Requirements, including Safeworking Procedures, Safety Standards and Rollingstock Interface Standards, during the course of an Access Holder's Access Agreement.
- (l) Where an Access Holder (or group of Access Holders) and QR Network agree to vary Rollingstock Interface Standards, either in accordance with Clause 8.1.7(k) or as otherwise agreed, and such variation(s) involve an additional cost funded exclusively by that Access Holder (or group of Access Holders), QR Network will be entitled to restrict other Access Holders from benefiting from the variation in the Rollingstock Interface Standards unless and until they make an appropriate contribution to the costs thereof.
- (m) The party whose operations are audited or inspected under Clause 8.1.7(e) or (f) shall bear the reasonable costs of conducting such audit or inspection unless it is demonstrated that the stated grounds for requiring the conduct of the audit did not exist. In circumstances where the stated grounds for such audit have not been demonstrated to exist, the party that required the conduct of the audit or inspection shall bear the costs of conducting such audit or inspection.

8.2 ENVIRONMENTAL RISK MANAGEMENT PROCESS

8.2.1 Environmental Investigation and Risk Management Report

- (a) As outlined in Clause 4.5, as part of the negotiation process or as otherwise specified in an Access Agreement, the Access Seeker or Access Holder will commission a suitably qualified person, reasonably acceptable to both QR Network and the Access Seeker or Access Holder, to prepare an EIRMR containing an environmental investigation component and an environmental risk management component which respectively identify:
 - (i) possible risks of Environmental Harm arising out of the proposed use of the Rail Infrastructure by the Access Seeker or Access Holder, including risks associated with those matters identified in Schedule H; and
 - (ii) the manner in which the Access Seeker or Access Holder proposes to address the possible risks of Environmental Harm identified, as well as the roles and responsibilities, including financial responsibility, for the control measures proposed (including an audit regime).
- (b) In order to ensure that an appropriate EIRMR is developed, QR Network will disclose to an Access Seeker or Access Holder on a timely basis all relevant information, reasonably available to it, relating to the environmental impact of the Access Seeker's or Access Holder's proposed operations on the Rail Infrastructure. This information may include:
 - (i) details of any Environmental Authorities held by QR Network that are relevant to the operation by the Access Seeker or Access Holder of its proposed Train Services on the Rail Infrastructure;
 - (ii) relevant environmental reports;

- (iii) a copy of QR Network's Code of Practice for Railway Noise Management;
 - (iv) any currently applicable noise levels or limits;
 - (v) particulars of noise complaints and enforcement actions; and
 - (vi) any other information from QR Network's EMS considered relevant by QR Network to the development of an appropriate EIRMR.
- (c) If an Access Seeker or Access Holder has an existing EMS that it proposes to use in connection with its proposed operation on the Rail Infrastructure, the EIRMR should also detail the relevant parts of the Access Seeker's or Access Holder's existing EMS, including how those parts address the risks identified in the EIRMR. Extracts of the relevant parts of the EMS should also be included in the EIRMR.
- (d) The Access Seeker or Access Holder must provide a copy of the EIRMR to QR Network for its consideration.
- (e) QR Network will consider whether the EIRMR adequately addresses the issues outlined in Clause 8.2.1(a) and advise the Access Seeker or Access Holder of its decision.
- (f) In order to assist QR Network in determining the adequacy of an EIRMR provided to it, the Access Seeker or Access Holder will disclose to QR Network all relevant information reasonably available to it relating to the environmental impact of its proposed operations on the Rail Infrastructure.
- (g) If, in QR Network's reasonable opinion, the EIRMR discloses areas of risk that cannot be adequately managed by the proposals included in the EIRMR, or the EIRMR fails to identify and adequately deal with additional relevant environmental risks, QR Network may notify the Access Seeker or Access Holder in writing of the risks not adequately managed or not identified or adequately dealt with.
- (h) If QR Network considers that the EIRMR does adequately address the issues outlined in Clause 8.2.1(a), or if QR Network fails to give the Access Seeker or Access Holder the notice referred to in Clause 8.2.1(g) within thirty (30) days of receipt (or such other period as the parties, acting reasonably, agree), the EIRMR will be accepted.
- (i) If QR Network gives the Access Seeker or Access Holder a notice pursuant to Clause 8.2.1(g), the Access Seeker or Access Holder may respond to QR Network, by a date agreed by the parties, with a written proposal that:
- (i) contains an investigation of the areas of risk and/or additional relevant environmental risks referred to in the notice provided pursuant to Clause 8.2.1(g);
 - (ii) specifies risk abatement or attenuation measures that the Access Seeker or Access Holder proposes to undertake in relation to the relevant risks, or specifies how the Access Charge might contain a component reflecting the cost to QR Network of assuming all or some portion of the risk;
 - (iii) where risk abatement or attenuation measures are proposed pursuant to Clause 8.2.1(i)(ii), specifies a timeframe for implementation of those measures; and
 - (iv) specifies details of any public consultation the Access Seeker or Access Holder proposes to undertake in connection with the implementation of any such measures.

- (j) QR Network may, acting reasonably, accept or reject all or part of the Access Seeker's or Access Holder's proposal (the "Proposal") provided that, if QR Network:
 - (i) accepts the Proposal, the Proposal will be incorporated into and form part of the EIRMR, which will then be accepted; or
 - (ii) rejects all or part of the Proposal, QR Network may advise the Access Seeker or Access Holder of the risks not adequately managed or not identified or adequately dealt with in the Proposal.
- (k) If the Access Seeker or Access Holder fails to submit its Proposal within the specified time, or if QR Network rejects all or part of the Proposal, then either QR Network or the Access Seeker or Access Holder may refer the issue of whether the EIRMR and/or the Proposal does not adequately manage or does not identify or adequately deal with the relevant environmental risks to:
 - (i) if an Access Agreement has not been signed, Dispute resolution in accordance with Clause 10.1; or
 - (ii) if an Access Agreement has been signed, Dispute resolution in accordance with that Access Agreement.
- (l) If the outcome of a Dispute resolution process referred to under Clause 8.2.1(k) is that the EIRMR and/or the Proposal:
 - (i) adequately manage the risks or identify and adequately deal with the risks, then the EIRMR (as modified by the Proposal, where applicable) will be accepted;
 - (ii) fails to adequately manage the risks or identify and adequately deal with the risks and the Access Seeker or Access Holder amends the EIRMR in accordance with that outcome (including any nominated time frame for completion of the amendments), then the EIRMR (as amended) will be accepted; or
 - (iii) fails to adequately manage the risks or identify and adequately deal with the risks and the Access Seeker or Access Holder fails to amend the EIRMR in accordance with that outcome (including any nominated time frame for completion of the amendments), then QR Network may cease negotiations or terminate the Access Agreement (whichever is applicable).
- (m) An EIRMR accepted under this Clause 8.2.1 will be incorporated as a schedule to the Access Seeker's or Access Holder's Access Agreement. If the Access Agreement has already been negotiated before the acceptance of the EIRMR, the implementation of the EIRMR may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and the IRMP.
- (n) A new or varied EIRMR shall be prepared as outlined in this Clause 8.2.1 for all new Train Services and for any variation to Train Services prior to the operation of such new or varied Train Services.

8.2.2 Environmental Management System

- (a) Prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, the Access Seeker or Access Holder (or where relevant, a Railway Operator appointed by the Access Seeker or Access Holder) must have in place an EMS that:

- (i) has regard to the issues raised in the EIRMR and contains procedures for implementing the risk management proposals identified in it. The EIRMR will include the results of any determination referred to in Clause 8.2.1(k) and any amendment of the EIRMR arising from the recommendations of any environmental audit or review undertaken in accordance with Clause 8.2.3(e);
 - (ii) addresses all relevant legislative requirements including the requirements of the Environmental Authorities held by QR Network from time to time that are relevant to the Access Seeker's or Access Holder's Train Services; and
 - (iii) identifies systems (including audit systems) and procedures to address all relevant environmental risks and ensure compliance with Environmental Laws.
- (b) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, QR Network will ensure that the elements included in the EIRMR, which QR Network is responsible for implementing, are incorporated in QR Network's EMS.

