

# Queensland Rail's Draft Access Undertaking 1

May 2015



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## Preamble

Queensland Rail was incorporated on 11 July 2008 and is wholly owned by the Rail Authority. Queensland Rail was originally named QR Passenger Pty Ltd and was a subsidiary of Aurizon Operations Limited (formerly QR Limited) responsible for the Above Rail passenger Train Services.

On 30 June 2010, as part of the restructure and privatisation process for Aurizon (formerly QR National):

- Queensland Rail became an independent business – separate from the Aurizon corporate group; and
- the rail network previously managed by Aurizon Network (formerly QR Network Pty Ltd) (now part of the Aurizon corporate group) was divided between Aurizon Network and Queensland Rail.

This resulted in Aurizon Network continuing as the Railway Manager of the rail network in the Central Queensland Coal Region (including part of the North Coast Line) and Queensland Rail becoming the owner and Railway Manager of the remainder of the rail network previously managed by Aurizon Network.

Therefore, from 30 June 2010, Queensland Rail changed from a business which principally operated passenger Trains to a business that also manages a rail network including approximately 8,000 km of Queensland railway track used by freight and passenger Trains.

Queensland Rail's major businesses include passenger Trains (including inner-city commuter and long distance trains), rail holidays, travel centres and managing access to its rail network for a wide variety of Trains including for agricultural products, passengers, general freight, bulk minerals and coal. The needs of Trains on Queensland Rail's network vary greatly due to their different supply chain dynamics, geographic locations, rail corridor characteristics and interactions with other rail traffics.

While Queensland Rail's responsibilities regarding passenger Trains are important, the provision of Access to the Network for freight Trains is also a significant activity for Queensland Rail. Queensland Rail seeks to provide a safe and efficient rail based transport option for freight.

Much of Queensland Rail's network is supported by Transport Service Payments from the Queensland Government. The absence of these Transport Service Payments would result in large parts of the rail network being commercially unviable.

Queensland Rail competes with road transport for most non-coal Train Services as well as coastal shipping, air transport, slurry pipelines and other transport options. In this

sense, a large part of Queensland Rail's network business is not truly monopolistic as it is actively competing with other transport modes.

As part of Aurizon Operations Limited's restructure associated with the formation and privatisation of Aurizon, the 2008 Undertaking, with various modifications, was made to apply to Queensland Rail under the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (Qld). The 2008 Undertaking's application to Queensland Rail will be superseded by this Undertaking on its approval by the QCA.

This Undertaking is an access undertaking given in response to an initial undertaking notice under section 133 of the *Queensland Competition Authority Act 1997* (Qld) in relation to the declared service under section 250(1)(b) of the QCA Act. This Undertaking has been developed following extensive consultation with key stakeholders. It provides a balanced approach to the provision of Access and a framework (based on a negotiate/arbitrate model) to manage negotiations in an efficient and transparent manner for Rolling Stock Operators seeking Access to Queensland Rail's Network including addressing matters such as:

- the process for seeking Access in relation to the Network;
- the pricing principles for Access Charges including a Reference Tariff for coal carrying Train Services using the West Moreton Network and Metropolitan Network;
- Network Management Principles for the scheduling and prioritisation of Train Services;
- reporting obligations and dispute resolution; and
- a Standard Access Agreement.

For further information on the negotiation of Access in accordance with the provisions of this Undertaking, please contact:

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Commercial and Strategy

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## Part 1 Application and scope

### 1.1 Duration

This Undertaking is effective during the Term.

### 1.2 Scope

#### 1.2.1 Application of this Undertaking

- (a) Subject to **clause 1.2.1(b)**, this Undertaking applies to negotiations between Queensland Rail and Access Seekers in relation to Access Rights.
- (b) Despite any other provision in this Undertaking:
  - (i) this Undertaking does not apply:
    - (A) to the negotiation or provision of services other than Access;
    - (B) to 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; or
    - (C) to any part of the Network for which:
      - (1) the owner is not Queensland Rail or a Related Party of Queensland Rail; and
      - ~~(2) Queensland Rail's contractual or other arrangements with the owner of that part of the Network would prevent it from granting Access Rights, or fully complying with this Undertaking, in relation to that part of the Network; and<sup>4</sup>~~
  - (ii) Subject to Schedule F, Queensland Rail is not obliged to comply with this Undertaking to the extent that it is inconsistent with Queensland Rail's compliance with its Passenger Priority Obligations and Preserved Train Path Obligations.
- (c) Nothing in this Undertaking requires Queensland Rail or any other party to an Access Agreement executed before the Approval Date to vary a term or provision of that Access Agreement.

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<sup>4</sup>This situation might potentially arise, for example, where Queensland Rail provides Railway Manager-related services to an owner of private infrastructure.

- (d) Nothing in this Undertaking affects, and this Undertaking is subject to, Queensland Rail's and an Access Seeker's rights under the QCA Act.

### 1.2.2 Procurement of services other than Access

Unless Queensland Rail otherwise agrees, Access Seekers are responsible for procuring any services other than Access, including Above Rail Services, required for the operation of Train Services.

### 1.2.3 Line diagrams

Queensland Rail will:

- (a) publish on its website line diagrams showing its rail network including:
  - (i) the parts of that rail network comprising the Network;
  - (ii) existing Private Infrastructure connection points to the Network; and
  - (iii) a description of the amendments made to the line diagrams (if any) since the last version of those line diagrams;
- (b) use reasonable endeavours to keep those line diagrams up to date and accurate in all material respects;
- (c) review and, if applicable, amend the line diagrams during the Term:
  - (i) at intervals of no more than six months; and
  - (ii) if requested by the QCA or an Access Holder or Access Seeker (acting reasonably) from time to time; and
- (d) notify the QCA at intervals of no more than six months during the Term of any amendments to the line diagrams during that time interval;
- (e) notify all Access Seekers and Access Holders in relation to any proposed amendments to the line diagrams;
- (f) in the event that an Access Holder or Access Seeker raises a dispute about the accuracy of the line diagram, follow the dispute resolution process in Part 6; and
- (d)(g) subject to the outcome of any dispute resolution process, promptly update the online diagrams and notify all Access Holders and Access Seekers as soon as the line diagrams have been updated.

## 1.3 Consistency and differentiation

- (a) Queensland Rail will consistently apply this Undertaking to all Access Seekers and requests and negotiations for Access.
- (b) ~~Without limitation to its obligations in this Undertaking,~~ Queensland Rail ~~acknowledges will comply with~~ its obligations under sections 100, 104, 125 and 168C of the QCA Act, ~~in particular,~~ Consistent with

these obligations Queensland Rail will not, and will procure that its Related Parties do not:

- (i) in relation to not unfairly differentiating between Access Seekers as required by and subject to section 100 of the QCA Act, including in respect of: engage in conduct for the purposes of preventing or hindering an Access Seeker's or Access Holder's Access; or
  - (A) the levels of service provided to Access Seekers in relation to the application of the Undertaking (including the negotiation of Access Rights); and
  - (B) the opportunities given to Access Seekers to obtain Access Rights;
- (ii) in relation to not unfairly differentiating between Access Holders as required by and subject to section 168C of the QCA Act provide Access to any Related Party which is a Rail Transport Operator on more favourable terms than the terms on which Queensland Rail provides Access to competitors of any Related Party which is a Rail Transport Operator (having regard to all of the terms on, and circumstances in which Access is provided including the Access Charges and differences in Access Rights provided).; and
- (iii) in relation to not preventing or hindering a "user's access to the declared service" as required by and subject to sections 104 and 125 of the QCA Act.

(c) Queensland Rail will provide that:

- (i) all transactions between Queensland Rail and any Related Party which is a Rail Transport Operator in relation to Access are conducted on an arms-length basis;
- (ii) all Access Seekers, irrespective of whether they are a Related Party of Queensland Rail or a third party:
  - (A) are provided with a consistent level of service; and
  - (B) given an equal opportunity to obtain Access Rights, subject to the express provisions of the QCA Act, the TIA and this Undertaking.

## 1.4 Extensions – Capacity investment framework

### 1.4.1 Application

- (a) This **clause 1.4** applies where an Access Seeker's requested Access Rights cannot be granted without Extending the Network, when an Access Seeker notifies Queensland Rail, in accordance with **clause 2.7.2(d)** that it is willing to fund all Extension Costs directly incurred by

Queensland Rail in developing, constructing and owning the Extension that is necessary to provide the Additional Capacity required to grant the Access Rights in the relevant Access Application.

~~(b)~~ Queensland Rail is obliged to Extend the Network or complete the relevant study stage of the Extension (as applicable) (unless otherwise agreed by Queensland Rail and the relevant Access Funder) to provide the Additional Capacity required by the Access Funder if:

~~(i)~~ The proposed Extension satisfies the Extension Conditions in clause 1.4.2(c); and

~~(ii)~~ the Access Funder:

~~(A)~~ executes a Funding Agreement for the Extension agreed in accordance with clause 1.4.3; or

~~(B)~~ executes a Funding Agreement for the relevant study stage of the Extension in accordance with clause 1.4.3; and

~~(a)(iii)~~ provides a bank guarantee in support of its commitments under the Funding Agreement as agreed by Queensland Rail (acting reasonably) and the Access Funder unless this requirement is waived, or another form of security is accepted, by Queensland Rail (acting reasonably).

~~(b)~~ In this clause 1.4, unless the context requires otherwise, a reference to an Access Seeker includes a reference to that Access Seeker's Customer.

~~(c)~~ Subject to clause 1.4.1(d), nothing in this clause 1.4:

~~(i)~~ restricts or otherwise limits Queensland Rail's ability:

~~(A)~~ to Extend the Network;

~~(B)~~ to fund an Extension or otherwise invest in the Network;

~~(C)~~ to enter into arrangements with other persons (other than Access Seekers/Funders) in relation to Extending the Network; or

~~(D)~~ to, at its cost, prepare plans and strategies and undertake studies and investigations in relation to Extending the Network (including Concept Studies, Pre-feasibility Studies and Feasibility Studies); or

~~(ii)~~ obliges Queensland Rail to bear some or all of any Extensions Costs or to incur any Extension Costs in advance of funding being provided by the Access Seeker/Funder; or,

~~(iii) obliges Queensland Rail act in a way that results in Queensland Rail's legitimate business interests not being protected.~~

~~(d) Queensland Rail will undertake all Extensions of the Network under the auspices of the Undertaking and the QCA Act to provide even-handed dealings with all Access Seekers, Access Funders and Access Holders.~~

#### 1.4.2 Extending the Network

(a) If Queensland Rail ~~elects not to fund all or part of the Extension Costs for an Extension, is notified under 2.7.2(c)~~ then Queensland Rail will promptly:

~~(i) discuss with the relevant Access Seeker options for that Access Seeker to provide funding for the Extension; and~~

~~(ii) promptly negotiate and, if terms are agreed, enter into arrangements with that Access Seeker in relation to the funding of the Extension (**Funding Agreement**).~~

~~(i) For clarity, a Funding Agreement may also be entered into for a preliminary study or investigation in relation to an Extension such as a Concept Study, Pre-feasibility Study or Feasibility Study where Queensland Rail elects not to fund all or part of such a study or investigation. in addition to the information provided pursuant to clause 2.7.2(b)(ii), provide the Access Funder with all information on the Extension required, in accordance with sections 101(1) and 101(2) of the QCA Act, to provide the Additional Capacity required to grant the Access Rights in the Access Application. Without limiting the foregoing, this includes information on:~~

~~(A) necessary Authorisations that are reasonably required for the Extension;~~

~~(B) rights and interests in land that are reasonably required for the Extension;~~

~~(C) rail safety requirements reasonably required for the Extension;~~

~~(D) engineering, operational and other requirements that are reasonably required for the Extension; and~~

~~(E) the operational integrity of the relevant corridor that is to be extended;~~

~~(ii) discuss with the relevant Access Funder the options to proceed with the Extension, compromised of the following project stages:~~

~~(A) Concept Study~~

- ~~(B) \_\_\_\_\_ Prefeasibility Study~~
- ~~(C) \_\_\_\_\_ Feasibility Study~~
- ~~(D) \_\_\_\_\_ the construction and commissioning of the Extension~~
- ~~(iii) \_\_\_\_\_ discuss with the relevant Access Funder options for that Access Funder to provide funding for each stage of the Extension; and~~
- ~~(iv) \_\_\_\_\_ negotiate and enter into arrangements in accordance with the Extension Access Principles set out in **Schedule I** and **clause 1.4.3** with the Access Funder in relation to the funding of the relevant stage of the Extension (**Funding Agreement**).~~

~~For clarity, there is no requirement that there be a single Funding Agreement for an Access Funder or for an Extension. Separate Funding Agreements may be entered into for each stage of the Extension. The parties are then free to make a decision on whether to proceed with an Extension at the completion of each stage of an Extension.~~

- ~~(b) \_\_\_\_\_ If either Queensland Rail or an Access Funder considers that a study process under this **clause 1.4** should be discontinued, then the parties (acting reasonably) will seek to agree whether the study process should continue but if the parties cannot agree then the study process will continue subject to the relevant studies being funded.~~

- ~~(b) \_\_\_\_\_ Subject to **clauses 1.4.3** to **1.4.5**, if:~~

- ~~(i) \_\_\_\_\_ an Extension is necessary to provide the Additional Capacity required to grant Access Rights requested by an Access Seeker; and~~
- ~~(ii) \_\_\_\_\_ Queensland Rail elects not to fund any part of the Extension Costs for the relevant Extension,~~

~~then Queensland Rail is only obliged to enter into a Funding Agreement in relation to that part of the Extension Costs that it has elected not to fund if all of the following are satisfied (unless otherwise agreed by Queensland Rail and the relevant Access Seeker):~~

- ~~(iii) \_\_\_\_\_ the Access Seeker:~~
  - ~~(A) \_\_\_\_\_ agrees to provide funding to Queensland Rail on terms and conditions in a funding agreement agreed in accordance with **clause 1.4.3**;~~
  - ~~(B) \_\_\_\_\_ satisfies Queensland Rail (acting reasonably) that it will provide that funding; and~~
  - ~~(C) \_\_\_\_\_ agrees to provided a bank guarantee in support of its commitments under the Funding Agreement as~~

~~agreed by Queensland Rail and the Access Seeker unless this requirement is waived, or another form of security is accepted, by Queensland Rail (acting reasonably);~~

~~Queensland Rail bears no Extension Costs in relation to Extending the Network that it has not elected to fund;~~

~~(iv)(c)~~ The Extension must satisfy the following conditions (**Extension Conditions**):

~~(v)(i)~~ the Access ~~FunderSeeker~~ or Queensland Rail has obtained, or is reasonably likely to obtain, all necessary Authorisations reasonably required to Extend the Network;

~~(vi)(ii)~~ the Access ~~FunderSeeker~~ or Queensland Rail has acquired or procured, or is reasonably likely to acquire or procure, all of the rights and interests in land that, in Queensland Rail's opinion (acting reasonably), are reasonably required to construct, own, operate and manage the Extension, (on terms satisfactory to Queensland Rail (acting reasonably)) including, for example, the inclusion of additional land into Queensland Rail's land tenure arrangements with the State relating to the Network;

~~(vii)(iii)~~ in Queensland Rail's opinion (acting reasonably), the Extension (including constructing the Extension):

- (A) is technically feasible;
- (B) is consistent with the safe and reliable provision of Access and operation of the Network;
- (C) does not impact on the safety of any person maintaining, operating or using the Network;
- (D) does not adversely affect existing Access Rights;
- (E) complies with the engineering, operational and other requirements of Queensland Rail (acting reasonably); and

~~(F) — protects Queensland Rail's legitimate business interests;~~

~~(viii)(iv)~~ Access Agreements have been executed with Queensland Rail for the Additional Capacity that is expected to be created by the Extension on terms and conditions consistent with this Undertaking unless otherwise agreed;

~~(ix)(v)~~ those Access Agreements are or have become unconditional in all material respects except for conditions relating to Extending the Network which cannot be satisfied until the Network has been Extended; and

~~(x)(vi) subject to **clause 1.4.3**, all construction, funding, operational and other material arrangements reasonably required for the Extension (including the matters referred to above) have been entered into by each relevant Access Seeker and Queensland Rail and are or have become unconditional in all material respects except for conditions relating to Extending the Network which cannot be satisfied until the Network has been Extended. the Access Funder and Queensland Rail have executed construction, funding, operational, and other material arrangements reasonably required for the Extension (including the matters referred to above) and are unconditional in all material respects except for conditions relating to the Extension which cannot be satisfied until the Network has been Extended.~~

- ~~(c) — It is acknowledged that an Access Seeker may fund the Extension Costs for an Extension (including any studies or investigations such as a Concept Study, Pre Feasibility Study or Feasibility Study for the Extension) by executing a Funding Agreement with Queensland Rail in accordance with this Undertaking. For clarity, there is no requirement that there be only a single Funding Agreement per Access Seeker per Extension — for example, an Access Seeker may enter into a Funding Agreement for a Concept Study but the parties may then make a separate decisions about whether a funding agreement is needed for a Pre-feasibility Study, for a Feasibility Study or for the Extension itself.~~
- ~~(d) — Where an Extension is required for the grant of Access Rights to an Access Seeker, the Access Agreement and, if applicable, Funding Agreement may include obligations requiring Queensland Rail to Extend the Network in accordance with the terms of those agreements.~~
- ~~(e) — Where **clause 1.4.2(b)** applies, Queensland Rail and each relevant Access Seeker must use reasonable endeavours and assist each other to ensure that the requirements set out in **clause 1.4.2(b)** are satisfied. Without limiting the foregoing, Queensland Rail will apply for any Authorisation referred to in **clause 1.4.2(b)(v)** and for land tenure or rights referred to in **clause 1.4.2(b)(vi)** where Queensland Rail is the only party who may, or is the most appropriate party to, apply for same.~~

~~An Access Seeker must fund all costs of Queensland Rail assisting to ensure that the requirements set out in **clause 1.4.2(b)** are satisfied. For clarity, unless Queensland Rail agrees otherwise, Queensland Rail has no obligation to satisfying or assist in satisfying the requirements set out in **clause 1.4.2(b)** if it is required to incur or pay any costs in order to do so.~~

- (d) Queensland Rail and an Access Funder must use reasonable endeavours and act promptly to assist each other such that the Extension complies with the Extension Conditions.
- (e) Subject to a Funding Agreement being executed in accordance with **clause 1.4.3**, Queensland Rail will:
  - (i) provide all project assistance that is reasonably required by an Access Funder to develop an Extension to comply with **clause 1.4.2(c)** at the required study standard;
  - (ii) apply for any Authorisation referred to in **clause 1.4.2(c)(i)** and land tenure or rights referred to in **clause 1.4.2(c)(ii)** where Queensland Rail is the most appropriate party to do so;
  - (iii) construct, own and commission the Extension that complies with **clause 1.4.1(b)**;
- (f) If an Access Funder (acting reasonably) considers Queensland Rail is not undertaking, or is unnecessarily delaying, the provision of assistance under **clause 1.4.2(d)** or **1.4.2(e)**, then the Access Funder may refer the matter to the QCA under **clause 6.1.4** as a dispute. Nothing in this clause limits **clause 6.1**.
- (g) For clarity, unless Queensland Rail agrees otherwise, Queensland Rail has no obligation to assist in satisfying the requirements set out in **clause 1.4.2** if it is required to incur or pay any Extension Costs in order to do so.