8.2.3 Audit and Review of EIRMR

- (a) As noted in Clause 8.2.1(a)(ii), an Access Holder's EIRMR will specify the environmental audit requirements for its Train Services. The frequency of environmental audits must be reasonably linked to the risks identified in the EIRMR.
- (b) An Access Holder will provide QR Network with copies of those parts of any environmental audits undertaken by or on behalf of the Access Holder that are relevant to the operation of its Train Services on the Rail Infrastructure.
- (c) QR Network will provide an Access Holder with copies of those parts of QR Network's environmental audits that are relevant to the Access Holder's operation of Train Services on the Rail Infrastructure.
- (d) An Access Holder must advise QR Network of any failure to comply with its EIRMR, as and when the Access Holder becomes aware of such failure. QR Network must advise an Access Holder of any failure to comply with the EIRMR applicable under the Access Holder's Access Agreement, as and when QR Network becomes aware of such failure. The Access Agreement will specify the consequences for a party's failure to notify in accordance with this Clause 8.2.3(d).
- (e) If QR Network becomes aware of:
 - (i) any inadequacy of the Access Holder's EIRMR due to:
 - any change in Environmental Laws of relevance to the Access Holder's Train Services; or
 - any conduct on the part of the Access Holder which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or
 - (ii) any non-compliance by the Access Holder with the EIRMR,then QR Network may by notice to the Access Holder direct the Access Holder to undertake a review of the adequacy of its EIRMR and/or the Access Holder's compliance with it. The review will only deal with:

- (iii) the extent to which the EIRMR appears not to address a change in applicable Environmental Laws; or
 - (iv) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or
 - (v) the extent of non-compliance by the Access Holder with its EIRMR, whichever is applicable in the circumstances.
- (f) If directed by QR Network to undertake a review in accordance with Clause 8.2.3(e), the Access Holder will ensure the review is carried out and will provide QR Network with a copy of the review report not later than three (3) months after the notice was received from QR Network.
 - (g) The Access Holder's Access Agreement will specify the obligations of both QR Network and the Access Holder in relation to the implementation of the outcomes of a review carried out in accordance with Clause 8.2.3(e), including the implementation of changes to the EIRMR.
 - (h) The Access Holder's Access Agreement will specify the circumstances in which QR Network may suspend the operation of an Access Holder's Rollingstock or Train Services, on environmental grounds, during the course of the Access Holder's Access Agreement.

8.3 CONNECTING INFRASTRUCTURE

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

- (c) Where the Access Seeker or Access Holder and QR Network cannot agree as to:
- (i) whether works referred to under Clause 8.3(a)(i) are to a reasonable standard;
 - (ii) what is a reasonable period within which to provide comments to QR Network under Clause 8.3(a)(ii)(A);
 - (iii) whether QR Network's proposed project management of the construction of the Connecting Infrastructure will result in unreasonable costs or delays being incurred by the Access Seeker or Access Holder;
 - (iv) an amount payable under Clause 8.3(b);
 - (v) whether QR Network has unreasonably delayed the construction of Connecting Infrastructure; or
 - (vi) any other aspect of a Rail Connection Agreement,
- then, subject to any other remedies sought by a party at law, either party may seek to resolve the Dispute in accordance with Clause 10.1.

PART 9: REPORTING

9.1 QUARTERLY NETWORK PERFORMANCE REPORTS

- (a) Within thirty (30) days after the end of each Quarter in the Term, QR Network will publicly release a quarterly report in relation to that Quarter containing the information set out in Clauses 9.1(d) to (i). QR Network will use reasonable efforts to ensure that the information contained in each quarterly report is accurate.
- (b) In publishing a quarterly report in accordance with Clause 9.1(a), QR Network will include in the quarterly report a comparative presentation of the information in the subject Quarter and the four (4) preceding Quarters in respect of the information set out in Clauses 9.1(d) to (i) provided that, to the extent that a preceding Quarter is not within the Term:
- (i) the information for the preceding Quarter for the purposes of the comparative presentation is that published for that Quarter under the 2008 Undertaking; and
 - (ii) if no such information was published, then information for the preceding Quarter for the purposes of the comparative presentation does not need to be included.
- (c) Where a quarterly report has been published in accordance with Clause 9.1(a) and QR Network has actual knowledge of a material error in the quarterly report, QR Network will, as soon as practicable but no later than the date by which the next quarterly report is to be publicly released, publish either, at QR Network's discretion, an erratum or a corrected quarterly report identifying the material errors. An error will be a material error where:
- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
 - (ii) otherwise, QR Network or the QCA considers the error to be material.
- In addition, QR Network shall notify the QCA of any errors that QR Network has actual knowledge of in the quarterly report unless the QCA has otherwise been notified or is aware of the error.
- (d) Information on the number and reliability of Train Services that have operated in the subject Quarter, as follows:
- (i) the number and percentage of Train Services that reach their destination within the Allotted Time Threshold;
 - (ii) the number and percentage of Train Services that do not reach their destination within the Allotted Time Threshold:
 - (A) due solely to the acts or omissions of QR Network;
 - (B) due solely to the acts or omissions the Access Holder for the Train Service; and
 - (C) where neither paragraph (A) nor (B) apply; and
 - (iii) the total number of Train Services.

- (e) Information on the transit time of Train Services that have operated in the subject Quarter, as follows:
- (i) for all Train Services, the average Above Rail Delay, in minutes, per one hundred (100) train kilometres;
 - (ii) for all Train Services, the average Below Rail Delay, in minutes, per one hundred (100) train kilometres; and
 - (iii) for all Train Services, the average Unallocated Delay, in minutes, per one hundred (100) train kilometres.
- (f) Information on the availability of the network for Train Services in the subject Quarter, as follows:
- (i) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributed directly to QR Network as Railway Manager;
 - (ii) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributed directly to an Access Holder (which would include cancellations attributable to a Railway Operator appointed by the Access Holder); and
 - (iii) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that cannot be clearly assigned as directly attributable to an Access Holder or to QR Network as Railway Manager.
- (g) Information on coal carrying Train Services that have operated on each Individual Coal System in the subject Quarter, being:
- (i) the aggregate gtk;
 - (ii) the aggregate nt;
 - (iii) the aggregate Train Paths used by the relevant Train Services;
 - (iv) the aggregate ntk;
 - (v) the aggregate egtk; and
 - (vi) the average actual Below Rail Transit Time Percentage.
- (h) Information on the safety of Train Services that have operated in the subject Quarter, being the number of major reportable incidents, as reported to the Safety Regulator for each of the following:
- (i) incidents solely attributable to QR Network;
 - (ii) incidents solely attributable to an Access Holder; and
 - (iii) incidents not solely attributable to QR Network or an Access Holder, or which have not been attributed.
- (i) Information on network service quality in the subject Quarter, as follows:
- (i) speed restrictions, being the average percentage and the average number of kilometres of Track under temporary speed restriction; and
 - (ii) the most recent measure of Track quality for the network measured by a quality index with component measures including gauge, top, twist and versine.

- (j) For the purposes of Clauses 9.1(d) to (h) , the Train Services will be aggregated as follows, Train Services operated for the purpose of:
- (i) transporting coal within each Individual Coal System;
 - (ii) transporting coal within the Western System;
 - (iii) transporting freight products, and bulk minerals (other than coal); and
 - (iv) providing long distance passenger transport.
- (k) For the purposes of Clause 9.1(i), information on speed restrictions will be reported in the following segments:
- (i) each Individual Coal System; and
 - (ii) the remainder of the network, with the exception of:
 - the Metropolitan Region; and
 - Standard Gauge Rail Infrastructure.

9.2 ANNUAL REPORTS

9.2.1 Annual Financial Report

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

9.2.2 Annual Access Performance Report

- (a) Within four (4) months of the end of each Year in the Term, or such longer time as agreed by the QCA, QR Network will publicly release an annual access performance report in relation to the subject Year containing the information set out in Clauses 9.2.2(c) and (d) and which will be accompanied by an audit certificate prepared in accordance with Clause 9.7 in respect of QR Network's compliance with its obligations under this Clause 9.2.2.
- (b) Where an annual access performance report has been published in accordance with Clause 9.2.2(a) and QR Network has actual knowledge of a material error in the annual performance report, QR Network will, as soon as practicable but no later than six (6) months after acquiring knowledge of the material error, publish either, at QR Network's discretion, an erratum or a corrected annual performance report identifying the material errors. An error will be a material error where:
- (i) if the error is a numerical error, the number reported deviates from the correct number by an amount of more than 2%; or
 - (ii) otherwise, QR Network or the QCA considers the error to be material.

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

- (c) Information in relation to QR Network's compliance with the Undertaking over the subject Year as follows:
- (i) the number of requests for Preliminary Information received in accordance with Clause 4.1(d) and the average time (in days) taken to provide the Preliminary Information;

- (ii) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in Clause 4.2(c);
- (iii) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in Clause 4.2(c), the average delay (in days) taken to acknowledge the Access Applications;
- (iv) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in Clause 4.3(a);
- (v) the number and percentage of Access Applications received in accordance with this Undertaking for which the time for the provision of an Indicative Access Proposal was extended in accordance with either Clause 4.3(b)(i) or (ii);
- (vi) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in Clauses 4.3(a) and (b), the average delay (in days) taken to provide the Indicative Access Proposals;
- (vii) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 10.1;
- (viii) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 10.1 and QR Network was found to have committed a breach of the Undertaking;
- (ix) the number of instances where QR Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3;
- (x) the number of instances where QR Network has received a written complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3 and QR Network was found to have committed a breach of those ring fencing obligations;
- (xi) the number of instances where an Access Holder has made a written complaint to QR Network about an incorrectly calculated bill, and where QR Network's investigation into the complaint identifies that the bill was incorrectly calculated; and
- (xii) in respect of written complaints that QR Network Train Control has made a decision in breach of QR Network's traffic management decision making matrix contained in Appendix 3, Part B of Schedule G (for each of Third Party Access Holders collectively and Related Operators as Access Holders collectively):
 - (A) the number of complaints received by QR Network;
 - (B) of the complaints received by QR Network, the number which are currently being assessed by QR Network; and
 - (C) of the complaints received by QR Network, the number which, after being assessed by QR Network, were verified.

- (d) Information in relation to the outcome of QR Network's negotiations with Access Seekers over the subject Year as follows:
- (i) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker;
 - (ii) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of any reason other than the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker; and
 - (iii) the number of instances where a Negotiation Period commenced in accordance with this Undertaking has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker.

9.2.3 Public Maintenance Cost Report

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

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

9.2.4 Maintenance Cost Report to the QCA

Unless otherwise agreed between QR Network and the QCA:

- (a) within four (4) months after the end of each Year in the Term, QR Network will:
 - (i) report its actual maintenance cost in the subject Year compared to the forecast maintenance cost accepted by the QCA for the purpose of determining Reference Tariffs; and
 - (ii) provide an explanation of significant variations between the actual and forecast maintenance costs,
in a format to be agreed with the QCA from time to time; and
- (b) the actual and forecast maintenance costs will be separately reported under Clause 9.2.4(a) for:
 - (i) each Individual Coal System; and
 - (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted an estimate of QR Network's forecast maintenance costs for the purposes of assessing the relevant Reference Tariff(s).

9.2.5 Operational Data Report to the QCA

Unless otherwise agreed between QR Network and the QCA, QR Network will, within four (4) months after the end of each Year in the Term, provide the following operational information to the QCA:

- (a) the aggregate gtk;
- (b) the aggregate nt;
- (c) the aggregate Train Paths used by the relevant Train Services;
- (d) the aggregate ntk; and
- (e) the aggregate egtk,

for each of the following categories, for all coal carrying Train Services that:

- (f) operated on each Individual Coal System in the subject Year; and
- (g) operated within each Individual Coal System classified by origin and destination in the subject Year.

9.3 CAPITAL EXPENDITURE AND REGULATORY ASSET BASE REPORTS

9.3.1 Capital Expenditure Report to the QCA

Unless otherwise agreed between QR Network and the QCA, QR Network will, within four (4) months after the end of each Year in the Term, provide to the QCA the following details for capital expenditure in the subject Year that QR Network considers should be included in the Regulatory Asset Base:

- (a) the name of the project;
- (b) the location of the project;
- (c) the amount of the capital expenditure; and
- (d) information to support the QCA's assessment of the prudence of the capital expenditure in accordance with Clauses 2 and 3 of Schedule A.

9.3.2 Regulatory Asset Base Roll-forward Report to the QCA

Unless otherwise agreed between QR Network and the QCA, QR Network will, within four (4) weeks after receiving the QCA's advice on its approval of capital expenditure for inclusion in the Regulatory Asset Base under Clause 2 of Schedule A for the subject Year, provide to the QCA QR Network's proposed roll-forward of the Regulatory Asset Base in accordance with Clause 1.2 of Schedule A, including details of:

- (a) the opening value of the Regulatory Asset Base for the subject Year;
- (b) indexation of the Regulatory Asset Base;
- (c) depreciation of the Regulatory Asset Base;
- (d) capital expenditure that is included in the Regulatory Asset Base;
- (e) disposals and transfers from the Regulatory Asset Base; and
- (f) the closing value of the Regulatory Asset Base for the subject Year,

separately reported for:

- (g) each Individual Coal System; and
- (h) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted a value for a Regulatory Asset Base for the purposes of assessing the relevant Reference Tariff(s).

9.3.3 Public Regulatory Asset Base Roll-forward Report

- (a) Within one (1) month after notification by the QCA of its acceptance of QR Network's roll-forward of the Regulatory Asset Base for a Year, QR Network will publicly release an annual report of changes to the Regulatory Asset Base for that Year, containing the information set out in Clause 9.3.3(b) for the geographic areas specified in Clause 9.3.3(c) in a format to be agreed with the QCA from time to time.
- (b) QR Network will report for the subject Year the roll-forward of the Regulatory Asset Base including details of:
 - (i) the opening value of the Regulatory Asset Base for the subject Year;
 - (ii) indexation of the Regulatory Asset Base;
 - (iii) depreciation of the Regulatory Asset Base;
 - (iv) capital expenditure that is included in the Regulatory Asset Base, separately identifying individual projects with a value in excess of \$10 million;
 - (v) disposals and transfers from the Regulatory Asset Base;
 - (vi) the closing value of the Regulatory Asset Base for the subject Year; and
 - (vii) for comparative purposes, the value of the Capital Indicator for the subject Year.
- (c) The roll-forward of QR Network's Regulatory Asset Base will be separately reported for:
 - (i) each Individual Coal System; and
 - (ii) any other section of Rail Infrastructure for which one or more Reference Tariffs apply and for which the QCA has accepted a value for a Regulatory Asset Base for the purposes of assessing the relevant

Reference Tariff(s) unless otherwise agreed by QR Network and the QCA.

9.4 BREACH REPORTS TO THE QCA

(a) QR Network will report to the QCA any breaches of this Undertaking of which QR Network is aware, including advising the QCA of the nature of the breach and the remedial action proposed or taken by QR Network in respect of the breach, at the following times:

- (i) within ten (10) Business Days after the end of each calendar month, in relation to any breaches of obligations with respect to timeframes that occurred within that calendar month; and
- (ii) in relation to other breaches, as soon as QR Network becomes aware of the breach,

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

(b) Where QR Network does not report a breach or a remedial action proposed or taken by QR Network to the QCA on the basis of exception in this Clause 9.4, QR Network must notify the QCA of this and QR Network or the QCA may apply to the Supreme Court of Queensland for a determination of whether that exception applies.

9.5 INFORMATION REQUESTED BY THE QCA

(a) The QCA has the right, by written notice, to request that QR Network provide to the QCA information or a document that the QCA reasonably requires for the purpose of performing its obligations or functions in accordance with either this Undertaking or an Access Agreement developed pursuant to this Undertaking. The notice must include a description of the information or document required, the purpose for which it is required, and the day by which it is required, provided that the day stated in the notice must be reasonable.

(b) QR Network will comply with a request by the QCA under Clause 9.5(a) by the day stated in the notice unless QR Network has a reasonable excuse for non-compliance.

9.6 COMPLIANCE OFFICER

(a) The Compliance Officer is to be responsible for using best efforts to undertake the following activities:

- (i) notifying the QR Network Executive General Manager:
 - (A) as soon as possible of any material breach of the Undertaking by QR Network and advising of any remedial action proposed or taken by QR Network in respect of the breach; and
 - (B) in respect of other breaches and the remedial action proposed or taken by QR Network in respect of those breaches, on a monthly basis;
- (ii) taking all steps necessary to ensure that QR Network is able to meet its obligations under Clauses 3.2.1, 9.1(a), 9.2.1 to 9.3.3 and 9.5; and
- (iii) taking all steps necessary to ensure that QR Network is able to meet any other obligation under the Undertaking nominated by the QR Network Executive General Manager and agreed to by the QCA in writing.