~~(f)~~

### **1.4.3 Funding Agreements**

- (a) The intent of a Funding Agreement is to have a workable, bankable and credible mechanism for Access ~~Funder~~Seekers to fund Extensions where Queensland Rail elects not to do so.
- (b) Without limitation to ~~clauses~~ **1.4.2**, a Funding Agreement must, unless otherwise agreed by Queensland Rail and the relevant Access ~~Funder~~Seeker:
  - (i) ~~be consistent with this Undertaking including;~~
    - ~~(i)(A) the Extension Access Principles in **Schedule I** (provided however that if there is any conflict between the terms of **clause 1.4** and the terms of **Schedule I**, the terms of this **clause 1.4** will be paramount);~~
  - (ii) result in the transaction being structured in a reasonable way for all parties;
  - ~~(iii) ensure Queensland Rail's legitimate business interests are protected;~~

- ~~(iv)(iii)~~ not result in Queensland Rail bearing some or all of the relevant Extension Costs;
- ~~(iv)~~ require Queensland Rail to ~~use reasonable endeavours to ensure provide~~ that an Extension is:
  - ~~(A)~~ scoped and studied in accordance with Prudent Practices;
  - ~~(B)~~ constructed efficiently and is consistent with Queensland Rail's obligations in **Schedule E**; and
  - ~~(v)(C)~~ operated and managed by Queensland Rail in a manner that is consistent with Queensland Rail's obligations in relation to the operation and management of the Network under this Undertaking.
  - ~~(A)~~ ~~constructed efficiently and in accordance with Prudent Practices taking into account all of the relevant circumstances (including safety and construction requirements of Queensland Rail);~~
  - ~~(B)~~ ~~operated and managed by Queensland Rail in a manner that is consistent with Queensland Rail's obligations in relation to the operation and management of the Network under this Undertaking; and~~
- ~~(vi)~~ without limiting ~~clauses 1.4.3(b)(i) to (v)~~, contain:
  - ~~(A)~~ ~~a methodology so that an Access Seeker funding the relevant Extension Costs receives, over the economic life of the relevant asset, an amount equal to that component of Access Charges received by Queensland Rail that relates to a return on and of the relevant Extension Costs to the extent funded by the Access Seeker—to the extent that it is lawful to do so;~~
  - ~~(B)~~ ~~provisions which enable an independent auditor to audit compliance with the methodology referred to in **clause 1.4.3(b)(vi)(A)**, from time to time, as reasonably required by the relevant Access Seeker over the economic life of the relevant asset;~~
  - ~~(C)~~ ~~to the extent that Queensland Rail has not funded the Extension Costs for an Extension, provisions requiring Queensland Rail, if Queensland Rail receives a monetary tax benefit (in relation to the depreciation of that Extension because it is the owner), to pass through the amount of that monetary tax benefit to that Access Seeker~~

~~(provided that where Queensland Rail has partially funded the Extension that pass through is pro-rated accordingly);~~

~~(D) — subject to **clause 1.4.9**, provisions allowing the Access Seeker to require Queensland Rail to seek pre-approval from the QCA for inclusion of the anticipated Extension Costs in the relevant Regulatory Asset Base in accordance with **schedule E** as a precondition to funding; and~~

~~(E) — reasonable provisions including in relation to procurement, project management, project delivery, variations, commissioning, completion, inspection and audit and dispute resolution.~~

~~(c) A Funding Agreement may include requirements for the funding Access Seeker to pay additional fees or amounts for costs to Queensland Rail in relation to the relevant Extension for, without limitation, any additional risks or costs assumed or incurred by Queensland Rail which Queensland Rail would not have assumed or incurred but for the Extension. However, Queensland Rail must act reasonably in determining or calculating, and must provide justification for, any additional risks or costs.~~

#### **1.4.4 Construction, ownership, operation and management of Extensions**

Unless otherwise agreed by Queensland Rail, an Extension which is funded by an Access Funder entity other than Queensland Rail must only be designed, constructed, owned, operated and managed by Queensland Rail in accordance with this Undertaking and the relevant Funding Agreement and Access Agreement.

#### **1.4.5 Funding Agreement Register**

- (a) Queensland Rail will maintain a register of Funding Agreements (**Funding Agreement Register**).
- (b) On request by the QCA, Queensland Rail must provide a copy of the Funding Agreement Register and all executed Funding Agreements to the QCA including for the purposes of resolving a Dispute under **clause 6.1**.

#### ~~**1.4.6 — Master planning and extension coordination**~~

~~(a) — Queensland Rail will use reasonable endeavours to consult with Access Holders and Access Seekers (and, if applicable, their Customers) as relevant, from to time, in relation to the planning for and coordination of Extensions.~~

~~(b) — To the extent that Queensland Rail has a plan or strategy that has been approved by its board or chief executive officer that identifies feasible investment options for increasing Capacity for a Regional~~

~~Network and that evaluates those options from a total cost, risk and timing perspective (even if indicatively) Queensland Rail will:~~

- ~~(i) make that plan or strategy available to Access Holders and Access Seekers (and, if applicable, their Customers) on its website; and~~
  - ~~(ii) consider any suggestions or other feedback that it receives in respect of that plan or strategy.~~
- (c) ~~A plan or strategy referred to under **clause 1.4.6(b)** is non-binding and indicative only and does not affect Queensland Rail's or any other person's compliance with the terms of this Undertaking.~~

#### ~~1.4.7 Project initiation and process~~

- ~~(a) An Access Seeker may:~~
- ~~(i) identify a demand for Access Rights that requires Additional Capacity; and~~
  - ~~(ii) based on that demand, request Queensland Rail to commence a study process to clarify the scope, standard and cost of an Extension for that Additional Capacity.~~
- ~~(b) Unless otherwise agreed by the Access Seeker and Queensland Rail, the study process will be comprised of:~~
- ~~(i) a Concept Study;~~
  - ~~(ii) a Pre-feasibility Study; and~~
  - ~~(iii) a Feasibility Study,~~
- ~~undertaken by Queensland Rail.~~
- ~~(c) If Queensland Rail elects not to fund all or part of any study comprised in a study process:~~
- ~~(i) the relevant Access Seeker will have the right to fund that study; and~~
  - ~~(ii) Queensland Rail will undertake that study subject to the Access Seeker entering into a Funding Agreement as set out in **clause 1.4** in relation to that study.~~

~~Queensland Rail may exercise its election under this **clause 1.4.7(c)** prior to commencing each study comprised in the study process.~~

- ~~(d) Without limitation to **clauses 1.4.8, 1.4.9 and 2.10**, or Queensland Rail's discretion to fund all or part of the cost of a study comprised in a study process, Queensland Rail may elect to fund that cost subject to the relevant Access Seeker entering into an agreement to reimburse to Queensland Rail the costs incurred by Queensland Rail in respect of funding the study in circumstances where an Access Agreement is not executed.~~

- ~~(e) If either Queensland Rail or the relevant Access Seeker considers that the study process should not continue, then the parties will seek to agree whether the study process should continue but if the parties cannot agree then the study process will continue subject to the relevant studies being funded.~~
- ~~(f) If an Access Seeker (acting reasonably) considers Queensland Rail is not undertaking, or is unnecessarily delaying, a relevant study as part of the study process, then the Access Seeker may refer the matter to the QCA under **clause 6.1.4** as a dispute.~~

#### **1.4.8 Study funding principles**

- ~~(a) Queensland Rail is not obliged to fund the cost of any study as part of a study process for an Extension.~~
- ~~(b) Efficient study funding costs relating to a study or investigation (including a Concept Study, Pre-feasibility Study or Feasibility Study) relating to an Access Seeker request for Access:
  - ~~(i) will be capitalised into the cost of the proposed Extension for the development of Access Charges and the calculation of the relevant methodology required pursuant to **clause 1.4.3(b)(vi)(A)**; and~~
  - ~~(ii)(i) included in the relevant Regulatory Asset Base whether or not the proposed Extension proceeds, where the Access Seeker's Train Services are to have, or would have had, Access Charges set by reference to a Reference Tariff.~~~~

#### **1.4.91.4.6 Extension Pre-approval for inclusion in a Regulatory Asset Base**

- (a) Where:
  - (i) an Extension has been progressed through the full study process referred to in **clause 1.4.2(a)(ii)1.4.7(b)** and there is a completed Feasibility Study; and
  - (ii) the Access Seeker-Funder who is proposing to enter into a Funding Agreement for the Extension (acting reasonably) requests Queensland Rail to do so,

Queensland Rail will seek the QCA's pre-approval of the scope, standard and cost of a proposed Extension for inclusion in the relevant Regulatory Asset Base in accordance with **schedule EEE** prior to the execution of a Funding Agreement.

- (b) **Clause 1.4.6(a)1.4.6(a)1.4.9(a)** does not restrict or otherwise limit Queensland Rail's ability to seek pre-approval of the cost of a proposed Extension in accordance with **schedule EEE**.

#### **1.4.101.4.7 Disputes**

~~For clarity, a~~Any dispute between an Access ~~Seeker~~Funder and Queensland Rail in relation to this **clause 1.4** (including in relation to the **schedule EEE** or to the negotiation of a Funding Agreement) is subject to the dispute resolution process under **clause 6.1**.

### **1.5 Master planning and extension coordination**

- ~~(a)~~ This **clause 1.5** does not apply in relation to the Metropolitan Network.
- ~~(b)~~ Queensland Rail will prepare a Regional Network Master Plan for each Regional Network in the Network, being at the Approval Date the West Moreton Network, the Mt Isa Network and the North-Coast Network, within twelve (12) months of the Approval Date.
- ~~(c)~~ A Regional Network Master Plan should identify Queensland Rail's asset management strategy for the regulatory period and identify Extension options that may be required over the subsequent 10 years. A Regional Network Master Plan should include information on the following categories:
  - ~~(i)~~ operating capacity of the Regional Network and any relevant Regional Network operating assumptions;
  - ~~(ii)~~ asset management plans, including sustaining capital expenditure, to maintain the operational integrity of the Regional Network;
  - ~~(iii)~~ aggregate demand assessment for the next 10 years;
  - ~~(iv)~~ Rail Infrastructure Operations that may be required to meet aggregate demand; and
  - ~~(v)~~ identify any asset management, supply chain and technological innovation alternatives available to increase Available Capacity whilst keeping capital investment to a minimum.
- ~~(d)~~ Queensland Rail will establish a Regional Network Capacity Group and involve the Regional Network Capacity Group in the development of the Regional Network Master Plan for each Regional Network. A Regional Network Capacity Group will comprise:
  - ~~(i)~~ Access Holders that hold Access Rights for Train Services within the relevant Regional Network;
  - ~~(ii)~~ Access Seekers that are seeking Access Rights for Train Services along that Regional Network; and
  - ~~(iii)~~ Customers of Access Holders within the relevant Regional Network, (if relevant).

- (e) Each Regional Network Capacity Group is to jointly have access to Queensland Rail's Capacity Analysis model via one appointed external consultant (at the Regional Network Capacity Group's cost) to undertake a peer review of the model and the model's output.
- (f) Queensland Rail will run a reasonable range of scenarios for consideration by the Regional Network Capacity Group. Capacity modelling is to be undertaken on the basis of initial reasonable agreement as to reasonable model parameters and reasonable sensitivity analysis to be conducted on these modelling parameters, with any dispute on model parameters being referred to the QCA for resolution.
- (g) Queensland Rail's process to develop each Regional Network Master Plan will comprise the following steps:
  - (i) within 3 months of the Approval Date, Queensland Rail will convene a Regional Network Planning Forum and provide an opportunity for each Regional Network Capacity Group to
    - (A) identify their demand expectations over the subsequent 5-10 years; and
    - (B) raise any issues or concerns they want addressed in the Regional Network Master Plan;
  - (ii) within 9 months of the Approval Date, Queensland Rail will:
    - (A) publish a draft Regional Network Master Plan for each Regional Network on Queensland Rail's website and invite all stakeholders to comment on the draft Regional Network Master Plan; and
    - (B) convene a Regional Network Planning Forum and provide an opportunity for the Regional Network Capacity Group to raise any issues or concerns with the draft Regional Network Master Plan;
  - (iii) consider the views submitted by stakeholders and the Regional Network Capacity Group in good faith and take those views into account in finalising each Regional Network Master Plan;
  - (iv) within 12 months of the Approval Date, release the Regional Network Master Plans and include a public link to each final Regional Network Master Plan on Queensland Rail's website.
- (h) If there is a change in demand in a Regional Network Master Plan such that there is a 10% increase to the forecast in the relevant aggregate demand assessment within the Term of the Undertaking, Queensland Rail must notify the relevant Regional Network Capacity Group, including each Access Seeker and Access Holder, as soon as

it becomes aware of the increase. The relevant Regional Network Capacity Group or an individual Access Holder or Access Seeker, may require, and Queensland Rail must complete, an updated Regional Network Master Plan within 6 months of the notice from the Regional Network Capacity Group or Access Seeker or Access Holder (as the case may be).

- (i) Queensland Rail may require the Regional Network Capacity Group or the Access Holder or Access Seeker seeking an update to the Regional Network Master Plan to fund Queensland Rail's Efficient Costs incurred in updating the Regional Network Master Plan.

### **1.5.2 Rail Infrastructure Operations project initiation and process**

- (a) A Regional Network Capacity Group, an Access Seeker or an Access Holder may:
  - (i) identify demand for Rail Infrastructure Operations; and
  - (ii) based on that demand, request Queensland Rail to commence a study process to clarify the scope, standard and cost of an Extension for that Additional Capacity.
- (b) If Queensland Rail elects not to fund all or part of any study comprised in a study process that has been requested by the Regional Network Capacity Group, an Access Seeker or an Access Holder, then:
  - (i) The Regional Network Capacity Group, an Access Seeker or an Access Holder will have the right to fund that study as an Access Funder; and
  - (ii) Queensland Rail will undertake that study subject to an Access Funder entering into a Funding Agreement in relation to that study in accordance with **clause 1.4**.
- (c) If either Queensland Rail or the relevant Regional Network Capacity Group considers that a study process under this **clause 1.5** should be discontinued then the parties (acting reasonably) will seek to agree whether the study process should continue but if the parties cannot agree then the study process will continue subject to the relevant studies being funded.

## Part 2 Negotiation process

### 2.1 Preparing and submitting an Access Application

#### 2.1.1 Access Applications

- (a) A request for Access Rights must be submitted to Queensland Rail in the form of an Access Application.
- (b) Queensland Rail will publish on its website the application forms for Access Applications (which may identify different requirements for different types of Train Services. However the information requirements must be in accordance with this Undertaking).
- (c) An Access Seeker must, when submitting an Access Application, unconditionally and irrevocably agree to comply with the requirements, obligations and processes in this Undertaking relating to it or its Access Application and if the Access Seeker does not do so then Queensland Rail may refuse to accept the Access Application.

#### 2.1.2 Preliminary steps

- (a) A prospective Access Seeker may request initial meetings with Queensland Rail, prior to submitting an Access Application, to discuss the proposed Access Application and to clarify any matters relating to the negotiation process including any application requirements under **schedule BBB**.
- (b) A prospective Access Seeker may give a written request to Queensland Rail for relevant Capacity Information and Queensland Rail will make available that Capacity Information within 10 Business Days after receiving that request.
- (c) Queensland Rail will:
  - (i) make the Preliminary Information available to Access Seekers on its website; and
  - (ii) keep the Preliminary Information to be made available to Access Seekers current and accurate.

### 2.2 Confidentiality

#### 2.2.1 Obligation to keep Confidential Information confidential

- (a) Subject to **clause 2.2.1(b)**, Queensland Rail and each Access Seeker (by submitting an Access Application) acknowledge, as a Recipient, that Confidential Information disclosed to it must:
  - (i) be treated as and kept confidential;

- (ii) only be used for the purpose for which it was disclosed;
  - (iii) be treated as the property of the Disclosing Party; and
  - (iv) subject to **clause 2.2.2(a)**, only be disclosed in accordance with this Undertaking.
- (b) A Recipient of Confidential Information is not required to comply with **clause 2.2.1(a)** in relation to a disclosure or use of Confidential Information to the extent that:
- (i) the Disclosing Party has given its written consent (which must not be unreasonably withheld) to that disclosure or use; or
  - (ii) another Confidentiality Exception applies to that disclosure or use.

## **2.2.2 Requirement for confidentiality agreement**

- (a) Queensland Rail or the relevant Access Seeker may require the other to enter into a confidentiality agreement and, if so, the parties must act reasonably and promptly to negotiate and execute such an agreement which shall govern the confidentiality obligations as between those parties.
- (b) Neither Queensland Rail nor an Access Seeker is obliged to disclose Confidential Information to the other unless a confidentiality agreement on terms satisfactory to it (acting reasonably) has been executed (for clarity this provision does not apply where Queensland Rail or an Access Seeker is required to disclose information under the QCA Act).

## ~~2.2.3 Ring fencing arrangements~~

~~Queensland Rail does not presently have interests in markets upstream or downstream from the Below Rail Services that are in competition with third parties in those markets and there is no expectation that it is likely to do so during the Term. However, if such interests arise during the Term, then Queensland Rail will inform the QCA and, if requested by the QCA, prepare and submit to the QCA a draft amending access undertaking in accordance with the QCA Act setting out its ring fencing obligations.~~

## **2.3 Acknowledgment of an Access Application**

### **2.3.1 Requests for additional information or clarification**

Queensland Rail may (acting reasonably) require the Access Seeker to provide additional or clarified information for the purpose of preparing an Indicative Access Proposal. Queensland Rail will notify the Access Seeker of any such requirement within five Business Days after receiving the Access Application.

### **2.3.2 Acknowledging Access Applications**

- (a) Within five Business Days after the later of the receipt of:

- (i) an Access Application; or
- (ii) the additional or clarified information required under **clause 2.3.1** in respect of that Access Application,

Queensland Rail will, subject to **clause 2.8**, give the Access Seeker a written acknowledgement of receipt of the Access Application.

~~(b) — Where Queensland Rail considers that, due to:~~

- ~~(i) — the complexity of the Access Application; or~~
- ~~(ii) — other extenuating circumstances,~~

~~it would not be reasonable to provide an Indicative Access Proposal within 20 Business Days after acknowledging receipt of the Access Application under **clause 2.3.2(a)**, the written acknowledgement given may state:~~

- ~~(iii) — that the Indicative Access Proposal will not be provided within 20 Business Days after the giving of the acknowledgement and the reasons for this; and~~
- ~~(iv) — the estimated time by which Queensland Rail will provide the Indicative Access Proposal.~~

~~(c) — If the Access Seeker considers that Queensland Rail's estimated time under **clause 2.3.2(b)(iv)** is excessive, then (despite **clause 6.1**):~~

- ~~(i) — the Access Seeker may give an access dispute notice (as defined in the QCA Act) to the QCA; and~~
- ~~(ii) — the Dispute will be resolved in accordance with Division 5, Part 5 of the QCA Act.~~

~~(d) — Where an access dispute notice has been given under **clause 2.3.2(c)** and the QCA makes an access determination in respect of the dispute:~~

- ~~(i) — accepting Queensland Rail's estimate, the acknowledgement given under **clause 2.3.2(a)** continues to apply; or~~
- ~~(ii)(iii) — not accepting Queensland Rail's estimate, the acknowledgement given under **clause 2.3.2(a)** is taken to be amended to be consistent with the QCA's access determination.~~

## 2.4 Provision of an Indicative Access Proposal

### 2.4.1 Time period for provision of Indicative Access Proposal

Subject to **clause 2.8** and **clause 2.5.3**, Queensland Rail will use reasonable endeavours to provide an Indicative Access Proposal to the Access Seeker ~~by the later of: within 20 Business Days after giving the acknowledgment under **clause 2.3.2.**~~

- ~~(a) 20 Business Days after giving the acknowledgment under clause 2.3.2; or~~
- ~~(b) the estimated time stated in the acknowledgement in accordance with clause 2.3.2(b) subject to the outcome of any dispute under clause 2.3.2(c).~~

## 2.4.2 Inclusions in Indicative Access Proposal

The Indicative Access Proposal will, amongst other things, outline:

- (a) subject to clause 2.7.2(f)(ii), the relevant Rolling Stock, Train Configuration and operating characteristics;
- (b) the results of an indicative Capacity Analysis including (if applicable) a notice advising that insufficient Capacity exists to accommodate the Access Application without an Extension;
- (c) whether any other Access Seekers have requested Access Rights which, if provided, would limit Queensland Rail's ability to grant Access Rights in accordance with the Indicative Access Proposal and whether a queue has formed; and
- ~~(d) provide an initial estimate of the Access Charges for the requested Access Rights (including a methodology for calculating Access Charges) (including an initial estimate of any applicable rates or other inputs for formulae) including where clause 3.3(c)3.3(e)3.3(b) applies details of how that clause has been applied in calculating the initial estimate; and-~~
- ~~(e) if a Reference Tariff does not apply to the requested Access Rights:~~
  - ~~(i) the cost of providing the Access, including the capital, operating and maintenance costs, consistent with s101(2)(b) of the QCA Act; and~~
  - ~~(d)(ii) asset value including the valuation methodology, consistent with s101(2)(c) of the QCA Act.~~

## 2.4.3 Indicative nature

An Indicative Access Proposal is non-binding and, unless it contains express provisions to the contrary, contains arrangements that are only indicative or preliminary in nature. An Indicative Access Proposal does not oblige Queensland Rail to provide Access in accordance with specific terms and conditions (including the methodology for calculating Access Charges or estimated rates and other inputs for formulae) set out in it.

## 2.5 Notification of intent to negotiate

### 2.5.1 Access Seeker to give notice of intent to negotiate

If an Access Seeker intends to proceed with its Access Application on the basis of the relevant Indicative Access Proposal, it must, subject to **clause 2.5.2**,

give Queensland Rail written notice of its intention to do so as soon as reasonably practicable after receiving the Indicative Access Proposal.

### 2.5.2 Consequence of late notification of intent

- (a) Subject to clause 2.5.3, if an Access Seeker gives the notice referred to in **clause 2.5.1** to Queensland Rail more than 20 Business Days after being given the Indicative Access Proposal, Queensland Rail may review the Indicative Access Proposal and either:
- (i) give the Access Seeker a revised Indicative Access Proposal; or
  - (ii) proceed on the basis of the existing Indicative Access Proposal.
- (b) If Queensland Rail gives a revised Indicative Access Proposal to an Access Seeker under **clause 2.5.2(a)**, then:
- (i) the process in this **Part 2** recommences as though the revised Indicative Access Proposal was given to the Access Seeker under **clause 2.4**; and
  - (ii) the Access Seeker must comply with this **clause 2.5** in relation to that revised Indicative Access Proposal.
- (c) If an Access Seeker has not given the notice referred to in **clause 2.5.1** within three months after it was given an Indicative Access Proposal, then the Access Seeker is taken to have withdrawn its Access Application.

### 2.5.3 Extension of time – IAP and ITN

Queensland Rail may extend the time for providing an Indicative Access Proposal under **clause 2.4.1** and an Access Seeker may extend the time for giving a notice of intention to proceed under **clause 2.5.1** respectively if:

- (a) the party seeking the extension gives reasonable grounds for the extension to the other party prior to the date otherwise required under **clause 2.4.1** or **2.5.1** (as the case may be); and
- ~~(b)~~ the other party agrees to the extension, such agreement not to be unreasonably withheld.

## 2.6 Competing Access Applications

- (a) If there are Competing Access Seekers and:
- (i) one of those Competing Access Seekers is a Customer Access Seeker, then:
    - (A) this Undertaking and Queensland Rail will treat that Customer Access Seeker as the sole Access Seeker as between those Competing Access Seekers; and

- (B) Queensland Rail must negotiate solely with that Customer Access Seeker as between those Competing Access Seekers; or
- (ii) ~~clause 2.6(a)(i)(A) does not apply if a Competing Access Seeker is nominated in writing by the Customer as the Customer's preferred Access Seeker~~, then:
  - (A) this Undertaking and Queensland Rail will treat the Competing Access Seeker nominated in writing by the Customer to Queensland Rail as the sole Access Seeker as between those Competing Access Seekers; and
  - (B) Queensland Rail must negotiate solely with that nominated Access Seeker as between those Competing Access Seekers.
- (b) Where there are Competing Access Seekers, Queensland Rail will disclose to the Customer the identity of the Competing Access Seekers.
- (c) Where:
  - (i) the Customer does not nominate a Competing Access Seeker under **clause 2.6(a)(ii)** ~~within a reasonable time (which need not be prior to Queensland Rail issuing an Indicative Access Proposal to each Competing Access Seeker)~~; and
  - (ii) ~~a each~~ Competing Access Seeker has given a notice of intention under **clause 2.5**; and
  - (iii) ~~each~~ Competing Access Seeker is either:
    - (A) currently engaged in negotiations with a Customer regarding a potential haulage agreement in respect of the Access Rights sought; or
    - (ii)(B) a party to an existing haulage agreement with the Customer in respect of the Access Rights being sought; then
  - (iii) Queensland Rail will commence negotiations with each Competing Access Seeker in accordance with Part 2 of this Undertaking and progress those negotiations to a stage where Queensland Rail has provided each Competing Access Seeker with an Access Charge for the Access Rights sought based on the operational information provided by the relevant Competing Access Seeker and both parties have accepted an Access Agreement consistent with this Undertaking and the terms of the Standard Access Agreement. However, an Access Agreement will be negotiated and executed with the Competing Access Seeker who

demonstrates to Queensland Rail's reasonable satisfaction that it does, or will in the immediate future, hold the contractual rights to provide the Train Service/s for the Customer for which Access Rights are sought, and that the Customer is agreeable to the execution of an Access Agreement with that Competing Access Seeker.

~~Queensland Rail may by notice to the Customer and Competing Access Seekers, suspend the negotiation process under this Part 2 for each Competing Access Seeker pending the Customer's nomination.~~

- ~~(d) — Where **clause 2.6(a)(ii)** applies and the Customer nominates a Competing Access Seeker prior to Queensland Rail preparing an Indicative Access Proposal for each Competing Access Seeker, Queensland Rail will prepare an Indicative Access Proposal only for the Competing Access Seeker nominated by the Customer.~~

## 2.7 Negotiation of an Access Agreement

### 2.7.1 The negotiation period

- (a) Subject to **clause 2.5.2**, if an Access Seeker gives Queensland Rail a notice under **clause 2.5.1**, then Queensland Rail and the Access Seeker will commence negotiations as soon as reasonably practicable to progress towards an Access Agreement.
- (b) If negotiations have commenced in accordance with **clause 2.7.1(a)**, the period for negotiations (**Negotiation Period**):
- (i) starts on the day Queensland Rail was given the notice under **clause 2.5.1** (subject to **clause 2.5.2(b)**); and
  - (ii) ends on the earlier of:
    - (A) execution of an Access Agreement by the parties in relation to the relevant Access Application;
    - (B) the Access Seeker notifying Queensland Rail that it no longer wishes to proceed with its Access Application (or in addition, for a Rolling Stock Operator who is an Access Seeker, the relevant Customer gives such a notification to Queensland Rail in respect of the relevant Access Right);
    - (C) the date nine months after the date on which the period for negotiations started, or such later date as agreed by the parties (acting reasonably);
    - (D) Queensland Rail giving the Access Seeker a Negotiation Cessation Notice; and
    - (E) the occurrence of any other event or circumstance where negotiations cease in accordance with this Undertaking.

- (c) Negotiations for Access cease at the end of the Negotiation Period and Queensland Rail is not obliged to continue negotiations with an Access Seeker after the Negotiation Period for the relevant Access Application has ceased.

### 2.7.2 Issues to be addressed in negotiations

- (a) During the Negotiation Period, Queensland Rail and the Access Seeker will negotiate, and endeavour to agree, the terms of an Access Agreement. In order to facilitate the negotiation process:
  - (i) ~~subject to clause 2.2.2(b),~~ Queensland Rail will provide to the Access Seeker:
    - (A) information that is reasonably required by the Access Seeker in accordance with section 101(1) of the QCA Act, provided such information is reasonably able to be provided by Queensland Rail and cannot be reasonably obtained from a source other than Queensland Rail; and
    - (B) information in accordance with Queensland Rail's obligation under section 101(2) of the QCA Act to the extent that it has not already been provided;  
~~relevant to the negotiations, provided that doing so will not breach a confidentiality obligation binding on Queensland Rail;~~
  - ~~(ii) if requested in writing by the Access Seeker, Queensland Rail will make available to the Access Seeker Capacity Information relevant to the Access Seeker's Access Application;~~
  - ~~(ii) if requested in writing by the Access Seeker, Queensland Rail will make available to the Access Seeker Capacity Information relevant to the Access Seeker's Access Application;~~
  - (iii) ~~subject to clause 2.7.2(f),~~ the Access Seeker must, in order for the impacts and requirements of the operations proposed by the Access Seeker to be analysed:
    - (A) prepare, and submit to Queensland Rail, a draft Operating Plan<sup>2</sup> prior to the parties undertaking the Interface Risk Assessment; and

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<sup>2</sup> Queensland Rail will use the Operating Plan to refine and finalise the Train Service Entitlement, the methodology, rates and other inputs for calculating Access Charges and other terms and conditions of the Access Agreement. The Operating Plan will also be used as a basis for any further or refined Capacity Analysis prepared by Queensland Rail.

- (B) finalise the Operating Plan while the Interface Risk Assessment is being undertaken and prior to the development of an IRMP;
- (iv) the parties (for the purposes of this clause 2.7.2(a)(iv), if the Access Seeker is an End User Access Seeker the relevant Nominated Rollingstock Operator will be the relevant Access Seeker party) must jointly:
  - (A) undertake an Interface Risk Assessment<sup>3</sup>; and
  - (B) after the Interface Risk Assessment is completed, develop an IRMP,

unless the parties agree (or if the Access Seeker is an End User Access Seeker, the End User Access Seeker and Queensland Rail agree) that those matters will be completed after the relevant Access Agreement has been executed in accordance with that Access Agreement;
- (v) the Access Seeker must (unless the Access Seeker is an End User Access Seeker and the obligations under this clause 2.7.2(a)(v) have or will be satisfied by the relevant Nominated Rollingstock Operator) commission a suitably qualified person, acceptable to Queensland Rail (acting reasonably), to prepare an environmental investigation and risk management assessment for the purposes of the Interface Risk Assessment and development of an IRMP;
- (vi) Queensland Rail will provide the Access Charge for the requested Access Rights including a methodology for calculating the Access Charges based on the pricing principles set out in Part 3 of this Undertaking including where clause 3.3(c) applies details of how clause 3.3(c) has been applied in calculating the Access Charge (including any applicable rates or other inputs for formulae);
- (vii) Queensland Rail will provide a Capacity Analysis to the Access Seeker;
- (viii) Queensland Rail will provide a detailed description of the relevant Train Service Entitlement and the initial timetable;

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<sup>3</sup> Queensland Rail will publish on its website indicative information, standards and requirements ~~that for~~ the Interface Risk Assessment and IRMP ~~must be consistent with~~. For example, Queensland Rail will make available a sample IRMP which specifies a list of safety and Rolling Stock 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 Rolling Stock issues. However, the IRMP developed and agreed by the parties may cover additional safety and/or Rolling Stock issues and associated controls depending on the circumstances of the particular operation.