- (b) The QR Network Executive General Manager will be responsible for taking all steps necessary for ensuring that QR Network is able to meet any other reporting obligation or activity imposed on QR Network by the Undertaking not identified or nominated under Clause 9.5(a).

9.7 AUDIT OF PERFORMANCE REPORT

- (a) An audit of QR Network's compliance with its obligations under Clauses 9.1 and 9.2.2 will be conducted:
 - (i) annually; and
 - (ii) subject to this Clause 9.7, in accordance with Clause 10.3.
- (b) The auditor will compile an audit report identifying:
 - (i) whether QR Network has complied in all material respects with its obligations under Clauses 9.1 and 9.2.2 and, if not, details as to the relevant non-compliance; and
 - (ii) the process adopted for the conduct of the audit.

PART 10: DISPUTE RESOLUTION AND AMENDMENT PROCESSES

10.1 DISPUTE RESOLUTION

10.1.1 Disputes

- (a) If any dispute or question (“**Dispute**”) arises in relation to:
- (i) the operation of or anything required to be done by QR Network under this Undertaking; or
 - (ii) the negotiation of Access between an Access Seeker and QR Network, then, unless otherwise agreed by the parties to the Dispute or provided for in this Undertaking, that Dispute shall be resolved in accordance with this Clause 10.1 and any party to the Dispute may give to the other parties a Dispute Notice.
- (b) Unless otherwise agreed by the parties, Disputes in connection with an Access Agreement shall be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking (even if the Dispute relates to provisions included in that Access Agreement that are similar to or are inconsistent with this Undertaking).

10.1.2 Chief Executive Resolution

- (a) Unless otherwise agreed by both parties or provided for in this Undertaking, any Dispute shall within five (5) Business Days of the Dispute Notice be referred in the first instance to each party’s chief executive (or his or her nominee) for resolution.
- (b) If:
- (i) the Dispute is not resolved within ten (10) Business Days after the referral under Clause 10.1.2(a); or
 - (ii) a chief executive appoints a nominee in accordance with Clause 10.1.2(a) that is unacceptable to the other party,
- the relevant Dispute may, by agreement between the parties, be referred for resolution by an expert in accordance with Clause 10.1.3. Failing such agreement, either party may refer the Dispute to the QCA in accordance with Clause 10.1.4.

10.1.3 Expert Determination

- (a) Where a Dispute is referred to an expert pursuant to this Clause 10.1 or otherwise in accordance with this Undertaking:
- (i) an expert shall be appointed by agreement between the parties, or in default of such appointment within ten (10) Business Days of the need to refer the Dispute to an expert, the expert appointed is to be the person nominated at the request of a party by:
 - (A) if the parties agree that the Dispute is of a financial nature, the President (for the time being) of CPA Australia;
 - (B) if the parties agree that the Dispute is of a non-financial nature, the President (for the time being) of Engineers Australia – Queensland Division; or

- (C) in any other case, the President (for the time being) of the Queensland Law Society Incorporated;
- (ii) the expert shall:
 - (A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (B) have no interest or duty which conflicts or may conflict with his or her function as expert, he or she being required to fully disclose any such interest or duty by written notice to the parties before his or her appointment;
 - (C) not be an employee of the parties or of a Related Party of any of them;
 - (D) not be permitted to act until he or she has given written notice to each party that he or she is willing and able to accept the appointment;
 - (E) have regard to the provisions of this Undertaking and consider all submissions (including oral submissions by each party provided that such oral submissions are made in the presence of all the parties), supporting documentation, information and data with respect to the matter submitted by the parties;
 - (F) not make a determination in relation to a Dispute that is inconsistent with this Undertaking;
 - (G) provide the parties with a copy of his or her determination in relation to the Dispute in the form of a report within a reasonable time after his or her appointment;
 - (H) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties; and
 - (I) be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration (including the *Commercial Arbitration Act 1990 (Qld)*), shall not apply to him or her or to the determination or the procedures by which he or she may reach a determination.
- (b) The parties shall, upon request by the expert, provide or make available to the expert, as soon as reasonably practicable, all information in their possession or control and all assistance, that the expert may reasonably require.
- (c) In the absence of manifest error, the decision of the expert shall be final and binding upon the parties. If a party believes that there has been a manifest error it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error, then the parties may agree to refer the Dispute to another expert in accordance with this Clause 10.1.3, or failing such agreement, either party may refer the Dispute to the QCA for resolution in accordance with Clause 10.1.4.
- (d) Unless otherwise agreed by the parties:
 - (i) the parties shall be liable for the costs of the expert and any advisers to the expert in equal shares; and
 - (ii) each party shall bear their own costs of participating in the expert determination.

10.1.4 Determination by the QCA

- (a) If a Dispute is referred to the QCA pursuant to this Clause 10.1 or otherwise in accordance with this Undertaking, then Division 5 of Part 5 of the Act shall apply subject to any determination by the QCA being consistent with the provisions of this Undertaking.
- (b) If an issue is referred to the QCA for determination as specified in accordance with this Undertaking, but does not constitute a Dispute for the purposes of Division 5 of Part 5 of the Act, then the QCA will make a determination through any process that it considers appropriate, provided that:
 - (i) prior to considering the issue, the QCA advises both parties of the process that it will use to make the determination and both parties are given the opportunity to advise the QCA of any concerns with that process; and
 - (ii) any determination by the QCA is consistent with the provisions of this Undertaking.
- (c) If a Dispute is referred to the QCA in accordance with this Clause 10.1.4, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety. The QCA will provide to the parties a copy of any advice it receives from the Safety Regulator.
- (d) Where the QCA calls upon the Safety Regulator to provide advice to the QCA in relation to a Dispute, the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportion as the QCA determines.
- (e) Where a matter is referred to the Safety Regulator for resolution in accordance with Clause 8.1.3(f)(ii), the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportions as the Safety Regulator determines.
- (f) If a Dispute relating to Clause 7.3.5(d) is referred to the QCA in accordance with this Clause 10.1.4, QR Network bears the onus of demonstrating to the QCA that a reduction or elimination of the other sources of revenue would reasonably be expected to occur as a consequence of QR Network not providing Access to the particular traffic.
- (g) If a Dispute is referred to the QCA in accordance with this Clause 10.1.4 and that Dispute relates to the presumption under Clause 6.5.2(c), QR Network will bear the onus of demonstrating that presumption should not apply.

10.2 QCA DECISION-MAKING

- (a) The QCA may not make a decision ("Decision") under this Undertaking that may affect QR Network (including to require QR Network to do, give or submit anything to the QCA, to resolve a Dispute or to refuse to approve, approve or consent to or grant anything), unless:
 - (i) the QCA observed the rules of natural justice;
 - (ii) the QCA observed any procedures that were required by law or this Undertaking;
 - (iii) the QCA had jurisdiction to make the Decision under this Undertaking;
 - (iv) the QCA was authorised to make the Decision under this Undertaking;

- (v) the QCA's Decision would not be an improper exercise of the power conferred by this Undertaking. An improper exercise of power includes a reference to:
 - (A) taking an irrelevant consideration into account in the exercise of a power;
 - (B) failing to take a relevant consideration into account in the exercise of a power;
 - (C) an exercise of a power for a purpose other than a purpose for which the power is conferred;
 - (D) an exercise of a discretionary power in bad faith;
 - (E) an exercise of a personal discretionary power at the discretion or behest of another person;
 - (F) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
 - (G) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power;
 - (H) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
 - (I) any other exercise of a power in a way that is an abuse of the power;
- (vi) the QCA's Decision did not involve an error of law (whether or not the error appears on the record of the Decision);
- (vii) the QCA's Decision was not induced or affected by fraud;
- (viii) to the extent that any matters were required to be established before the Decision could be made or taken, there was some material or evidence from which the QCA could reasonably be satisfied the matter was established to justify the Decision or, to the extent that the existence of a particular fact forms the basis on which the Decision is made, the fact did or does exist; and
- (ix) the Decision was not otherwise contrary to law or this Undertaking.

For the avoidance of doubt, the terms of this Clause 10.2(a) are intended to have the same meaning as used in the *Judicial Review Act 1991* (Qld).

- (b) The requirements set out in Clause 10.2(a) also apply to the QCA's conduct in making a Decision.
- (c) If the QCA's Decision or conduct is challenged on the basis of a breach of a requirement in this Clause 10.2, QR Network and the QCA agree that QR Network may seek an order suspending the operation of the Decision and a stay of any proceedings under the Decision.
- (d) This Clause 10.2 does not affect the right of any party to seek any other form of remedy or relief including relief by way of the equitable remedies of injunction or declaration or to seek review under the *Judicial Review Act 1991* (Qld).