- (ix) Subject to clause 2.7.2(f), the Access Seeker must demonstrate that the Rolling Stock and Train Configurations for which the Access Rights are applicable are consistent with the agreed Interface Standards incorporated in the IRMP; and
- ~~(x)~~ Queensland Rail will provide the other terms comprising the Access Agreement.
- ~~(b)~~ During the Negotiation Period, if Queensland Rail has given the Access Seeker a notice that there is insufficient Capacity pursuant to clause 2.4.2(b) Queensland Rail will make available, as soon as reasonably practicable to the Access Seeker:
  - ~~(i)~~ Capacity Information and Capacity Analysis relevant to the Access Seeker's Access Application;
  - ~~(ii)~~ all information, in addition to the Capacity Analysis and Capacity Information, that would be reasonably required by the Access Seeker, in accordance with sections 101(1) and 101(2) of the QCA Act, to make an informed decision on whether to proceed with the Access Application and the Funding Agreement;
  - ~~(iii)~~ written notice of whether Queensland Rail is willing to fund the Extension required to provide the Additional Capacity to accommodate the Access Application;
- ~~(b)(c)~~ If Queensland Rail advises the Access Seeker, in accordance with clause 2.7.2(b)(iii), that it is willing to fund the required Extension the Access Application negotiations will continue in accordance with this Part 2.
- ~~(e)(d)~~ If Queensland Rail advises the Access Seeker, in accordance with clause 2.7.2(b)(iii) that it is not willing to fund the required Extension and the Access Seeker subsequently advises Queensland Rail that the Access Seeker is willing to fund the required Extension, Queensland Rail and the Access Seeker will commence, concurrently with Access Application negotiations, negotiations on the terms of the Funding Agreement that is required to proceed with the Access Application in accordance with clause 1.4.
  - ~~(i)~~ During the Negotiation Period, Queensland Rail will, if relevant, also negotiate the terms of a separate arrangement with the Access Seeker for the connection of Private Infrastructure to the Network.
- ~~(e)~~ If the Access Seeker is a Renewal Access Seeker then the terms of the Access Agreement are to be negotiated generally in accordance with clause 2.7.2 except that if the Access Rights sought by a Renewal Access Seeker are for Access Rights for which no

Reference Tariff applies then relevant Access Charges are to be consistent with the renewal pricing principles as set out in **Part 3**.

(f) In negotiating an Access Agreement for the purposes of this **Part 2** (including for the purposes of determining a Train Service Entitlement during those negotiations) where the Access Seeker is an End User Access Seeker:

(i) Queensland Rail and an End User Access Seeker will seek to agree an assumed Operating Plan (which the End User Access Seeker may involve any relevant Train Operator in the preparation of); and

~~(d)~~(ii) if the End User Access Seeker does not provide required information regarding Rolling Stock and Rolling Stock Configuration for the End User Access Seeker's Train Services, Queensland Rail will assume a Reference Train Service in respect of the Rolling Stock and Rolling Stock Configurations for the End User Access Seeker's Train Services and such other above rail operational matters as are reasonably necessary (having regard to any existing standard manner of conducting Above Rail Services on the relevant parts of the Rail Infrastructure).

## 2.8 Cessation of negotiation process

### 2.8.1 Negotiation Cessation Notice

(a) Queensland Rail may, at any time, give a notice to an Access Seeker that it does not intend to enter into an Access Agreement with the Access Seeker pursuant to the relevant Access Application (**Negotiation Cessation Notice**) for any one or more of the following reasons:

(i) the Access Seeker fails to comply with all of the relevant provisions of this Undertaking, and Queensland Rail (acting reasonably) is of the opinion that such non-compliance is material;

(ii) Queensland Rail (acting reasonably) is of the opinion that:

(A) there is no reasonable likelihood of material compliance by the Access Seeker with the terms and conditions of an Access Agreement; or

(B) the Access Seeker has no genuine intention of obtaining, or has no reasonable likelihood of using, the Access Rights requested;

(iii) the requirements under **clause 2.8.2** for giving a notice have been satisfied;

- ~~(iv)~~ the Access Seeker has concurrent requests for Access ~~such that if any one of those requests for Access were granted then any one or more of the remainder would not be needed by the Access Seeker; or~~ which Queensland Rail reasonably believes to be duplicate requests such that if any one of those requests for Access were granted then the remainder of the concurrent requests would not be required by the Access Seeker (**Duplicate Requests**) and provided that:

  - ~~(A)~~ Queensland Rail has given the Access Seeker notice that it intends to cease negotiations because of the existence of Duplicate Requests and the reasons for this; and
  - ~~(iv)(B)~~ the Access Seeker has not responded to the notice within 10 Business Days (or such later date as agreed by Queensland Rail (such agreement not to be unreasonably withheld)) advising which of the Duplicate Requests the Access Seeker (acting reasonably) wants to proceed with (if any); or
- (v) the Access Seeker fails to comply with the dispute resolution process under **clause 6.1** (including any outcome of that dispute resolution process) in relation to the relevant Access Application.
- (b) Without limitation to **clause 2.8.1(a)(ii)(A)**, it will be reasonable for Queensland Rail to form the opinion that the circumstance in **clause 2.8.1(a)(ii)(A)** exists where, at any time, the Access Seeker does not comply with the requirements under **clause 2.8.3**.
- (c) In forming an opinion referred to in **clause 2.8.1(a)(ii)(B)**, Queensland Rail may, without limitation, consider any one or more of the following factors:

  - (i) whether the Access Seeker has secured, or is reasonably likely to secure:

    - (A) the rights required to enter and leave the Network (for example, rights to unload at its destination); and
    - (B) if applicable, a rail haulage agreement for the operation of Train Services referred to in its Access Application; and
  - ~~(ii)~~ the promptness of the Access Seeker in conducting its negotiations.
- ~~(#)(d)~~ For clarity, if an Access Seeker responds to Queensland Rail's notice given pursuant to **clause 2.8.1(a)(iv)(A)**, and informs Queensland Rail that it wants to proceed with one of the Duplicate Requests,

Queensland Rail can only give a Negotiation Cessation Notice in respect of the unwanted Duplicate Request.

## 2.8.2 Safety considerations

If:

- (a) in the opinion of Queensland Rail (acting reasonably), the use of any proposed Access Rights sought by an Access Seeker may adversely affect the safety of any persons using or intending to use a passenger Train Service;
- (b) Queensland Rail and the Access Seeker have discussed the matter in **clause 2.8.2(a)** and after those discussions Queensland Rail (acting reasonably) still considers that the circumstance in **clause 2.8.2(a)** continues to apply;
- (c) Queensland Rail (acting reasonably) does not consider that any measures can reasonably and practicably be implemented by Queensland Rail (in its capacity as either a Below Rail or Above Rail Services provider) or the Access Seeker to avoid, or mitigate to Queensland Rail's satisfaction (acting reasonably), those adverse affects effects; and
- (d) refusal to enter into an Access Agreement would be consistent with Queensland Rail acting in accordance with Prudent Practices,

then Queensland Rail may give a Negotiation Cessation Notice to the relevant Access Seeker.

## 2.8.3 Access Seekers must satisfy prudential requirements

- (a) An Access Seeker must at all times satisfy the following prudential requirements, namely:
  - (i) the Access Seeker must not be Insolvent;
  - (ii) the Access Seeker (and any Related Party of the Access Seeker) must not be, or have been at any time in the previous two years, in Material Default of:
    - (A) this Undertaking (or, if applicable, the 2008 Undertaking);
    - (B) any agreement with Queensland Rail; or
    - (C) any agreement under which access to Private Infrastructure has been provided to the Access Seeker or a Related Party of the Access Seeker; and
  - (iii) the Access Seeker must be able to demonstrate to Queensland Rail (acting reasonably) that it has the financial capacity to perform its obligations, and satisfy its liabilities, under an Access Agreement (including timely payment of Access Charges or other amounts and of insurance

premiums and deductibles under any required policies of insurance).

(b) Queensland Rail may, at any time, require an Access Seeker to (and, if so required, the Access Seeker must) demonstrate to Queensland Rail (acting reasonably), within a reasonable period of no more than ten Business Days, that the Access Seeker satisfies the prudential requirements set out in **clause 2.8.3(a)**.

(c) Queensland Rail and an Access Seeker may agree a different time frame within which an Access Seeker must satisfy the prudential requirements set out in **clause 2.8.3** if:

(i) the Access Seeker seeking the extension provides Queensland Rail with reasonable grounds for the proposed time frame prior to the time frame in **clause 2.8.3(b)** expiring; and

(b) Queensland Rail agrees to the proposed time frame (such agreement not to be unreasonably withheld).

## 2.9 Access Agreement

### 2.9.1 Access Rights granted under an Access Agreement

The granting of Access Rights occurs when Queensland Rail and the Access Seeker execute an Access Agreement and that Access Agreement is or becomes unconditional.

### 2.9.2 Mutually Exclusive Access Applications

- (a) Subject to **clause 2.9.2(b)**, this **clause 2.9.2** applies to the extent that:
- (i) two or more Access Seekers have submitted Access Applications for Access Rights relating to Available Capacity; and
  - (ii) it is not reasonably possible for Queensland Rail to fulfil, in whole, the request for Access Rights made under those Access Applications,
- (each a **Mutually Exclusive Access Application**).
- (b) Where the application of **clause 2.9.2(a)** involves Queensland Rail taking into account Competing Access Seekers for a traffic task and:
- (i) one of those Competing Access Seekers is a Customer Access Seeker:
    - (A) the Customer Access Seeker's Access Application will be used for the purpose of applying **clause 2.9.2(a)**; and

- (B) the other Competing Access Seekers will not have a position in any queue established under this **clause 2.9.2**;
- (ii) the relevant Customer has nominated one of the Competing Access Seekers under **clause 2.6(a)(ii)**:
  - (A) the nominated Competing Access Seeker's Access Application will be used for the purpose of applying **clause 2.9.2(a)**; and
  - (B) the other Competing Access Seekers will not have a position in any queue established under this **clause 2.9.2**; or
- (iii) the relevant Customer has not nominated one of the Competing Access Seekers under **clause 2.6(a)(ii)**:
  - (A) ~~the Competing Access Seeker's Access Application which requires the greatest allocation of Available Capacity will be used for the purpose of applying clause 2.9.2(a); and Queensland Rail will form a queue with the Competing Access Seekers as would normally be the case under this clause 2.9.2 except that the queue, insofar as it relates to those Competing Access Seekers, will be subject (in addition to clause 2.9.2(i)) to clause 2.6(c); and~~
  - (B) the Competing Access Seekers will collectively have the same position in any queue established under this **clause 2.9.2** pending ~~the a~~ relevant nomination under **clause 2.6(a)(ii)** ~~(if any)~~.
- (c) An Access Application may become a Mutually Exclusive Access Application at any time before an Access Agreement is executed in relation to that Access Application.
- (d) An Access Seeker will be notified as soon as reasonably practicable after Queensland Rail identifies that its Access Application has become a Mutually Exclusive Access Application and the extent to which it is a Mutually Exclusive Access Application.
- (e) Queensland Rail will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it ceases to be a Mutually Exclusive Access Application.
- (f) Where Queensland Rail has identified that there are Mutually Exclusive Access Applications, Queensland Rail will form a queue ~~to determine which Access Seeker will be allocated Access Rights~~ and will notify each Access Seeker in the queue of their position in that queue.

~~(g)~~ The order of a queue established under **clause 2.9.2(f)** will initially be based on the date on which Queensland Rail received each of the Mutually Exclusive Access Applications, so that the Access Application first received by Queensland Rail is first in the queue, and the Access Application received next by Queensland Rail is second in the queue, and so on.

~~(g)(h)~~ Subject to **clause 2.9.2(i)**, Access Rights relating to Available Capacity will be allocated to the first Access Seeker with whom Queensland Rail can negotiate and execute an acceptable Access Agreement. However, Queensland Rail will not allocate Access Rights relating to Available Capacity to an Access Seeker who is later in the queue unless each earlier Access Seeker's Access Application has ended in accordance with **clause 2.7.1(b)**. Queensland Rail 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.

~~(h)(i)~~ Queensland Rail may change the order of a queue where:

- (i) the Negotiation Period for an Access Application in the queue has ended in accordance with **clause 2.7.1(b)**;
- (ii) a Negotiation Cessation Notice has been given under **clause 2.8.1** relating to an Access Application in the queue;
- (iii) an Access Application is added to the queue;
- (iv) in Queensland Rail's opinion (acting reasonably), allocating Access in respect of an Access Application in the queue but not first in the queue is more favourable to Queensland Rail's legitimate business interests as a Below Rail Services provider as described in **clauses 2.9.2(j)** or **2.9.2(k)** (as the case may be); or
- (v) the change is required to comply with this Undertaking – for example, where **clause 2.9.2(b)(iii)** applies and the relevant Customer subsequently nominates one of the Competing Access Seekers under **clause 2.6(a)(ii)**.

~~(i)(i)~~ Subject to **clause 2.9.2(k)**, For the purpose of **clause 2.9.2(i)(iv)**~~2.9.2(i)(iv)~~**2.9.2(h)(iv)**, Queensland Rail ~~may will~~ make such a decision based on the present value of ~~future returns to Queensland~~contribution to Common Costs Rail after reasonably considering ~~all associated risks but may also take into account other relevant~~ the following factors ~~factors~~ including:

~~(i)~~ the relative time likely to be required to finalise an Access Agreement;

~~(ii)(i)~~ the ability of the Access Seeker to satisfy, and to continue (after execution of an Access Agreement) to satisfy, the prudential requirements set out in **clause 2.8.3(a)**; and

(ii) any other effects that entering into the Access Agreement may have on ~~Queensland Rail's financial and risk position~~ contribution to Common Costs including any contribution from other sources of revenue that would reasonably be expected to reduce or be eliminated as a consequence of Queensland Rail not providing Access for that Train Service (for example, Access Charges from another Train Service or combination of Train Services, or Transport Service Contract Payments).

~~(iii)~~(k) For the purposes of **clause 2.9.2(i)(iv)**, where a queue contains Mutually Exclusive Access Applications for coal carrying Train Services from different mines within the West Moreton Network, as between those Access Applications, Queensland Rail will place a later Access Application seeking an Access Agreement of at least 10 years in the queue ahead of an earlier Access Application seeking a term less than 10 years if the Access Seeker for the later Access Application is ready and willing to execute an Access Agreement that is consistent with this Undertaking and the Standard Access Agreement.

~~(j)~~(l) If Queensland Rail changes the order of a queue, it will notify each Access Seeker in the queue of any change to their position in the queue and the reason for that change.

~~(k)~~(m) An Access Seeker may only assign its position in a queue to another person where:

- (i) both of the following are satisfied:
  - (A) that other person is either:
    - (1) that Access Seeker's Customer; or
    - (2) a Rolling Stock Operator; and
  - (B) the Access Seeker has entered into an agreement with that other person in relation to the provision of rail haulage services where those parties have agreed that the other person is to hold the relevant Access Rights; or
- (ii) that other person has acquired the whole of, or control over, the relevant assets of the Access Seeker for which the Access Rights are needed.

~~(l)~~(n) Where a dispute arises in respect of a change of a position in a queue, Queensland Rail will not:

- (i) implement that change; or
- (ii) execute an Access Agreement in relation to that queue (unless the resolution of the dispute would not alter the relevant Access Seeker's position in the queue),

until after, and in accordance with, the resolution of that dispute (including, if relevant, where the dispute is resolved by being withdrawn).

~~(o)~~ This **clause 2.9.2** (including the creation and application of any queue) is subject to **clause 2.9.3(b)** in relation to Renewal Access Seekers.

~~(p)~~ Where an Access Seeker's Access Application requires an Extension pursuant to **clause 1.4**, the queueing provisions (**clause 2.9.2**) will not apply to that Access Application insofar as it relates to the Capacity created by that Extension.

~~(m)(g)~~ Queensland Rail will expand the Capacity of the Network in order to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker where Queensland Rail is required to do so under **clause 1.4**.

### 2.9.3 Renewals

(a) Where an Access Seeker (who is not a Renewal Access Seeker) submits an Access Application for Access Rights concerning the Available Capacity that will arise when an existing Access Agreement expires, Queensland Rail will ~~use reasonable endeavours to~~ notify:

- (i) the Access Holder for that Access Agreement;
- (ii) that Access Holder's Customer (if any); and
- (iii) the relevant Renewal Access Seeker (if any),

of Queensland Rail's receipt of that Access Application, as soon as reasonably practicable after receiving it.

(b) Despite any other provision in this Undertaking to the contrary and subject to **clause 2.9.3(c)**, Queensland Rail ~~may~~will not execute an Access Agreement with the Access Seeker referred to in **clause 2.9.3(a)** until the earlier of:

(i) a Renewal Access Seeker fails to, or cannot, submit a relevant Renewal Application to Queensland Rail in respect of the relevant Renewal within the Renewal Timeframe; or

(ii) where a Renewal Application has been submitted within the Renewal Timeframe:

- (A) the negotiations with the Renewal Access Seeker have ended in accordance with ~~this~~ Undertaking clause 2.7.1(b) (subject to any extension of time agreed in accordance with **clause 2.7.1(b)(ii)(C)** (which will apply)); ~~or~~

~~(B) nine months after the later of:~~

~~(1) the date on which Queensland Rail gave the relevant notice under clause 2.9.3(a); and~~

~~(2) the date that is three years before the expiry of the relevant Access Agreement.~~

(c) **Clause 2.9.3(b)** only applies where:

- (i) the relevant existing Access Agreement concerns coal carrying Train Services or other bulk mineral carrying Train Services;
- (ii) the relevant Renewal Application is for a term of:
  - (A) at least the lesser of the period for which the Access Seeker referred to in **clause 2.9.3(a)** is seeking Access Rights and ten years; or
  - (B) the remaining life of the relevant mine as notified in writing to Queensland Rail by the Renewal Access Seeker (where it has no Customer) or otherwise the relevant Customer; and
- (iii) **clause 2.9.3(c)(ii)(B)** has not previously applied for any past Renewal Application in connection with the relevant Access Rights, unless Queensland Rail agrees otherwise.<sup>4</sup>

~~(d) Nothing in this clause 2.9.3 obliges Queensland Rail to enter into an Access Agreement with a Renewal Access Seeker or to do so on the same terms as the relevant existing Access Agreement for the relevant existing Access Rights.~~

~~(e) For the avoidance of doubt, when a Renewal Application is submitted the queuing provision (clause 2.9.2) does not apply.~~

~~(d)~~

#### 2.9.4 Development of **Standard Access** Agreements

~~(a) Unless Subject to clause 2.7.2(e), unless otherwise agreed between Queensland Rail and the Access Seeker, an Access Agreement must be consistent with:~~

~~(a)(i) this Undertaking; and~~

~~(ii) the terms of a the Standard Access Agreement applicable to the relevant type of Train Service.~~

~~(b) If an Access Seeker reasonably requests Queensland Rail to develop a standard funding agreement Queensland Rail will develop and~~

<sup>4</sup> Unless Queensland Rail agrees otherwise, **clause 2.9.3(b)** is only intended to operate once where a Renewal Application is for the remaining life of a mine. Any subsequent Renewal Application concerning the relevant Access Rights does not have the benefit of **clause 2.9.3(b)**. In those instances, the Renewal Access Seeker will be treated on the same basis as any other Access Seeker.

provide a standard funding agreement for the relevant stage of an Extension (or all stages if reasonably requested):

- (i) the terms of which should be consistent with the Extension Access Principles set out in **Schedule I** and the terms of **clause 1.4**, (provided that if there is any inconsistency between the terms of **Schedule I** and the terms of **clause 1.4**, the terms of **clause 1.4** will be paramount); and
- (ii) which Queensland Rail must develop within 3 months of a request in accordance with this **clause 2.9.4(b)**, or such longer period as agreed by the relevant parties acting reasonably.
- (c) Any dispute, in relation to this **clause 2.9.4** including about whether the requested standard funding agreement referred to in **clause 2.9.4** is required, or the terms of a proposed standard funding agreement, or time for providing a standard funding agreement may be referred to the QCA for determination in accordance with **clause 6.1.4**.
- ~~(b)~~(d) The terms of any Standard Funding Agreement that is developed in accordance with **clause 2.9.4(b)** may be relied on by Queensland Rail and Access Seekers to form the basis of their negotiations for a Funding Agreement in relation to that Access Seeker's Extension.

## **2.9.5 Execution of Access Agreements**

- (a) If:
  - (i) Queensland Rail offers an Access Agreement; and
  - (ii) Queensland Rail and the Access Seeker are ready and willing to execute the Access Agreement,then:
  - (iii) both Queensland Rail and the Access Seeker must use reasonable endeavours to execute the Access Agreement as soon as reasonably practicable provided that Queensland Rail is not required to execute the Access Agreement before the Access Seeker; and
  - (iv) the Access Seeker must execute (and return to Queensland Rail) that Access Agreement within 20 Business Days after receiving Queensland Rail's offer (or such longer period as agreed by Queensland Rail and the Access Seeker (each acting reasonably)).
- ~~(iv)~~(b) If an Access Seeker and Queensland Rail execute an Access Agreement that is unconditional in all material respects except for the conditions relating to a Funding Agreement and which cannot be satisfied until the Funding Agreement has been executed and the Network has been Extended, then Queensland Rail and the Access

Seeker must use reasonable endeavours to execute the Funding agreement as soon as reasonably practicable.

~~(b)(c)~~ If an Access Seeker does not execute (and return to Queensland Rail) the offered Access Agreement within the timeframe set out in **clause 2.9.5(a)(iv)**, then Queensland Rail's offer automatically lapses.

~~(e)(d)~~ Despite any other provision in this Undertaking, Queensland Rail may, but is not obliged to, grant Access Rights by agreeing to amend an existing Access Agreement.

## **2.9.6 Transfer of Access Rights**

An Access Holder may only assign, novate or otherwise transfer the Access Holder's interest in an Access Agreement to a third party in accordance with the terms of that Access Agreement ~~and with the prior written consent of Queensland Rail.~~

## ~~2.9.7 Tripartite Access Agreements~~

~~(a) If the Access Seeker's Customer is proposed to be party to the Access Agreement to be negotiated with the Access Seeker, then the Access Seeker's Customer must notify Queensland Rail, prior to the start of the relevant Negotiation Period that:~~

~~(i) a tripartite Access Agreement is required with the Access Seeker's Customer as a party; and~~

~~(ii) the Customer unconditionally and irrevocably agrees to comply with the requirements, obligations and processes in this Undertaking relating to it or the relevant Access Application.~~

~~(b) On and from the giving of a notice under **clause 2.9.7(a)**:~~

~~(i) the Standard Access Agreement will apply in its tripartite form;~~

~~(ii) unless the context requires otherwise, a reference to the Access Seeker will include a reference to the Access Seeker's Customer; and~~

~~(iii) the parties to any dispute in relation to the relevant Access Application will include Queensland Rail, the Access Seeker and the Customer,~~

~~for the purpose of this Undertaking.~~

## ~~2.10 Cost recovery where no Access Agreement~~

~~(a) Where:~~

~~(i) Queensland Rail:~~

~~(A) — rejects an Access Seeker’s request for Access or an Access Application; or~~

~~(B) — refuses to enter into an Access Agreement with an Access Seeker,~~

~~in accordance with this Undertaking; or~~

~~(ii) — the Negotiation Period applicable to an Access Seeker ends for a reason other than an Access Agreement being executed with the Access Seeker as referred to in **clause 2.7.1(b)(ii)(A)**;~~

~~the Access Seeker must, on request by Queensland Rail, pay and, if paid by Queensland Rail, reimburse, Queensland Rail its costs and expenses reasonably incurred by Queensland Rail in dealing with the Access Seeker’s request for Access including in connection with any negotiations with the Access Seeker.~~

~~(b) — Where an Access Seeker fails to pay or reimburse costs and expenses under **clause 2.10(a)**, Queensland Rail may:~~

~~(i) — refuse to accept a future request for Access from that person or a Related Party of that person or in respect of that person as another Access Seeker’s Customer, until those costs and expenses are paid or reimbursed in full; and~~

~~(ii)(i) — make any proposed Access Agreement for that person in relation to another current Access Application conditional on that person paying those costs and expenses within a prescribed time.~~

## Part 3 Pricing principles

### 3.1 Pricing objectives

#### 3.1.1 Revenue adequacy

Queensland Rail is entitled to earn revenue from providing Access, including from Access Charges and Transport Service Payments, that ~~is at least enough to:~~

- ~~(a) fully recover all Efficient Costs; and~~
- ~~(a) provide is sufficient to meet the efficient costs of providing Access (having provided for any adjustments determined by the QCA); including~~
- (b) a return ~~on the value of assets and~~ investment commensurate with the regulatory and commercial risks involved.

~~If Where~~ Queensland Rail ~~earn excess~~ revenue ~~in excess of this~~, then Queensland Rail may seek to reduce Transport Service Payments rather than Access Charges.

#### 3.1.2 Network utilisation

- (a) Queensland Rail may establish different Access Charges for Train Services serving different markets to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs.
- (b) If the Available Capacity is potentially insufficient to satisfy the requests for Access Rights of all current and likely Access Seekers, then:
  - (i) Queensland Rail may (consistent with the principles set out in **clauses 3.1 to 3.3**) determine the highest Access Charge for a Train Service that it is likely to achieve from the current or likely Access Seekers (**Maximum Access Charge**);
  - (ii) the Maximum Access Charge may be quoted to all Access Seekers in respect of the Available Capacity (including any Additional Capacity that Queensland Rail has agreed to provide), irrespective of:
    - (A) any Access Seeker's ability to contribute to the Common Costs; or
    - (B) the Access Charges payable under existing Access Agreements for similar Train Services; and
  - (iii) if Queensland Rail:

- (A) chooses to allocate Available Capacity to an Access Seeker for an Access Charge less than the Maximum Access Charge; and
- (B) another Access Seeker is willing to pay an Access Charge equal to the Maximum Access Charge,

then when determining a Ceiling Revenue Limit in accordance with **clause 3.2.43-2.43-2.3** for Train Services using that constrained section of the Network, the Access Charge for the Access Seeker is assumed to be the Maximum Access Charge.

## 3.2 Pricing limits

### **3.2.1 Definition of Pricing Limits**

In setting the methodology, rates and other inputs for calculating Access Charges for an Access Seeker's proposed Train Services, Queensland Rail 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 such that there is no Cross Subsidy between individual Train Services; and
- (ii) upper and lower limits for Access Charges in respect of combinations of Train Services, established at levels such that there is no Cross Subsidy between combinations of Train Services.

### **3.2.13.2.2 Applying a Ceiling Revenue Limit**

In setting the methodology, rates and other inputs for calculating Access Charges for an Access Seeker's proposed Train Services, Queensland Rail must do so such that, over the Evaluation Period, the Expected Access Revenue from any one of those Train Services and any combination of those Train Services does not exceed the Ceiling Revenue Limit or, where applicable, the Approved Ceiling Revenue Limit for that Train Service or combination of Train Services, as applicable.

### **3.2.23.2.3 Applying a Floor Revenue Limit**

Queensland Rail may (Unless otherwise approved by the QCA, in its absolute discretion) set-setting the methodology, rates and other inputs for calculating Access Charges for an Access Seeker's proposed Train Services Queensland Rail must do so such that, over the Evaluation Period, the Expected Access Revenue from any one of those Train Services or any combination of those Train Services falls-does not fall below the Floor Revenue Limit for that Train Service or combination of Train Services, as applicable.

### **3.2.33.2.4 Determination of Ceiling Revenue Limit**

- (a) The Ceiling Revenue Limit means the aggregate of the following:
  - (i) the maximum amount of Expected Access Revenue; and

- (ii) where the Access Seeker’s proposed Train Services comprise all of the Train Services using the relevant part of the Network, the Transport Services Payments (if any) that are reasonably expected to be received by Queensland Rail in respect of that part of the Network (on a pro rata basis for that individual Train Service or combination of Train Services, as applicable),

over the Evaluation Period where the Ceiling Revenue Limit is measured such that the net present value of the cashflows associated with providing Access for the relevant Train Service(s) over the Evaluation Period is zero. This measurement can be expressed as:

$$0 = -AV_o + \sum_{t=1}^n \frac{(CRL_t - C_t - M_t - AA_t - T_t)}{(1 + WACC)^t} + \frac{AV_n}{(1 + WACC)^n}$$


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$$0 = -AV_o + \sum_{t=1}^n \frac{CRL_t - C_t - M_t - T_t}{(1 + WACC)^t} + \frac{AV_n}{(1 + WACC)^n}$$

where:

**AV<sub>o</sub>** 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 3.2.4(c)**~~3.2.4(c)~~~~3.2.3(e)~~, 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 one to n;

**CRL<sub>t</sub>** is the Ceiling Revenue Limit for the Train Service(s) expressed as revenue that may be earned in each year of the Evaluation Period;

**C<sub>t</sub>** 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<sub>t</sub>** is the Efficient Costs for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;

**AA<sub>t</sub>** is any adjustment amount as agreed by Queensland Rail 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 Queensland Rail and the QCA or, failing such agreement, as determined by the QCA;

**AV<sub>n</sub>** 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 3.2.4(c)3.2.4(e)3.2.3(e)**, at the end of the Evaluation Period;

**WACC** has the meaning given to that term in **clause 7.1**.

(b) It will be necessary, for the purposes of determining the variables under **clause 3.2.4(a)3.2.4(a)3.2.3(a)**, make assumptions for the Train Services(s) over the Evaluation Period based on the forecast, as reasonably determined by Queensland Rail, for the Train Service(s) (including making allowance for any changes that are expected to result from the commencement of projects that impact significantly on the Train Service(s)).

~~(c)~~ The value of assets used in **clause 3.2.4(a)3.2.4(a)3.2.3(a)** is determined using ~~the Depreciated Optimised Replacement Cost (DORC) methodology:~~

~~(i)~~ The Regulatory Asset Base, as maintained in accordance with Schedule E; or

~~(e)(ii)~~ if a value cannot be determined pursuant to paragraph (i), as agreed by the Access Seeker and Queensland Rail or, failing agreement, as determined by the QCA.

### 3.3 Limits on price differentiation

~~(a)~~ Queensland Rail will only differentiate the methodology, rates and other inputs for calculating Access Charges between Access Seekers or between Access Seekers and Access Holders in accordance with this **clause 3.3**.

~~(a)(b)~~ Queensland Rail must not establish Access Charges that discriminate in favour of its downstream operations or the downstream operations of a Related Party and must ensure that its Access Charges must comply with this Part 3 and cannot have the purpose of preventing or hindering an Access Seeker's or Access Holder's Access (without derogating in any way from Queensland Rail's obligations under sections 104 or 125 of the QCA Act).

~~(b)(c)~~ The methodology, rates and other inputs for calculating Access Charges formulated by Queensland Rail for an Access Seeker's Train Services may vary from:

(i) an applicable Reference Tariff to reasonably reflect differences in the cost ~~and or~~ risk to Queensland Rail of

providing Access for that Train Service compared to the relevant Reference Train Service; or

(ii) if there is no applicable Reference Tariff, the methodology, rates and other inputs for calculating Access Charges for other Access Seekers or Access Holders in respect of Train Services for the same commodity in the same geographical area, on a unit rate basis to reasonably reflect, over time:

(A) ~~to reflect~~ differences in the cost and or risk to Queensland Rail of providing Access to that Access Seeker for that Train Service compared to the relevant Train Services for those other Access Seekers or Access Holders; and

~~(B)~~ to reflect:

~~(1)~~ changes that result in Queensland Rail no longer being able to commercially provide Access to Train Services in that geographic area at the current Access Charges (for example, changes in relevant Transport Service Payments);

~~(2)~~ changes in the cost and risk to Queensland Rail of providing Access;

~~(3)~~ changes in circumstances that have had, or may have, a material affect on the ability of Access Holders to pay Access Charges; or

~~(C)~~(B) material limitations on Available Capacity in accordance with clause 3.1.2(b),

over time.

~~(c)~~ Without limitation to this **clauses 3.3(a) and (b)**, this **clause 3.3** applies in respect of all Renewal Applications provided that if:

~~(i)~~ there are no other Access Seekers in respect of Train Services for the same commodity in the same geographical area as the proposed Train Services under a Renewal Application;

~~(d)~~ In addition to any rate review provision that may be incorporated in an Access Agreement in accordance with **clause 3.6** where Queensland Rail enters into an Access Agreement with an Access Holder for a Train Service and that Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this **clause 3.3** which Access Charge cannot be altered to be compliant with this clause, Queensland Rail will notify all other Access Holders with Access Agreements for a Train Service

that transports the same specified commodity in the same specified geographic area that it has done so

(e) Where the QCA becomes aware that Queensland Rail has entered into an Access Agreement with an Access Holder for a Train Service and that Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this **clause 3.3** which Access Charge cannot be altered to be compliant with this clause, the QCA may direct Queensland Rail to notify all other Access Holders with Access Agreements for a Train Service that transports the same specified commodity in the same specified geographic area that it has done so.