10.3 AUDIT PROCESS

An audit required under Clause 3.2.2, 3.5 or 9.7 must be conducted in accordance with the following process:

- (a) QR Network will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor);
- (b) the QCA's approval of an auditor (or replacement auditor) in accordance with Clause 10.3(a) continues unless and until withdrawn in accordance with Clause 10.3(c);
- (c) if the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may, within three (3) months after completion of the audit, notify QR Network in writing that its approval of that auditor in relation to the next audit of those matters is withdrawn;
- (d) the auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the auditor's obligations to QR Network and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence;
- (e) prior to commencing the audit the auditor must agree an audit plan with QR Network, document that audit plan, and obtain the QCA's approval of the audit plan;
- (f) the audit plan will:
 - (i) consist of a proposed work program for the execution of the audit, including audit costs (which shall be payable by QR Network); and
 - (ii) provide for the establishment of an audit liaison group, comprising the auditor, QR Network and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise;
- (g) QR Network will provide:
 - (i) any relevant information the auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR Network; and
 - (ii) if the audit is required under Clause 3.2.2, access to QR Network's financial records and information systems necessary for the purpose of conducting the audit;
- (h) the auditor will be required to enter into a confidentiality deed with QR Network in relation to any information provided by QR Network, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit report; and
- (i) the auditor will provide to QR Network and the QCA a copy of:
 - (i) the audit report (which the QCA may publish); and
 - (ii) any letter or report from the auditor accompanying the audit report which explains the audit findings in greater detail.

PART 11: DEFINITIONS & INTERPRETATIONS

11.1 DEFINITIONS

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

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

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

“2008 Undertaking” means the access undertaking prepared by QR Network and approved by the QCA pursuant to the Act which commenced on [insert] (as amended during the term of that access undertaking);

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

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

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

“Access” means the non-exclusive utilisation of a specified section of Rail Infrastructure for the purposes of operating Train Services including, in addition:

- (i) the benefit of other Below Rail Services essential to the use of the Rail Infrastructure such as:
 - (A) signalling;
 - (B) Train Control Services and associated communication;
 - (C) access to walkways immediately adjacent to, and crew changeover points connecting to, Track; and
 - (D) the provision of electric transmission infrastructure on electrified sections of the Track so as to permit the acquisition of electric energy for traction (but, for the avoidance of doubt, not including the sale or supply of electric energy); and
- (ii) entry upon land:
 - (A) to the extent that entry upon the land is incidental to and essential for the use of Rail Infrastructure; or
 - (B) for access to walkways and crew changeover points referred to in paragraph (i)(C) of this definition to the same degree as is available to Related Operators,

provided that:

- (C) the land is owned by QR Network or a QR Party, or QR Network or a QR Party has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
- (D) the entry is not inconsistent with the terms of any lease, licence or other arrangement to which QR Network or a QR Party is a party in respect of the land;

“Access Agreement” means an agreement between QR Network and an Access Holder for the provision of Access;

“Access Application” means a request for Access by an Access Seeker which:

- (i) has been prepared in writing using the application form provided on QR Network’s website; and
- (ii) which satisfies the Application Requirements;

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

“Access Conditions” means conditions additional to those in the relevant Standard Access Agreement, whether the conditions are contained in an Access Agreement or a separate agreement, that mitigate QR Network’s exposure to the financial risks associated with providing Access for an Access Seeker’s proposed Train Services including, without limitation, conditions requiring:

- (i) an upfront contribution;
- (ii) a payment of an Access Facilitation Charge;
- (iii) a prepayment of all or part of an Access Facilitation Charge;
- (iv) a varied or an additional take or pay arrangement including, for example, to address ‘back-end’ payment risk to an appropriate value equivalent to the exposure (for example, for the development of infrastructure for a new coal mine, the undepreciated component of any relevant Infrastructure Enhancements that were constructed solely for the purpose of the mine);
- (v) a bank guarantee or other security that is unconditional, irrevocable, payable on demand and otherwise in a form acceptable to QR Network, acting reasonably, to support payment of an amount (including, for example, payment of an Access Facilitation Charge or under an additional take or pay arrangement); or
- (vi) the forfeiting of any right to relinquish Capacity that may arise under this Undertaking,

but which are not inconsistent with the Act.

“Access Conditions Register” has the meaning given under Clause 6.5.3(a);

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

“Access Facilitation Charge” means an ongoing charge separate to an Access Charge for the facilitation of Access which is payable irrespective of the actual usage of Rail Infrastructure;

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

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

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

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

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

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

“Additional Information” means that information set out in:

- (i) Part A of Schedule D, to the extent not previously provided by QR Network; and
- (ii) Part B of Schedule D,

but only to the extent required by the Access Seeker;

“Ad Hoc Train Service” means any Train Service:

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

“Agreed Paths” means the lesser of:

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

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

- (i) transporting coal, 30 minutes;
- (ii) transporting bulk minerals (other than coal), 60 minutes;
- (iii) transporting freight products, 60 minutes; and
- (iv) providing long distance passenger transport, 30 minutes;

“Applicable Undertaking” means this Undertaking, the 2008 Undertaking, the 2005 Undertaking or the 2001 Undertaking that applied at the relevant time;

“Application Requirements” means:

- (i) the information requirements set out in Schedule C; and
- (ii) any additional information or clarification requested by QR Network under Clause 4.2(a) to the extent that information or clarification is required in order for QR Network to be reasonably satisfied that the request for Access provides

a reasonable description of the proposed Train Service for the purpose of preparing an Indicative Access Proposal;

“Approved Capital Expenditure” means all capital expenditure approved by the QCA in accordance with Clauses 2 and 3 of Schedule A;

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

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

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

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

“Available Capacity” means Capacity that is not Committed Capacity and includes Capacity that will cease being Committed Capacity prior to the time in respect of which Capacity is being assessed;

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

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

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

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

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

“Below Rail Transit Time Percentage” means, for a Train Service travelling between its origin and destination, the Below Rail Transit Time divided by the relevant nominated section running times (in the direction of travel) as specified in the relevant Train Service Entitlement;

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

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

“Capacity Analysis” means an assessment of the Capacity needed for the requested Access Rights including:

- (i) an assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights;
- (ii) if there is not sufficient Available Capacity to accommodate the requested Access Rights, an assessment of the Rail Infrastructure expansion or other Infrastructure Enhancements required to provide additional Capacity to accommodate the requested Access Rights (and an indicative estimate of the cost of such works); and
- (iii) an investigation of the operational impacts of the requested Access Rights based on the Access Seeker’s Operating Plan,

and which provides a sufficient basis to enable QR Network to finalise the relevant Train Service Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process).

“Capital Expenditure Carryover Account” means the account maintained by QR Network recording the difference between Approved Capital Expenditure and the Capital Indicator in the manner specified in Clause 5 of Schedule A;

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

“Carryover Discount Rate” means the average yield of the ten (10) year Commonwealth Government Bond over the twenty (20) Business Days preceding the subject Year plus 5.06%;

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

“Central Queensland Coal Region” means the rail corridors:

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

“Change in Law” means:

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

“Change in Relevant Taxes” means:

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

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

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

“Coal System Master Plan” means the plan relating to QR Network’s proposed capital expenditure projects containing the information specified under Clause 4.1(e) of Schedule A;

“Coal System Master Planning Forum” means the forum of that name established under Clause 4.1(b) of Schedule A;

“Commencing Date” means 1 July 2009;

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

“Committed Capacity Register” means a register that identifies persons who have an interest (whether as the existing Access Holder or otherwise) in Committed Capacity for existing Access Rights and including the information identified in Clause 7.4(c);

“Common Corridor” means:

- (i) where a new Access Holder’s or Transferee’s coal carrying Train Services operate wholly within the same Individual Coal System as the existing Access Holder’s Train Services operate, that part of the Rail Infrastructure that will be utilised by the new Access Holder’s or Transferee’s relevant Train Services extending from the destination (unloading facility) to the origin (loading facility) of the new Access Holder’s or Transferee’s Train Services for a distance equal

to no more than the distance from the destination to the origin of the existing Access Holder's Train Services; and

- (ii) in all circumstances other than those described in paragraph (i) of this definition, that part of the Rail Infrastructure that was utilised by the existing Access Holder for the Train Services for which Access Rights are being relinquished and will also be utilised by the new Access Holder's or Transferee's Train Services;