(f) Subject to **clauses 3.3(g)** and **(h)**, if in respect of a Renewal Application:

(i) there has not been a Renewal Application submitted after the Approval Date of this Undertaking;

(ii) the proposed Train Services under the Renewal Application are for the same commodity, the same number of Train Services and otherwise have in all respects the same description and characteristics as the Train Services under the expiring Access Agreement relevant to the Renewal Application; and

(iii) no Reference Tariff applies to the setting of Access Charges for the proposed Train Services under the Renewal Application,

~~then **clauses 3.3(a)** and **(b)**~~ then the methodology, rates and other inputs for calculating Access Charges for the proposed Train Services in the renewed Access Agreement (**renewed inputs**) will be the same as the methodology, rates and other inputs for calculating Access Charges in the expiring Access Agreement (**existing inputs**) other than to reasonably reflect, on a unit rate basis, over the term of the renewed Access Agreement, differences in the cost or risk to Queensland Rail of providing Access to the proposed Train Service under the renewed Access Agreement.

(g) If the proposed Train Services under the Renewal Application are for the same commodity, the same number of Train Services and otherwise have in all respects the same description and characteristics as the Train Services under the Access Agreement relevant to the Renewal Application except for a change in that description due to operational or supply change improvements, **clause 3.3(f)** will be applied in relation to setting the Access Charges in relation to the proposed Train Services under the Renewal Application as though the reference to “the methodology, rates and other inputs for calculating Access Charges for other Access Seekers in respect of Train Services for the same commodity in the same geographical

~~area” is a reference to “the methodology, rates and other inputs for calculating Access Charges for the Train Services under the existing Access Agreement relevant to the Renewal Application”, so as to allow a contribution to Common Costs as a renewed input to reflect those operational or supply change improvements.~~

~~(h) **Clauses 3.3(f) and (g)** do not apply to the extent that the expiring Access Agreement is inconsistent with those clauses.~~

### 3.4 Conflict between pricing principles

If **clauses 3.1 to 3.3** cannot be applied without giving rise to a conflict between those provisions, then those provisions will be applied in the following order of precedence (from highest to lowest) to the extent of that conflict:

~~(a) **clause 3.1.1 (Revenue adequacy)**;~~

~~(b)(a) **clause 3.3 (Limits on price differentiationLimits on price differentiationLimits on price differentiation)**;~~

~~(c)(b) **clause 3.2 (Pricing limitsPricing limitsPricing limits)**;~~

~~(c) **clause 3.1.2 (Network utilisationNetwork utilisationNetwork utilisation)**.~~

~~(d) **clause 3.1.1 (Revenue adequacy)**.~~

### 3.5 Reference Tariffs

~~(a) In recognition that, for individual Train Services, there may be a large range between the price limits established in **clause 3.2** within which Access Charges may be determined, Queensland Rail may develop Reference Tariffs for certain types of Train Services to assist in the facilitation of an efficient Access negotiation process.~~

~~(b) Where the QCA has approved a A-Reference Tariff is submitted to it by Queensland Rail, that Reference Tariff will be an acceptable means by which Queensland Rail provides Access Seekers with information about the matters listed in sections 101(2)(a) to (c) of the QCA Act: as provided for in accordance with s.101(4) of the Act.~~

~~(c) Each Reference Tariff will be developed as an Access Charge for a Reference Train Service.~~

~~(a)(d) 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, Queensland Rail will give Access Holders the opportunity to incorporate rate review provisions in Access Agreements in accordance with **clause 3.6**.~~

~~(b)(e) If Queensland Rail formulates an Access Charge for an Access Seeker’s proposed Train Services based on a Reference Tariff, then Queensland Rail is taken to have complied with **clauses 3.1 and 3.2**.~~

~~(e)(f) **Schedule D** specifies the period for which a Reference Tariff is effective and how the Reference Tariff may be reviewed during this period. Reference Tariffs for nominated Reference Train Services, including the conditions associated with the application of those Reference Tariffs, are set out in **Schedule D**.~~

### 3.6 Rate review provisions

Queensland Rail or an Access Seeker may require rate review provisions in an Access Agreement that is being negotiated to enable the methodology, rates and other inputs for calculating Access Charges to be adjusted to be consistent with changes over time ~~in~~<sup>if</sup>:

~~(a) — the cost and risk to Queensland Rail of providing Access;~~

~~(b)(a) if a Reference Tariff applies to the Train Service type, the applicable Reference Tariff (including any matters under **schedule DDD**); and~~

~~(e)(b) if no Reference Tariff applies to the Train Service type, the methodology, rates and other inputs for calculating Access Charges offered to agreed with other Access Seekers in respect of a Train Service with similar characteristics to that transporting the same commodity within the same geographical area as the Access Seeker's proposed Train Service.<sup>5</sup> the subject of the Access Agreement.~~

### 3.7 QCA Levy

An Access Charge for a Train Service may include a QCA Levy component to be collected for the QCA by Queensland Rail. This component will, where applicable, be determined from year to year based on the QCA Levy levied by the QCA to Queensland Rail and allocated amongst Train Service types in a manner approved by the QCA.

### 3.8 Maintenance of Regulatory Asset Bases

Queensland Rail will maintain the Regulatory Asset Bases in accordance with **schedule EEE**.

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<sup>5</sup> ~~Queensland Rail will determine whether the characteristics of Train Services are similar having regard to all relevant matters including the geographical area within which the Train Services operate, the origin and destination of the Train Services, the duration and quality of the Train Path including arrival and departure times of the day and week, the nature of the Rolling Stock and Train Configuration, characteristics of the Train Services, the commodity transported or transport service and the duration and terms of the relevant Access Agreement.~~

## Part 4 Operating requirements

### 4.1 Network Management Principles

- (a) All Access Agreements must include obligations for the Access Holder and Queensland Rail to comply with the Network Management Principles.<sup>6</sup>
- (b) Without limitation to **clause 4.1(a)**, Queensland Rail acknowledges its obligations under each Access Agreement to:
  - (i) perform scheduling, Network Control and associated services; and
  - (ii) provide Capacity related information to Access Holders, in accordance with the Network Management Principles and subject to the terms of that Access Agreement.
- (c) Each Train Service Entitlement will:
  - (i) include specified scheduling constraints (which will vary between different types of Train Services); and
  - ~~(ii)~~ be expressed in terms so that it can be used in the development of any MTP and DTP.
  - ~~(ii)(d)~~ The Network Management Principles must relate to all Train Services (including passenger services provided by Queensland Rail) and must be applied reasonably and fairly subject to specific requirements of the TIA.

### 4.2 Consultation for Through-Running Trains

Queensland Rail will ~~use reasonable endeavours to~~ consult with other relevant Railway Managers ~~as relevant, from to time~~, in relation to:

- (a) the coordination of maintenance activities;
- (b) the development of MTPs; and
- (c) proposed amendments to the Operating Requirements Manual, and if any of Queensland Rail's proposed changes or activities might affect other Railway Managers, with a view Queensland Rail will use reasonable endeavours to ~~minimising~~ minimise adverse ~~ea~~ffects in relation to Through-Running Trains.

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<sup>6</sup> For clarity, the Network Management Principles are set out in **schedule FFF**.

## 4.3 Operating Requirements Manual

- (a) The Operating Requirements Manual, as at the Approval Date, is that which is set out in **schedule GGG**.
- (b) Queensland Rail must make the Operating Requirements Manual available (including keeping it available) to Access Seekers and Access Holders.
- (c) Access Agreements entered into after the Approval Date must include provisions on the same terms (to the extent reasonably practical) as clause 8 in the Standard Access Agreement.

### **4.3.1 Amendments for Safety Matters**

- (a) Queensland Rail may amend the Operating Requirements Manual from time to time:
  - (i) in relation to Safety Matters;
  - (ii) to correct typographic or other minor errors; or
  - (iii) to update references to, or details for, persons or positions, in accordance with this **clause 4.3.1**.
- (b) Where Queensland Rail amends the Operating Requirements Manual under this **clause 4.3.1**, it must notify each Access Holder and (if applicable) each Nominated Rollingstock Operator of the amendments made including the date on which the amendments take effect.
- (c) Except where Queensland Rail requires immediate or urgent compliance for safety reasons or to comply with any Law, the date specified in a notice under **clause 4.3.1(b)** must be set so as to allow a reasonable period as determined by Queensland Rail (being no less than ten Business Days where the amendment relates to a Safety Matter or a Material Change) for each Nominated Rollingstock Operator to amend its processes, procedures and plans to comply with the amended Operating Requirements Manual.
- (d) Where Queensland Rail amends the Operating Requirements Manual in accordance with this **clause 4.3.1** each Nominated Rollingstock Operator must bear its own costs of complying with and otherwise implementing the amendments (including the equipping of Rolling Stock with new or additional equipment or making any other modification to Rolling Stock).

### **4.3.2 Amendment for matters where clause 4.3.1 does not apply**

- (a) Where **clause 4.3.1** does not apply in respect of proposed amendments to the Operating Requirements Manual, Queensland Rail may make those amendments by submitting a draft access Undertaking or a draft amending access Undertaking to the QCA in accordance with the QCA Act.

- (b) Where this **clause 4.3.2** applies, and Queensland Rail (acting reasonably) considers that a proposed amendment to the Operating Requirements Manual may directly affect a Nominated Rollingstock Operator, then Queensland Rail must not make that proposed amendment before notifying the Nominated Rollingstock Operator of the proposed amendment and giving that Nominated Rollingstock Operator (or Operators) a reasonable period to make submissions on the proposed amendment to Queensland Rail.
- (c) A notice given by Queensland Rail under **clause 4.3.2(b)** must include details of:

  - (i) the proposed amendment (including the proposed date on which the amendment is to take effect); and
  - (ii) the date by which the Nominated Rollingstock Operator may make submissions to Queensland Rail in respect of the proposed amendment.
- (d) Without limiting Queensland Rail's considerations when deciding whether to proceed with any proposed amendment, Queensland Rail must consider any submissions from any Nominated Rollingstock Operator.
- (e)(e) Queensland Rail may elect not to proceed with proposed amendments at any time including following a determination by an Expert as referred to in **clause 6**.

## Part 5 Reporting

### 5.1 Quarterly network train performance reports

#### 5.1.1 Obligation to publish quarterly report

- (a) Subject to **clause 6.4(d)**~~6.4(d)~~~~6.4(c)~~, within 30 days after the end of each Quarter in the Term, Queensland Rail will publicly release a quarterly report for that Quarter containing the information set out in **clause 5.1.2** and/or other indicators approved by the QCA from time to time.
- (b) Queensland Rail will use reasonable endeavours to ensure that the information contained in each quarterly report is accurate.
- (c) Queensland Rail must ensure that each quarterly report is accompanied by a responsibility statement signed by the Chief Executive Officer of Queensland Rail.

#### 5.1.2 Content of quarterly report

A quarterly report published under **clause 5.1.1** will:

- (a) contain the following information:
  - (i) a comparison of the information described in **clauses 5.1.2(a)(ii) to 5.1.2(a)(vii)** in relation to the subject Quarter and, subject to **clause 6.4(c)**~~6.4(c)~~~~6.4(b)~~, the four preceding Quarters (to the extent that those preceding Quarters reported on the same information);
  - (ii) for Train Services that operated in the subject Quarter:
    - (A) the number and percentage of Train Services that reached their destination within the Allotted Time Threshold;
    - (B) the number and percentage of Train Services that did not reach their destination within the Allotted Time Threshold:
      - (1) due solely to the acts or omissions of Queensland Rail in its capacity as the Railway Manager;
      - (2) due solely to delays attributed to an Access Holder or a Nominated Rolling Stock Operator; and
      - (3) due to any other reason; and
    - (C) the total number of Train Services;

- (iii) the average Above Rail Delay, Below Rail Delay and Unallocated Delay, in minutes, per 100 train kilometres for the aggregate of the Train Services that operated in the subject Quarter;
- (iv) the number and percentage of Train Services scheduled in the DTPs relating to the subject Quarter that were cancelled in each of the following circumstances:
  - (A) where that cancellation can be solely attributed directly to Queensland Rail in its capacity as the Railway Manager;
  - (B) where that cancellation can be solely attributed directly to an Access Holder or a Nominated Rolling Stock Operator; and
  - (C) where that cancellation occurred for any other reason;
- (v) the number of category A notifiable occurrences (as defined under the TRSA), as reported to the Rail Safety Regulator, for Train Services that operated in the subject Quarter;
- (vi) the average percentage, and the average number of kilometres, of Track under a temporary speed restriction for the subject Quarter (excluding Track in the Metropolitan Network);
- (vii) the most recent measure of Track quality, in the subject Quarter (if any), for the Network measured by a quality index with component measures including gauge, top, twist and versine;
- (viii) the number of written complaints by Access Holders that are verified by Queensland Rail (acting reasonably) as correct in connection with any of the following:
  - (A) the Operating Requirements Manual;
  - (B) an IRMP;
  - (C) any environmental investigation and/or risk management negotiation process or report created pursuant to **clause 2.7.2**;
  - (D) a Rolling Stock authorisation<sup>7</sup>; and
  - (E) the application of the Network Management Principles; and

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<sup>7</sup> That is, an Authority to Travel (being an authorisation issued by Queensland Rail under an Access Agreement which authorises a Rolling Stock Operator to temporarily operate specified Train Services on the Network for a specified period and using specified Train Configurations) or a Train Route Acceptance (which has the same meaning as an Authority to Travel but rather than being temporary applies until the expiry or termination of the Access Rights for the relevant Train Services).

~~(ix)~~ an outline as to the cause or causes of any material change in the matters reported under **clauses 5.1.2(a)(ii) to (viii)** relating directly to Queensland Rail's operating performance by comparison to the preceding Quarter; and

~~(ix)(x)~~ the number and percentage of Planned Possessions that did not start, and the number and percentage of Planned Possessions that did not finish, within the time scheduled for the relevant Planned Possession in the MTP.

- (b) the information referred to in **clauses 5.1.2(a)(ii) to 5.1.2(a)(v)**, will be limited to, and aggregated by, Train Services operated in the following parts of the Network:
- (i) the West Moreton Network;
  - (ii) the Mt Isa Network;
  - (iii) the North Coast Network; and
  - (iv) the Metropolitan Network.

## 5.2 Annual report on negotiation process

### 5.2.1 Obligation to publish annual report

- (a) Subject to **clauses 6.4(c)**~~6.4(c)~~~~6.4(b)~~ and ~~(e)(e)(d)~~, within four months after the end of each Year in the Term, or such longer time as agreed by the QCA, Queensland Rail will publicly release an annual report in relation to that Year containing the information set out in **clause 5.2.2**.
- (b) Queensland Rail will use reasonable endeavours to ensure that the information contained in each annual report is accurate.
- (c) Queensland Rail must ensure that each annual report is accompanied by a responsibility statement signed by the Chief Executive Officer of Queensland Rail.

### 5.2.2 Content of annual report

An annual report published under **clause 5.2.1** will contain the following information for the relevant Year:

- (a) the number of requests for Capacity Information received under **clause 2.1.2(b)** and the average time (in Business Days) taken by Queensland Rail to provide that information;
- (b) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in **clause 2.3.2**;
- (c) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in **clause 2.3.2**, the average delay (in

Business Days) by Queensland Rail to acknowledge the Access Applications;

- ~~(d)~~ the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe under **clause 2.4.1**;
- ~~(e)~~ the number and percentage of Access Applications received in accordance with this Undertaking for which a time estimate within which an Indicative Access Proposal would be provided to the Access Seeker was provided in an acknowledgement notice given under **clause 2.3.2**;
- ~~(f)~~~~(d)~~ for ~~those all~~ Indicative Access Proposals provided in accordance with this Undertaking ~~but that have not been provided within the applicable timeframe nominated in **clause 2.4.1**, the average delay (in Business Days) by Queensland Rail to provide the Indicative Access Proposal~~ the number of Indicative Access Proposals provided by Queensland Rail in accordance with **clause 2.4.1** and the number of instances of a notice of intention to negotiate provided by an Access Seeker under **clause 2.5.1** broken down into periods of less than 10 Business Days, 10 to 20 Business Days, 21 to 40 business Days and more than 40 Business Days;
- ~~(g)~~~~(e)~~ the number of disputes that are:
  - (i) referred to the dispute resolution process under **clause 6.1**; and
  - (ii) referred to the dispute resolution process under **clause 6.1** and determined in favour of the Access Seeker.
- ~~(h)~~~~(f)~~ the number and percentage of Access Applications in relation to which Queensland Rail has given a Negotiation Cessation Notice in accordance with **clause 2.8.1**;
- ~~(i)~~~~(g)~~ the number of Access Agreements executed by Queensland Rail;
- ~~(j)~~~~(h)~~ the number of Access Agreements (excluding agreements which extend or renew an Access Holder's Access Rights that existed immediately prior to execution of the agreement) executed by Queensland Rail for which the negotiation period was:
  - (i) three months or less;
  - (ii) more than three months but not more than six months;
  - (iii) more than six months but not more than 12 months; and
  - (iv) more than 12 months; and
- ~~(k)~~~~(i)~~ for each Regional Network ~~(that is, each system) to which a Reference Tariff applies~~;

- (i) maintenance costs of each Regional Network and scope of any maintenance performed compared with the maintenance forecasts used to develop the relevant tariff;
- (ii) operating expenditure compared with the forecasts used to develop the relevant tariff;
- (iii) the capital investment in the relevant Year and; the roll-forward of the relevant Regulatory Asset Base; and
- ~~(iv)~~ to the extent that a Reference Tariff applies in relation to that Regional Network:
  - ~~(A)~~ the roll forward of the relevant Regulatory Asset Base; and

~~(B)(iv)~~ the aggregate gtk for Train Services of the type to which the Reference Tariff applies; and

~~(j)~~ to the extent that for each Regional Network to which a Reference Tariff does not apply, in relation to that Regional Network (which, where a Regional Network includes multiple corridors will be categorised and aggregated according to each particular corridor):

- ~~(i)~~ maintenance costs of the Regional Network and scope of maintenance performed;
- ~~(ii)~~ operating costs of the Regional Network;
- ~~(iii)~~ the capital investment in the previous financial Year and expected capital investments over the next one and five years; and

~~(v)(iv)~~ volumes of:

(A) for non-passenger Train Services:

- (1) the aggregate Train Paths used by those Train Services;
- (2) the aggregate nt; and
- (3) the aggregate gtk,

broken down by commodity where appropriate; and

~~(B)~~ for passenger Train Services, the aggregate Train Paths used by those Train Services.