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

"Competing Applications" means the Access Applications of two or more Access Seekers who are competing in order to provide Train Service/s under a rail haulage agreement with the same Customer for the same service (i.e. the Access Rights sought relate to the same traffic task);

"Compliance Officer" means the QR Network employee designated as such by the QR Network Executive General Manager for the purposes of Clause 9.6(a);

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

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

provided that such information:

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

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

- (vii) the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;
- (viii) the information is now in the public domain through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in Clause 3.3(c); or
- (ix) the information has been received by the recipient independently from a third party free to disclose the information;

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

“Consequential Loss” means:

- (i) any special, indirect or consequential loss or damage;
- (ii) any economic loss in respect of any claim in tort;
- (iii) any loss of profits, production, revenue, use, contract, opportunity or goodwill or wasted overheads whatsoever; and
- (iv) any loss arising out of any Claim by a third party (other than a Claim in respect of loss or destruction of or damage to real or personal property or personal injury to or death of any person),

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

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

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

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

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

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

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

- (i) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and
- (ii) in respect of a combination of Train Services, the Common Costs related specifically to sections of Rail Infrastructure that are used solely for the purpose of Train Services within that combination of Train Services,

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

“Customer” means:

- (i) except for Clause 7.3.8, a person that the Access Holder or Access Seeker is providing or intending to provide Train Services for or on behalf of, and for the purpose of providing such Train Services, the Access Seeker or Access Holder is acquiring or has acquired Access Rights; and
- (ii) for the purposes of Clause 7.3.8, a person that has a rail haulage agreement with the Access Holder in respect of some or all of the Access Rights subject to the Access Holder’s Access Agreement;

“Customer Group” has the meaning given to that term in Clause 4.2.1 of Schedule A;

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

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

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

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

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

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

“Dispute” has the meaning given to that term in Clause 10.1.1(a);

“Dispute Notice” means a notice in writing given under Clause 10.1.1(a) specifying a Dispute and requiring that Dispute to be dealt with in accordance with Clause 10.1;

“Distribution Entities” has the same meaning as given to that term in the *Electricity Act 1994* (Qld);

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

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

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

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

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

- (i) the gtk for the Train Service, if that Train Service uses electric traction; and

- (ii) zero (0), if the Train Service does not use electric traction;

“EIRMR” is an environmental investigation and risk management report containing the matters referred to it in Clause 8.2.1(a);

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

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

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

- (i) a Change in Law or a Change in Relevant Taxes occurs, that either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since the Commencing Date, would cause a change in the costs reflected in, for Reference Tariffs specified in Part B of Schedule F, the AT₃, AT₄, and/or AT₅ input of the relevant Reference Tariff and, for Reference Tariffs specified in Part C of Schedule F, the AT₁ input of the relevant Reference Tariff, of greater than two and a half percentage points (2.5%) excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a variation of the Reference Tariff;
- (ii) a change in QR Network's maintenance practices, reasonably requested by an Access Holder or Customer subsequent to the Commencing Date, which would cause a change in the costs reflected in, for Reference Tariffs specified in Part B of Schedule F, the AT₃, AT₄, and/or AT₅ components of the relevant Reference Tariff and, for Reference Tariffs specified in Part C of Schedule F, the AT₁ component of the relevant Reference Tariff, of greater than two and a half percentage points (2.5%) excluding the impact of any change in maintenance practices that have previously resulted in a variation of the Reference Tariff;
- (iii) a change in the pricing of one or more Distribution Entities and/or Transmission Entities that, either alone or in combination with all other changes in the pricing of relevant Distribution Entities and/or Transmission Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the AT₅ input of the relevant Reference Tariff of greater than two and a half percentage points (2.5%);
- (iv) a change in the pricing of one or more Retail Entities that either alone or in combination with all other changes in the pricing of relevant Retail Entities that have occurred since the Commencing Date and that have not previously resulted in a variation of the Reference Tariff, would cause a change in the costs reflected in the EC input of the relevant Reference Tariff of greater than two and a half percentage points (2.5%); or
- (v) the QCA Levy is reviewed (taking into account any over or under recovery of fees via the QCA Levy in the previous year) following the QCA's announcement of its fees for the provision of regulatory services for the rail industry.

“Environmental Authorities” means:

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

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

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

“EPA” means the State department administering the EP Act;

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

“Escalation Date” means the date being 1 January, 1 April, 1 July and 1 October in each year;

“Evaluation Period” means:

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

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

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

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

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

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

and includes:

- (iii) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected party ;

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

“General Expansion Capital Expenditure” means expenditure on capital projects required to expand the existing capacity of the Rail Infrastructure, or develop Rail Infrastructure capacity where none exists, and where that Rail Infrastructure is utilised or to be utilised for the benefit of more than one Customer or more than one Access Holder;

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

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

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

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

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

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

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

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

“Infrastructure Enhancement” means new Rail Infrastructure or a modification to existing Rail Infrastructure;

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

“Initial Capacity Assessment” means a preliminary Capacity Analysis limited to:

- (i) an indicative assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights; and
- (ii) if not, either an outline of the works (and an indicative estimate of the cost of such works) required to provide additional Capacity to accommodate the requested Access Rights or the requirements for an investigation into such matters;

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

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

- (v) the Access Seeker resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

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

“Interface Risk Assessment” means an assessment that ensures that the Interface Risks are properly managed within a risk management framework and which will identify all reasonably foreseeable hazards related to the Interface Risks, assess the risks of such hazards occurring and the implications of such hazards occurring as well as nominating suitable control mechanisms to manage the Interface Risks;

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

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

- (i) the Rail Infrastructure;
- (ii) existing operations on the Rail Infrastructure (including other Train Services); and
- (iii) QR Network’s staff, other Access Holders’ staff or QR Network’s or other Access Holders’ interfaces with members of the public (including any activities on the Rail Infrastructure that may affect those matters);

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

“IRMP” means an interface risk management plan identifying the Interface Risks associated with the Access Seeker’s or Access Holder’s proposed operations and outlines both the control mechanisms agreed between QR Network and an Access Seeker or Access Holder to ensure those Interface Risks are managed to an acceptable level, and the parties responsible for implementing those controls and ensuring they remain effective;

“Law” or **“Laws”** means a statute, ordinance, rule or regulation;

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

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

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

“Loading Time” means the time between a Train Service arriving at a Nominated Loading Facility and that same Train departing the Nominated Loading Facility, and for the purpose of clarity, this time runs from when a Train Service arrives at the entry

signal to the Nominated Loading Facility until it has completed loading, presented at the exit signal, is ready to depart the Nominated Loading Facility and has advised the relevant Train Controller accordingly;

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

“Major Project” means a program of related capital expenditure that when complete:

- (i) is reasonably expected to increase the value of assets in the Regulatory Asset Base comprising an Individual Coal System by at least the lesser of thirty percentage points (30%) or \$300 million; or
- (ii) will give rise to or result in the creation of new Rail Infrastructure for a new rail corridor which, at the time immediately prior to the commencement of that program of capital expenditure, will not be comprised in an Individual Coal System (but including any ancillary Infrastructure Enhancement projects in relation to an existing Individual Coal System undertaken in connection with the creation of new Rail Infrastructure for that new rail corridor);

“Major Yards” means yards at Acacia Ridge, Fisherman Islands, Rockhampton, Callemondah, Jilalan, Coppabella, Paget, Townsville and Portsmith;

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

“Material Default” means:

- (i) failure on more than one occasion to comply with any terms and/or conditions of a relevant agreement that are not fundamental terms and/or conditions; or
- (ii) any breach of a fundamental term and/or condition of a relevant agreement, where a fundamental term and/or condition is one that if breached gives rise to a remedy of termination,

where a relevant agreement is as described in Clause 4.6(b)(ii);

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

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

“MCI” means the maintenance cost index developed by QR Network for the purposes of the escalation of Reference Tariffs and which has been approved by the QCA;

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

“National Codes of Practice” means the codes developed by the Australian Rail Association to identify, at a high level, the standards required for rail infrastructure in Australia;

“Negotiation Cessation Notice” means a notice of QR Network’s decision not to enter into an Access Agreement with the relevant Access Seeker and the reasons for that decision;

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

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

“New Access Agreement” has the meaning given in Clause 7.3.8(a)(i)(A);

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

“Nominated Access Rights” has the meaning given in 7.3.7(b)(i);

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

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

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

“NPV Value” means the net present value, calculated at the Discount Rate, of the contribution to Common Costs by a Train Service the subject to an Access Application including any contribution from other sources of revenue that would reasonably be expected to reduce or be eliminated as a consequence of QR Network not providing Access for that Train Service (for example, Access Charges from another Train Service or combination of Train Services, or Transport Service Payments);

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

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

“Old Access Agreement” has the meaning given in Clause 7.3.8(a)(i)(B);

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

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

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

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

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

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

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

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

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

“Private Incremental Costs” means those costs of providing access to the relevant Private Infrastructure, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs:

- (i) are assessed as Private Efficient Costs and based on the assets reasonably required for the provision of access to the relevant Private Infrastructure;
- (ii) have been reviewed and endorsed by the QCA; and
- (iii) have been submitted to QR Network by the owner or operator of the relevant Private Infrastructure for the purpose of calculating the Access Charges;

“Private Infrastructure” means the infrastructure, including but not limited to the track, signalling and electrical overhead traction system (if applicable), that is not Rail Infrastructure;

“Proposed Standard Access Agreement” means:

- (iv) a proposed new, amended or replacement pro forma Access Agreement; and
- (v) includes a proposal that a Standard Access Agreement cease to be a Standard Access Agreement;

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

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

“QR” means QR Limited ACN 124 649 967;

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

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

“QR Network Cause” means where QR Network is unable to make Rail Infrastructure available for the operation of Train Services in accordance with an Access Holder’s Train Service Entitlement as a result of:

- (i) Planned Possessions, Urgent Possessions or Emergency Possessions;
- (ii) a Force Majeure Event; or
- (iii) any other action by QR Network which may directly result in the Rail Infrastructure not being so available,

provided that the above reasons are not in any way attributable to the Access Holder;

“QR Network Executive General Manager” means the person who is, from time to time, the Executive General Manager of QR Network (including that position as renamed or replaced);

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

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

“QR Party” means a Related Party of QR Network;

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

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

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

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

“Rail Infrastructure” means rail transport infrastructure as defined in the TIA for which QR Network is the Railway Manager but only to the extent that the use of that rail transport infrastructure is declared for section 97 of the Act;

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

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

“Reasonable Demand” has meaning given to that term in Clause 3.2.2(d)(i) of Schedule A;

“Reduction Factor” means:

- (i) if:
 - (A) a new Access Holder has executed an Access Agreement (or a variation to an existing Access Agreement) in respect of Access Rights that QR Network could not have provided without using the whole or part of the Nominated Access Rights; or
 - (B) a Transferee has executed or will execute an Access Agreement (or a variation to an existing Access Agreement) using the whole or part of the Nominated Access Rights,

and:

- (C) QR Network's provision of the Access Rights under that Access Agreement commenced, in relation to paragraph (A), after it was given the Notice of Intention to Relinquish, but prior to the payment to it of the Relinquishment Fee or, in relation to paragraph (B), on and from the Relinquishment Date,

A / B

where:

A is the annual train kilometres over the Common Corridor attributable to the new Access Holder's or Transferee's Train Services in respect of which Access Rights could not have been provided without using the whole or part of the Nominated Access Rights; and

B is the annual train kilometres over the Rail Infrastructure attributable to the Train Services operated under the Nominated Access Rights

provided that to the extent that the new Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service is less than the existing Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service, the Reduction Factor will be decreased in proportion to that relative contribution; and

- (ii) if paragraph (i) does not apply, zero (0).

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

"Reference Tonnes" has the meaning given to that term in Clause 4.2.1 of Schedule A;

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

"Regulatory Asset Base" means the asset value for the Central Queensland Coal Region accepted by the QCA for the purpose of developing Reference Tariffs for coal carrying Train Services;

"Related Operators" means business groups within QR Parties that undertake the operation of Train Services for transporting passengers or freight for reward;

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

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

"Relinquishment Date" has the meaning given in Clause 7.3.7(b)(ii);

"Relinquishment Fee" means:

- (i) in respect of an Access Agreement that includes an obligation to pay take or pay in the event that an Access Holder does not operate Train Services, other

than an Access Agreement for Train Services specified in paragraph (ii) or (iii) of this definition, the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement if the Nominated Access Rights were not relinquished but the Access Holder did not operate the relevant Train Services;

- (ii) for coal carrying Train Services included in Access Agreements in place on the day immediately prior to 30 June 2006 (or New Access Agreements entered as part of transferring Access Rights from such Access Agreements pursuant to Clause 7.3.8(a)(i) but only to the extent that the terms of the Old Access Agreement apply in respect of the relevant Access Rights pursuant to Clause 7.3.8(a)(ii)), the amount that would be payable over the following two (2) year period if the Access Holder were to pay 40% (forty percentage points) of the Access Charge that would be payable if it operated the relevant Train Services; and
- (iii) in respect of an Access Agreement other than those nominated in paragraphs (i) or (ii), the amount that would have been contributed over the following two (2) year period to the Common Costs of providing the Rail Infrastructure as a result of the operation of the relevant Train Services and payment of the applicable Access Charge,

less the product of that amount and the Reduction Factor, provided that:

- (iv) if:
 - (A) that calculation results in an amount that is less than zero (0); or
 - (B) the Nominated Access Rights to be relinquished are to be transferred to a Transferee for a period of less than two (2) years,then that amount is deemed to be zero (0);
- (v) where paragraph (i) of this definition applies, if the Nominated Access Rights to be relinquished:
 - (A) are for coal carrying Train Services operating in the Central Queensland Coal Region under an Access Agreement executed on or after 30 June 2006; and
 - (B) are not to be transferred to a Transferee,then that amount must not exceed fifty percentage points (50%) of the amount calculated under paragraph (i) of this definition; and
- (vi) for the purposes of determining the take or pay amount for paragraph (i) of this definition in relation to Nominated Access Rights for Train Services in the Central Queensland Coal Region, that take or pay amount must be calculated:
 - (A) in accordance with the relevant Access Agreement; and
 - (B) if that calculation requires information about future events, using assumptions determined by QR Network about those future events so as to calculate the maximum amount of take or pay that could potentially be payable;

“Renewal Application” means an Access Application submitted to QR Network in accordance with Clause 7.4(d):

- (i) within sixty (60) days after QR Network gave the relevant notice under Clause 7.4(d); and

- (ii) in respect of Access Rights:
 - (A) not in excess of those under the relevant Access Holder's existing Access Agreement;
 - (B) for the existing mine which receives the benefit of those Access Rights or a Replacement Mine; and
 - (C) for a term of at least ten (10) years or, if the Access Application relates to an existing mine, the remaining life of that mine,

but does not include an Access Application in respect of Access Rights that were granted to the relevant Access Holder under its existing Access Agreement as a Transferee;

"Replacement Mine" means a mine:

- (i) the Customer for which is the same as the Customer for the existing mine receiving the benefit of the relevant Access Rights;
- (ii) that is in the same geographic area as the existing mine referred to above such that Train Services for that mine use substantially the same Train paths as Train Services for the existing mine; and
- (iii) that is producing a volume of coal substantially equivalent to a reduction in existing volume from the existing mine;

"Retail Entities" has the same meaning as given to that term in the *Electricity Act 1994* (Qld);

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

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

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

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

"Rules" has the meaning given in the National Electricity Rules as defined under the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA);

"Safety Management System" means:

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

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

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

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

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

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

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

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

“Standard Access Agreement” means:

- (i) a Standard Access Agreement (as defined under the 2008 Undertaking) existing immediately prior to the Commencing Date, as amended by the QCA in accordance with Clause 5.2; and
- (ii) a pro forma Access Agreement approved or amended by the QCA in accordance with Clause 5.2,

until such time as the QCA, in accordance with Clause 5.2, approves the replacement or ceasing of that document as such;

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

“State” means the State of Queensland;

“Stowage” means:

- (i) Dwell; and
- (ii) the short-term storage of Trains on Rail Infrastructure at locations specified by QR Network where an Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown or other temporary outage of the Access Holder, the loading facility or the unloading facility, and/or the unavailability of the Rail Infrastructure, but does not include storage of individual items of Rollingstock or the long-term storage of Trains;

“Subsidiary” has the meaning given under the Corporations Act;

“System Allowable Revenue” means:

- (i) for AT₂₋₄ in relation to an Individual Coal System, the total revenue from AT₂₋₄ arising from all Access Agreements in relation to that Individual Coal System

that QR Network is entitled to earn over the relevant Year, as specified in Clauses 5.3, 6.3, 7.3 and 8.3, Part B of Schedule F; and