## 5.3 Financial Reporting

### 5.3.1 Annual Financial Report

- ~~(a)~~ Within 6 months after the end of each Year, Queensland Rail will publicly release Financial Statements in relation to the preceding Year;

~~(b)~~ The Financial Statement published pursuant to **clause 5.3.1(a)** must be accompanied by an audit certificate prepared by an auditor who has experience in the area of costing railway activities;

~~(B)(c)~~ The audit certificate referred to in **clause 5.3.1(b)** will specify whether or not the Financial Statement has been prepared, in all material respects, in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual.

## ~~5.3.5.4~~ General reporting obligations

### ~~5.3.15.4.1~~ Accuracy

- (a) Queensland Rail will use reasonable endeavours to ensure the reports referred to in **clauses 5.1** and **5.2** are accurate.
- (b) If, in Queensland Rail's opinion, there is a material error in a report published or provided under **clauses 5.1** or **5.2**, then it will, as soon as reasonably practicable, take the steps it considers reasonable to correct that error.

### ~~5.3.25.4.2~~ Information requested by the QCA

- (a) Subject to **clause ~~5.4.2(b)5.4.2(b)5.3.2(b)~~**, the QCA may, by written notice, request Queensland Rail to provide information or a document that the QCA reasonably requires for the purpose of complying with this Undertaking.
- (b) A notice given by the QCA under **clause ~~5.4.2(a)5.4.2(a)5.3.2(a)~~** 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.
- (c) Queensland Rail will comply with a request by the QCA under **clause ~~5.4.2(a)5.4.2(a)5.3.2(a)~~** by the day stated in the request unless it has a reasonable excuse for non-compliance.

### ~~5.3.35.4.3~~ Information about compliance with the Undertaking

Without limitation to this Undertaking, Queensland Rail acknowledges:

- (a) its obligations under section 150AA of the QCA Act; and
- (b) that the QCA may, in accordance with section 150AA of the QCA Act, require Queensland Rail to give the QCA particular information about Queensland Rail's compliance with the Undertaking.

### ~~5.3.45.4.4~~ Audit

- (a) If the QCA believes, acting reasonably, that the information contained in a quarterly report or annual report released by Queensland Rail under **clause 5.1** or **5.2** is inaccurate in a material way or that Queensland Rail may have failed to comply with the Undertaking or the QCA Act (including in relation to a specific instance of non-

compliance), the QCA may instruct Queensland Rail to obtain an audit of the relevant quarterly report or annual report or an audit of compliance with the Undertaking or QCA Act (as applicable).

- (b) Where the QCA has instructed Queensland Rail to obtain an audit under **clause ~~5.4.4(a)~~~~5.4.4(a)~~~~5.3.4(a)~~**, the QCA may require that the audit be conducted by a third party and, if it does, the following process will apply (unless otherwise agreed by the QCA and Queensland Rail):
- (i) Queensland Rail will appoint an auditor subject to the QCA's prior approval of the auditor and, if the QCA does not approve a particular auditor, Queensland Rail must nominate an alternative auditor as soon as reasonably practicable;
  - (ii) the auditor will have a duty of care to the QCA in providing the audit and, in the event of a conflict between the auditor's obligations to Queensland Rail and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence;
  - (iii) prior to commencing the audit, the auditor must agree an audit plan with Queensland Rail, document that audit plan and obtain the QCA's approval of that audit plan;
  - (iv) the audit plan referred to under **clause ~~5.4.4(b)(iii)~~~~5.4.4(b)(iii)~~~~5.3.4(b)(iii)~~** will consist of a proposed work program for the execution of the audit and will include the establishment of an audit liaison group, comprising the auditor, Queensland Rail and the QCA, to provide a forum for the resolution of any audit issues that arise during the course of the audit;
  - (v) Queensland Rail will be responsible for the costs of the auditor;
  - (vi) subject to **clause ~~5.4.4(b)(vii)~~~~5.4.4(b)(vii)~~~~5.3.4(b)(vii)~~**, Queensland Rail will provide any relevant information the auditor reasonably requires to conduct the audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with Queensland Rail;
  - (vii) the auditor must enter into a confidentiality deed with Queensland Rail in relation to any information provided by Queensland Rail, 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 detailed below;
  - (viii) the auditor must prepare:
    - (A) a statement (**Audit Statement**):

- (1) specifying only whether, in the opinion of the auditor, the information contained in the quarterly report or annual report (as applicable) released by Queensland Rail under **clause 5.1** or **5.2** (as applicable) is materially inaccurate and, in the opinion of the auditor, whether Queensland Rail may have failed to comply with the Undertaking or the QCA Act; and
  - (2) describing the process adopted for the conduct of the audit; and
- (B) a report (**Audit Report**):
  - (1) explaining the information set out in the Audit Statement in greater detail; and
  - (2) in the event that the auditor identifies that the information contained in the quarterly report or annual report (as applicable) is inaccurate in a material way, providing information on the inaccuracy.
- (c) Within a reasonable period following Queensland Rail's receipt of a completed Audit Statement and Audit Report, Queensland Rail must provide the Audit Statement and Audit Report to the QCA.
- (d) The QCA may publicly release an Audit Statement and the Audit Report.

## Part 6 Administrative provisions

### 6.1 Dispute and complaint resolution process

#### 6.1.1 Alternative dispute process

Nothing in this **clause 6.1** prevents an Access Seeker and Queensland Rail from agreeing (in each party's absolute discretion) to use a different dispute resolution process or different timeframes to the dispute resolution process or timeframes set out in this **clause 6.1**. However, if an Access Seeker and Queensland Rail do agree a different dispute resolution process or timeframe (as applicable), then:

- (a) the different dispute resolution process or timeframe (as applicable) will be binding on them;
- (b) neither of them may seek to:
  - (i) change the dispute process (except with the agreement of the other); or
  - (ii) alter or challenge the outcome of the dispute process (except in the case of manifest error); and
- (c) in a case of manifest error, either of them may refer the matter to the QCA for arbitration in accordance with Division 5, Part 5 of the QCA Act.

#### 6.1.2 Application of dispute and complaint resolution process

- (a) If any dispute, complaint or question arises between Queensland Rail and an Access Seeker in relation to any provision of this Undertaking, a request for Access or the negotiation of an Access Agreement (**Dispute**), then:
  - (i) that Dispute will be resolved in accordance with this **clause 6.1**; and
  - (ii) either the Access Seeker or Queensland Rail may give the other a notice in writing (**Dispute Notice**) setting out details of the Dispute and that the Dispute is to be dealt with in the manner set out in this **clause 6.1**.
- (b) Disputes in relation to an Access Holder or an Access Agreement must be dealt with in accordance with the provisions of the relevant Access Agreement and must not be dealt with under this Undertaking.

#### 6.1.3 Resolution by escalation

- (a) Within five Business Days (or such longer period as agreed by the parties) after the date on which a party gives the other party a Dispute Notice (**Dispute Notice Date**), representatives of the parties must meet and use reasonable endeavours to resolve the Dispute.

- (b) If the Dispute is not resolved under **clause 6.1.3(a)**, senior management representatives of the parties (who, for a party, are senior to that party's representative(s) referred to in **clause 6.1.3(a)**) must, within ten Business Days (or such longer period as agreed by the parties) after the Dispute Notice Date, meet and use reasonable endeavours to resolve the Dispute.
- (c) If the Dispute is not resolved under **clause 6.1.3(b)**, the Dispute must be referred to each party's chief executive officer (or his or her nominee – who, for a party, must be more senior than that party's representative(s) referred to in **clauses 6.1.3(a) and (b)**) who must use reasonable endeavours to resolve the Dispute within ten Business Days (or such longer period as agreed by the parties) after the Dispute has been so referred.

#### **6.1.4 Resolution by QCA**

- (a) If a Dispute is not resolved under **clause 6.1.3** within the last of the applicable time frames, then:
  - (i) either the Access Seeker or Queensland Rail (or both of them) may give an access dispute notice (as defined in the QCA Act) to the QCA; and
  - (ii) the Dispute will be resolved in accordance with Division 5, Part 5 of the QCA Act.
- (b) If a Dispute is referred to the QCA for arbitration in accordance with Division 5, Part 5 of the QCA Act, the QCA must:
  - (i) ask the Rail Safety Regulator to make a decision on those aspects of the Dispute (if any) that relate to safety matters (as defined in the TRSA);
  - (ii) provide to the Access Seeker and Queensland Rail a copy of any decision that it receives from the Rail Safety Regulator; and
  - (iii) not make any access determination in respect of the Dispute relating to a safety matter that is inconsistent with any decision of the Rail Safety Regulator.

#### **6.1.5 Reporting unresolved disputes and complaints to the QCA**

If:

- (a) a Dispute is referred to the dispute resolution process in this **clause 6.1**;
- (b) that Dispute is not resolved by the Access Seeker and Queensland Rail; and

- (c) neither the Access Seeker nor Queensland Rail gives an access dispute notice to the QCA in accordance with **clause 6.1.4(a)(i)**, then, within three months after the Dispute Notice Date, Queensland Rail will report that Dispute (including a brief description of the Dispute) to the QCA.

## 6.2 QCA Decision-making

- (a) The QCA may not make a decision (**Decision**) under this Undertaking that may affect Queensland Rail or another person (including to require Queensland Rail or another person to do, give or submit anything to the QCA, to resolve a Dispute, to approve or consent to or grant anything or to refuse to 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 any applicable Law (including 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 was a proper exercise of the power conferred by this Undertaking and, without limitation, it will not be a proper exercise of power if:
    - (A) the QCA takes an irrelevant consideration into account in the exercise of a power;
    - (B) the QCA fails to take a relevant consideration into account in the exercise of a power; or
    - (C) the QCA exercises:
      - (1) a power for a purpose other than a purpose for which the power is conferred;
      - (2) a discretionary power in bad faith;
      - (3) a personal discretionary power at the discretion or behest of another person;
      - (4) a discretionary power in accordance with a rule or policy without regard to the merits of a particular case;
      - (5) a power in a manner that is so unreasonable that no reasonable person could so exercise the power;
      - (6) a power in such a way that the result of the exercise of the power is uncertain; or

- (7) a power in a way that is an abuse of the power;
- (vi) the QCA’s Decision involves an error of law (whether or not the error appears on the record of the Decision);
- (vii) the QCA’s Decision was 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 not 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 not exist; and
- (ix) the Decision was otherwise contrary to law or this Undertaking.

For the avoidance of doubt, where words and phrases in this **clause 6.2(a)** are also used under the *Judicial Review Act 1991* (Qld) and are not expressly defined in this Undertaking, then those words and phrases have the same meaning as used in the *Judicial Review Act 1991* (Qld).

- (b) The requirements set out in **clause 6.2(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 6.2**, Queensland Rail and the QCA agree that where Queensland Rail or another person (as applicable) is aggrieved by the Decision or conduct (including if its interests are or would be adversely affected by the Decision or conduct), Queensland Rail or that other person (as applicable) may seek an order suspending the operation of the relevant Decision and a stay of any proceedings under the relevant Decision.
- (d) This **clause 6.2** 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).

## 6.3 Notices

### 6.3.1 Form of Notices

A notice or other document relating to this Undertaking (**Notice**) must be in writing in English.

### 6.3.2 Means of giving Notices

In addition to any other lawful means, a Notice may be given by being personally delivered or sent by pre-paid post or email.

### 6.3.3 Effect and receipt of a Notice

- (a) Unless a later time is specified in it, any Notice takes effect and is given from the earlier of the time it is actually given or is taken to be given.
- (b) A Notice is taken to be given, in the case of a Notice given by:
  - (i) hand, at the time of delivery;
  - (ii) post, on the second day following the date of posting (other than a Notice acknowledging the receipt of an Access Application which is taken to be given on the date of posting); and
  - (iii) email, unless the sender receives an automated message that the email has not been delivered, when the sender receives an automated message confirming delivery or four hours after the time sent (as recorded on the device from which the sender sent the email), whichever happens first, provided that, if a Notice is given:
    - (iv) after 5:00pm in the place of receipt; or
    - (v) on a day which is not a Business Day in the place of receipt, it is taken as having been given on the next Business Day.

### 6.3.4 Process service is not affected

This **clause 6.3** does not affect any process or other document relating to litigation, administrative or arbitral proceedings relating to this Undertaking (which may be served in accordance with any other applicable Law).

## 6.4 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, 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.

(a)(b) Any Access Applications or Renewal Applications Done before the Approval Date and not subject to clause 6.4(a), are deemed to be Done and, as applicable, continue under this Undertaking to the extent this Undertaking provides for equivalent matters to be Done (for example, Access Application queueing and negotiations).

~~(b)~~(c) If this Undertaking requires Queensland Rail to report to the QCA on a Quarter or a Year that began prior to the Approval Date, then:

- (i) the relevant report will include information in respect of the period prior to the Approval Date; and
- (ii) Queensland Rail is only obliged to provide information for the period prior to the Approval Date as would have been required to be provided under the 2008 Undertaking in respect of that same type of report.

~~(e)~~(d) If the Approval Date is the first day of a Quarter, then Queensland Rail will report on the last Quarter prior to the Approval Date in accordance with the requirements of the 2008 Undertaking.

(e) If the Approval Date is the first day of a Year, then Queensland Rail will report on the prior Year in accordance with the requirements of the 2008 Undertaking subject to clause 6.4(f).

~~(f)~~ For any system for which a Reference Tariff applies and Queensland Rail is required to create a report pursuant to **clause 5.2.2(i)**, Queensland Rail must create a report or reports (as the case may be) in accordance with the requirements of this Undertaking using 1 July 2013 as the first day of the reporting period. For clarity the first report will include:

- ~~(i)~~ actual maintenance;
- ~~(ii)~~ changes to the regulatory asset base; and
- ~~(iii)~~ system volumes.

## 6.5 Additional provisions and new standard agreements

~~(a)~~ The QCA may give Queensland Rail a notice requiring it to amend the Undertaking to include new provisions and incorporate new standards agreements for the following, if the QCA has a reasonable expectation that these provisions and/or agreements are warranted to accommodate requests from Access Seekers or Access Holders or are otherwise reasonably required for the purposes of this Undertaking, being to provide:

- ~~(i)~~ provisions, and implementing appropriate arrangements for, ring fencing information from a Related Party which is a Rail Transport Operator, if Queensland Rail enters into competition with any third party Rail Transport Operator;

~~(b)~~ For the purpose of this **clause 6.5**:

- ~~(i)~~ a notice given by the QCA under **clause 6.5(a)** will be treated as if it were an initial undertaking notice given by the QCA under the QCA Act;

- (ii) the new provisions or any new agreement submitted by Queensland Rail to the QCA in accordance with this **clause 6.5** will be treated as though it was a draft access undertaking submitted under the QCA Act in response to an initial undertaking notice; and
- (iii) Queensland Rail and the QCA will act in accordance with the provisions of the QCA Act as though this were the case. Without limiting the foregoing, relevant provisions of Division 7 of Part 5 of the QCA Act will apply including to lodging of the relevant document in response to the notice given under **clause 6.5(a)**, consideration and approval by the QCA, factors affecting approval, publication, submissions and period for approving the document.
- (c) If Queensland Rail fails to lodge new provisions and/or new agreements, in accordance with this clause, or if the new provisions or new agreements as submitted are not approved by the QCA, the QCA may prepare and approve new provisions and/or new agreements as the QCA considers appropriate.
- (d) For clarity, after the provisions and/or agreement are approved by the QCA in accordance with this **clause 6.5** this Undertaking will apply as though it were amended to include the relevant provisions and/or agreement.