- (ii) for the AT₅ component of Access Charges for the Central Queensland Coal Region, the total revenue from the AT₅ component of Access Charges arising from all Access Agreements in relation to the Central Queensland Coal Region that QR Network is entitled to earn over the relevant Year, as specified in either Clause 5.3 or 6.3, Part B of Schedule F,

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

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

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

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

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

“System Rules” means the rules made by QR Network in accordance with Appendix 1 of Schedule G;

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

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

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

“Terminating Date” means the date that is the earlier of:

- (i) 30 June 2013;
- (ii) the date on which this Undertaking is withdrawn as provided for in the Act; and
- (iii) where:
 - (A) one or more of the following has occurred:
 - (1) a Third Party (other than the State or Queensland Treasury Corporation) provides debt or equity funding to QR Network or a QR Party;
 - (2) QR Network ceases to be a subsidiary of QR or QR Network’s business of providing Below Rail Services is transferred or assigned in whole or part to another entity; or
 - (3) there is no QR Party that undertakes the operation of Train Services for reward, except in respect of transporting passengers; and
 - (B) QR Network has, at its discretion, notified the QCA that such an event has occurred and that this Undertaking is terminated,

the date on which the QCA is given a notice under paragraph (B) of this definition or, if that notice specifies a later date for the termination of this Undertaking, then that later date.

“Third Party” means a person other than a QR Party;

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

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

“Total Actual Revenue” means:

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

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

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

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

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

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

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

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

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

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

“Train Service” means the operation of a Train on the Rail Infrastructure between a specified origin and destination including any of the following, as necessary for the operation of that Train:

- (i) the use of passing loops and Train queuing and staging including before and after loading and unloading of that Train;

- (ii) loading and unloading of that Train at facilities other than facilities that are not Rail Infrastructure;
- (iii) Train marshalling and shunting:
 - (A) in preparation for running of that Train Service;
 - (B) before or after loading or unloading of that Train; and
 - (C) before or after maintenance and provisioning of that Train; and
- (iv) Stowage,

provided that for the purposes of the definition of Private Incremental Costs in this Clause 11.1 and Clause 4, Part B of Schedule F it also includes the extent to which the relevant Rollingstock utilises Private Infrastructure in addition to Rail Infrastructure as part of its trip;

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

“Transferee” has the meaning given in Clause 7.3.7(b)(iii);

“Transferred Access Rights” has the meaning given in Clause 7.3.8(a)(i)(A);

“Transmission Entities” has the same meaning as given to that term in the *Electricity Act 1994* (Qld);

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

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

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

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

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

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

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

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

11.2 INTERPRETATION

- (a) In this Undertaking unless the context otherwise requires:
- (i) where reference is made to a position or group name, and that position or group name changes during the course of the Undertaking, provided the position or group retains responsibility for the same or substantially the same tasks, the reference will be taken to cover the changed name;
 - (ii) reference to a person includes a partnership, an unincorporated joint venture, an unincorporated association, a corporation, a government or statutory body or authority and any other entity recognised by law;
 - (iii) where:
 - (A) a group of persons are in a partnership, an unincorporated joint venture, an unincorporated association or other similar arrangement; and
 - (B) that group of persons together execute or seek to execute an agreement (including an Access Agreement or a rail haulage agreement) or such an agreement is executed or is sought to be executed for or on behalf of that group of persons,then that group of persons is deemed to constitute a single person, Customer, Access Seeker or Access Holder (as applicable);
 - (iv) a reference to “dollars” or “\$” means a reference to Australian dollars;
 - (v) words importing the singular number includes the plural number and vice versa;
 - (vi) words importing any gender include the other gender;
 - (vii) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (viii) any reference to any parties by their defined terms includes that party’s executors, administrators, permitted assigns or permitted subcontractors or, being a company, its successors, permitted assigns or permitted subcontractors and the obligation of any party extends to those persons;
 - (ix) a reference to conduct includes a benefit, remedy, discretion, authority or power;
 - (x) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
 - (xi) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or enures for the benefit of those persons jointly and each of them severally;
 - (xii) clause headings are for reference purpose only;
 - (xiii) any reference to the words “include” “includes” or “including” must be read as if they are followed by the words “without limitation”;
 - (xiv) any reference to time is to local time in Queensland;
 - (xv) subject to Clause 11.2(a)(xvi), reference to a Part, Clause or Schedule is a reference to the corresponding Part or Clause found in Part 1 to Part 11 of this Undertaking or Schedule to this Undertaking as amended or replaced from time to time;

- (xvi) in a Schedule to this Undertaking, a reference to:
 - (A) a Part or Clause, is a reference to a Part or Clause of that Schedule unless otherwise stated; and
 - (B) a Part or Clause of this Undertaking, is a reference to a Part or Clause found in Part 1 to Part 11 of this Undertaking;
 - (xvii) a reference to this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time;
 - (xviii) a reference to any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (xix) if there is any inconsistency between matters contained in a Schedule or Part 1 and Part 2 to Part 11 of this Undertaking, the provisions in Part 2 to Part 11 of the Undertaking prevail.
- (b) To the extent that QR Network's obligations under this Undertaking are or become inconsistent with QR Network's obligations under any Law, this Undertaking does not apply to the extent of that inconsistency.

11.3 NOTICES

- (a) Subject to Clause 11.3(b), where this Undertaking requires a notice or document be given to a person, the notice or document will be given:
- (i) when the notice or document is personally delivered to the person;
 - (ii) where the person is a body corporate, when the person has been served in the way provided for the service of documents under the Corporations Act or another applicable law;
 - (iii) if the notice or document is posted, on the earliest of the following:
 - (A) where the notice is an Acknowledgement Notice, on the date the notice is posted;
 - (B) where the notice (other than an Acknowledgement Notice) is posted within Australia to an Australian address, three (3) Business Days after posting; or
 - (C) in any other case, ten (10) Business Days after posting; or
 - (iv) if the notice is sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee (and that report is conclusive evidence that the addressee received the fax in full at the time indicated on that report).
- (b) If a notice or document is given:
- (i) after 5:00 pm in the place of receipt; or
 - (ii) on a day which is a not a Business Day in the place of receipt,
- then it will be deemed to have been given at 9:00 am on the next day which is a Business Day in the place of receipt.

11.4 TRANSITIONAL PROVISIONS

- (a) All acts, applications, approvals, approval processes, arrangements, circumstances, conduct, decisions, determinations, dispute resolution processes, events, Force Majeure Events, matters, negotiations, notices,

omissions, queues, registers, requests, time periods, votes, warranties or any other process or thing whatsoever ("Matter") done, agreed, arising, given, received, undertaken, commenced or established ("Done") or deemed to be Done under the 2008 Undertaking are deemed to be Done and, as applicable, continue under this Undertaking as though the Matter was Done under this Undertaking to the extent that this Undertaking provides for equivalent Matters to be Done.

- (b) For the purposes of this Undertaking, the date of execution for an Access Agreement executed in accordance with Subparagraph 2.5.2(f) of the 2008 Undertaking is deemed to be the date when the Internal Access Agreement (as defined under the 2008 Undertaking) it replaced was put in place.
- (c) If this Undertaking requires QR Network to report to the QCA on a Quarter or a Year that began prior to the Commencing Date, then:
 - (i) the relevant report will include information in respect of the period prior to the Commencing Date; and
 - (ii) QR Network is only obliged to provide information for the period prior to the Commencing Date as would have been required to be provided under the 2008 Undertaking in respect of that same type of report.
- (d) If the Commencing Date is the first day of a Quarter, then QR Network will report on the last Quarter prior to the Commencing Date in accordance with the requirements of the 2008 Undertaking.
- (e) If the Commencing Date is the first day of a Year, then QR Network will report on the prior Year in accordance with the requirements of the 2008 Undertaking.
- (f) Clause 3B, Part B, Schedule F of the 2008 Undertaking continues after the Terminating Date of the 2008 Undertaking for the purposes of calculating the relevant adjustment of 2nd Year System Allowable Revenue in relation to the last Year of the Term of the 2008 Undertaking.
- (g) For the purposes of Clause 3.1.1(a), Part B of Schedule F a reference to an adjustment of 2nd Year System Allowable Revenue in accordance with Clause 3.3 includes an adjustment calculated under Clause 11.4(f).