## Part 7 Definitions and interpretation

### 7.1 Definitions

In this Undertaking:

**2008 Undertaking** means Aurizon Network’s access undertaking as approved by the QCA on 23 October 2008 (as amended pursuant to submissions by Queensland Rail which were approved by the QCA) but only to the extent that it applied to Queensland Rail pursuant to section 9(1)(j) of the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009* (Qld);

**Above Rail Delay** means a delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be solely attributed directly to an Access Holder (or its Nominated Rolling Stock Operator) in operating its Train Services, but excludes:

- (a) cancellations;
- (b) delays resulting from compliance with a Passenger Priority Obligation; and
- (c) 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 Rolling Stock provision, Rolling Stock maintenance, non-Network Control related communications, train crewing, terminal provision and services, freight handling and marketing and the administration of those activities and **Above Rail** has a similar meaning;

**Acceptable Credit Rating** means a minimum long term credit rating of not less than BBB- from Standard and Poor’s Rating Services (or equivalent rating by another internationally recognised ratings agency). current long term credit rating of at least:

- ~~(a) ‘A’ or better from Standard and Poor’s; or~~
- ~~(b) ‘A3’ or better from Moody’s.~~

**Access** means the non-exclusive right to use a specified part of the Network for the purpose of operating Train Services;

**Access Agreement** means an agreement between Queensland Rail and an Access Holder for the provision of Access;

**Access Application** means a request for Access Rights by an Access Seeker that includes:

- (a) the information referred to under **schedule BBB**; and
- (b) all additional or clarified information required by Queensland Rail ~~(for example,~~ under **clause 2.3.1**);

**Access Charge** means the charge or other amount payable by an Access Holder to Queensland Rail for the provision of Access under an Access Agreement and includes, except where the context requires otherwise, Take or Pay Charges and Adjustment Charges;

**Access Funder** means a reference to an Access Seeker's Customer, an End User Access Seeker or an Access Seeker's nominee depending on which party elects to fund the Extension.

**Access Holder** means a person who holds Access Rights under an Access Agreement;

**Access Rights** means an entitlement to Access in accordance with a specified Train Service Entitlement;

**Access Seeker** means a person who is seeking new or additional Access Rights from Queensland Rail including, for clarity, a Renewal Access Seeker;

**Accredited** means accredited (including exempted from the requirement to be accredited) in accordance with Part 5 of the TRSA;

**Additional Capacity** means the additional capability of the Network to accommodate Train Services that would result from an Extension;

**Ad Hoc Train Service** means any Train Service:

- (a) additional to the number of Train Services permitted under an existing Access Agreement, but otherwise consistent with the Train Service Entitlement and Rolling Stock and Train Configuration authorised pursuant to that existing Access Agreement; or
- (b) varying from the Train Service Entitlement specified in an existing Access Agreement, but agreed to by Queensland Rail;

**Adjustment Charge** has the meaning given to that term in **clause 6.1(a)6.1(a)7.1(a)** of **schedule DDD**;

**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:

- (a) transporting coal, 30 minutes;
- (b) transporting bulk minerals (other than coal), 60 minutes; and
- (c) transporting freight products, 60 minutes;

**Alternative Schedule Time** means a Train Service proposed by Queensland Rail, which is a Useable Schedule Time.

**Approval Date** means the date on which this Undertaking was approved by the QCA;

**Approved Capital Expenditure** means all capital expenditure accepted into a Regulatory Asset Base by the QCA in accordance with **clause 2.1(a)** of **schedule EEE**;

**Approved Ceiling Revenue Limit** means any amount approved by the QCA for the purposes of setting Reference Tariffs and for the Reference Train Services is the amount set out in **clause 4(f) of Schedule D**;

**Aurizon Network** means Aurizon Network Pty Ltd ACN 132 181 116;

**Authorisation** means any consent, accreditation, authorisation, registration, filing, lodgement, notification, agreement, licence, certification, commission, permit, approval, exemption, ruling or other permission from, by or with an Authority required by any Law or lawfully required by any Authority;

**Authority** means:

- (a) the Crown or any minister of the Crown;
- (b) any government, federal, state or local government department or other governmental, semi-governmental or judicial body or authority including local government, a court or a tribunal;
- (c) any corporation, authority, body or force constituted for a public purpose (including any police service or force);
- (d) any holder of an office for a public purpose;
- (e) any governmental, semi-governmental or judicial person; and
- (f) any person (whether autonomous or not) who is charged with the administration or enforcement of a Law,

including any officer or agent of the foregoing acting in that capacity but excluding the Rail Authority;

**Available Capacity** means Capacity excluding:

- (a) all Committed Capacity other than, in relation to an Access Application:
  - (i) Committed Capacity that will cease being Committed Capacity prior to the time period for which Capacity is being assessed for that Access Application; and
  - (ii) Capacity that is required to comply with any Passenger Priority Obligation or Preserved Train Path Obligation that can be allocated by Queensland Rail to that Access Application in accordance with that Passenger Priority Obligation or Preserved Train Path Obligation and is not otherwise Committed Capacity;
- (b) Queensland Rail's reasonable requirements for the exclusive use of the Network for the purposes of:
  - (i) performing activities associated with the maintenance or repair of the Network, or undertaking Extensions, including the operation of work Trains; and
  - (ii) attending to and performing activities associated with safety matters or the management of safety risks; and

- (c) Capacity that is not available as a result of:
  - (i) an Operational Constraint from time to time; or
  - (ii) restrictions imposed or required from time to time in accordance with any Law;

**Below Rail Delay** means a delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be solely attributed directly to Queensland Rail in its capacity as the Railway Manager, but excludes:

- (a) cancellations;
- (b) delays resulting from compliance with a Passenger Priority Obligation; and
- (c) delays resulting from a Force Majeure Event;

**Below Rail Services** means the activities associated with the ownership, provision and management of the Network, including:

- (a) the construction, maintenance and renewal of Network assets; and
- (b) the network management services required for the safe operation of Train Services on the Network including:
  - (i) Network Control; and
  - (ii) the implementation of procedures and systems, including supporting communications systems, for the safe operation of Train Services and protection of work sites on the Network,

and **Below Rail** has a similar meaning;

**Business Day** means a day which is not a Saturday, Sunday 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 the Network to accommodate Train Services including all Additional Capacity that is expected to result from Extensions that Queensland Rail has committed to construct;

**Capacity Analysis** means an assessment of:

- (a) whether there is sufficient Available Capacity to accommodate an Access Seeker's requested Access Rights; and
- (b) if there is not sufficient Available Capacity to accommodate the requested Access Rights, the Additional Capacity required to grant the requested Access Rights ~~(including either:~~
  - (i) an indicative outline of the ~~investigations and works in relation to identifying and undertaking which would be reasonably required to complete~~ the Extensions and an indicative estimate of the cost, standard and scope of, and

timing for, ~~such investigations and work~~ the required Extension); or

~~(b)(ii)~~ the scope, standard and cost of the required Extension,

which provides a basis for the negotiation of an Access Agreement and Funding Agreement (if applicable);

**Capacity Information** means the information referred to under ~~clause 2 of~~ schedule AAA;

**Capital Indicator** means the annual capital expenditure allowance approved by the QCA for the purpose of assessing the relevant Reference Tariff;

**Ceiling Revenue Limit** has the meaning given to that term in clause 3.2.43.2-43.2-3;

**Change in Law** means:

- (a) any amendment, repeal, modification or enactment of any Law;
- (b) 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;
- (c) the making of any new directive, or any change in an existing directive, of any Authority;
- (d) the imposition of a requirement for Authorisations not required as at the Approval Date;
- (e) after the date of grant of any Authorisation, a change in the terms, conditions and requirements relating to that Authorisation including any new terms, conditions or requirements; or
- (f) 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 a basis that is materially less favourable than the original Authorisation;

**Change to Credit** means:

- (a)
  - (i) a change in the rate, or basis of calculation, of; or
  - (ii) the introduction or cessation of,  
a credit, rebate, deduction, refund, exemption, concession or any other benefit or allowance (whether or not relating to an Impost), including, without limitation, a fuel tax credit, diesel fuel rebate or similar credit to which Queensland Rail is or was entitled; or
- (b) any change in the funding or other support received by Queensland Rail from any Authority in relation to any relevant part of the Network;

**Committed Capacity** means that portion of the Capacity that is required:

- (a) to meet Train Service Entitlements;
- (b) to comply with any Passenger Priority Obligation or Preserved Train Path Obligation;
- (c) without limitation to **paragraph (b)** of this definition, to comply with any Law (other than Undertaking) requiring Queensland Rail to provide a passenger Train Service with access to the Network; or
- (d) without limitation to **paragraphs (b) and (c)** of this definition, to meet Queensland Rail's requirements from time to time for the operation of passenger Train Services;

**Common Costs** means those costs associated with the provision of the Network by Queensland Rail that are not Incremental Costs for any particular Train Service;

**Comparison Train Length** means, in respect of a Train, the amount in metres calculated as the sum of:

- (a) the aggregate of the lengths (in metres) of each item of Rolling Stock comprising or to comprise the Train (including its locomotives) multiplied by 1.02; and
- ~~(b)~~ 125mm multiplied by the number of items of Rolling Stock comprising or to comprise the Train (including its locomotives);<sup>8</sup>
- ~~(b)(c)~~ or such other allowance as can be reasonably substantiated as a prudent allowance.

**Competing Access Applications** means the Access Applications of two or more Access Seekers that are seeking Access Rights relating to the same traffic task<sup>9</sup>;

**Competing Access Seekers** means the Access Seekers whose Access Applications are Competing Access Applications;

**Concept Study** means a study that:

- (a) identifies possible Extension solutions for creating additional Capacity;

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<sup>8</sup> By way of explanation, the 2% and 125mm allowances are allowances for train handling accuracy and slack movement in drawgear (including free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

<sup>9</sup> This is a situation where if one of the Access Seekers is granted Access Rights, then the other Access Seekers will no longer need a grant of Access Rights – for example:

- Where two Access Seekers are competing to provide Train Services under a rail haulage agreement with the same Customer for the same Train Service. This might occur where a mine is conducting a competitive tender for the provision of rail haulage services, there is more than one person seeking to provide those rail haulage services and each of those persons submits an Access Application.
- Where an Access Seeker is seeking Access Rights in order to provide Train Services under a rail haulage agreement with a Customer and that Customer is also seeking Access Rights itself for the same Train Service.

- (b) makes a preliminary assessment of potential costs, benefits and risks involved in those possible Extension solutions;
- (c) unless otherwise agreed by Queensland Rail and the relevant Access Seeker, includes an indicative assessment of:
  - (i) the project objectives in relation to the creation of additional Capacity; and
  - (ii) for the possible Extension solutions:
    - (A) a broad cost estimate with a +/- 50% accuracy (or such other accuracy where agreed with the funding Access Seekers (acting reasonably));
    - (B) a preliminary financial analysis and risk assessment; and
    - (C) indicative timeframes for developing and completing the possible Extension solution; and
- (d) includes a proposed scope, budget, duration and deliverables for a Pre-feasibility Study including the reasons for selecting the possible Extension solutions that will be considered during that Pre-feasibility Study;

**Confidential Information** means any information, data or other matter (in this definition, **information**) disclosed to a Recipient by, or on behalf of, a Disclosing Party where:

- (a) the disclosure of the information by the Recipient would reasonably be expected to adversely affect the commercial interests of the Disclosing Party; or
- (b) the information is marked or otherwise indicated as confidential at the time of disclosure to the Recipient,

excluding information that:

- (c) was in the Recipient's lawful possession prior to the disclosure; or
- (d) whether before or after the disclosure:
  - (i) is in the public domain through means other than a breach of confidentiality by the Recipient (or anyone to whom the Recipient has disclosed it); or
  - (ii) is received by the Recipient independently from a third party who is free to disclose such information;

**Confidentiality Exception** means:

- (a) any disclosure or use of Confidential Information consented to by the Disclosing Party under **clause 2.2.1(b)(i)**;
- (b) any disclosure of Confidential Information to another person who is a party to the negotiations involving the Disclosing Party and Recipient,

provided that the confidentiality obligations under this Undertaking continue to apply to that Confidential Information as if the disclosure was made directly by the Disclosing Party to that other person; or

- (c) any disclosure or use of Confidential Information:
- (i) to the extent necessary to:
    - (A) the Recipient's directors, officers or employees; or
    - (B) without limiting **paragraph (c)(xii)** of this definition, the directors, officers or employees of a Related Party of the Recipient;
  - (ii) to the extent required or compelled by, or necessary to observe, administer or comply with, any Law;
  - (iii) to the extent consistent with a person's right to disclosure under any Law;
  - (iv) without limiting **paragraphs (c)(ii)** or **(iii)** of this definition, in accordance with this Undertaking (including the Network Management Principles) including:
    - (A) in publishing or providing MTPs and DTPs; and
    - (B) for the purpose of consultations or negotiations relating to a modification of a MTP or the scheduling of a DTP in variation from an MTP;
  - (v) to the extent necessary for the conduct of any legal proceedings (including any dispute resolution process under this Undertaking or the QCA Act);
  - (vi) to the extent required under any stock exchange listing requirement or rule;
  - (vii) to the Rail Safety Regulator or the QCA;
  - (viii) to the Recipient's solicitors, barristers, or accountants under a duty of confidentiality (which is not waived by the Recipient without the prior written consent of the Disclosing Party);
  - (ix) to the Recipient's engineering or other technical consultants and advisers to the extent necessary for the provision of advice to the Recipient (provided they are under a legal obligation not to disclose the Confidential Information to any third party);
  - (x) to the Recipient's banker, financier 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 Disclosing Party under which they are obliged to keep the Confidential Information confidential;

- (xi) if Queensland Rail is the Recipient, to any responsible Minister (as defined in the Rail Authority Act);
- (xii) if Queensland Rail is the Recipient, to the extent necessary to:
  - (A) the Rail Authority;
  - (B) the Rail Authority's board members; and
  - (C) the Rail Authority's:
    - (1) chief executive officer, chief finance officer and other senior executives (as those terms are defined under the Rail Authority Act); and
    - (2) other officers and employees;
- (xiii) for the purpose of facilitating Network Control Directions where the disclosure of information is by Queensland Rail in the usual course of undertaking Network Control;
- (xiv) to the extent necessary by any person involved in clearing an event or incident that is preventing or affecting the operation of Train Services on the Network; or
- (xv) to the extent necessary by Queensland Rail for the purpose of responding to, managing or clearing an event or incident that is preventing or affecting, or is likely to prevent or affect, the operation of Train services on the Network;

**Costing Manual** means a cost allocation manual prepared by Queensland Rail pursuant to section 159 of the QCA Act and approved or revised by the QCA from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth);

**CPI** means the Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No.6401.0) as published by the Australian Bureau of Statistics (or other successor, authority or instrumentality having jurisdiction in the matter);

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

- (a) the Incremental Cost imposed on the Network by that Train Service or combination of Train Services; and
- (b) in respect of a combination of Train Services, the Common Costs related specifically to sections of the Network 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 a person that the Access Holder or Access Seeker is providing or intending to provide Train Services (as a Rolling Stock Operator) for or on behalf of;

**Customer Access Seeker** means, where there are Competing Access Seekers and one of those Access Seekers (**Principal Access Seeker**) is the Customer for the other Competing Access Seekers, the Principal Access Seeker;

**Daily Train Plan** or **DTP** means a plan that details 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 Network;

**Dangerous Goods** means any substance or thing defined as dangerous goods, explosives or radioactive material under a Dangerous Goods Code or any substance or thing identified as such in a relevant Access Agreement;

**Dangerous Goods Code** means:

- (a) the Australian Code for the Transport of Dangerous Goods by Road and Rail;
- (b) the Australian Code for the Transport of Explosives by Road and Rail; or
- (c) the Code of Practice for the Safe Transport of Radioactive Material, as published and in force from time to time and as amended or replaced;

**Decision** has the meaning given to that term in **clause 6.2(a)**;

~~**Depreciated Optimised Replacement Cost (DORC)** means the value of assets determined as follows:~~

- ~~(a) the replacement value of the assets will be assessed as the cost of the modern engineering equivalent replacement asset;~~
- ~~(b) 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 demand, for Access (whether by an Access Seeker, Access Holder or Queensland Rail) and any reasonable spare Capacity in the Network as determined by Queensland Rail, acting reasonably; and~~
- ~~(c) depreciation of the optimised replacement asset value will reflect the remaining useful service potential of the relevant assets;~~

**Disclosing Party** means, in respect of Queensland Rail and an Access Seeker, either party to the extent that information is disclosed by or on behalf of that party to the other party during the negotiation of Access (including, as applicable, in an Access Application or by the provision of information prior to an Access Application being made);

**Dispute** has the meaning given to that term in **clause 6.1.2(a)**;

**Dispute Notice** has the meaning given to that term in **clause 6.1.2(a)(ii)**;

**Dispute Notice Date** has the meaning given to that term in **clause 6.1.3(a)**;

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

**Duplicate Requests** has the same meaning given to that term in clause 2.8.1(a)(iv).

**Efficient Costs** means, for each Year during the Evaluation Period, the costs that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices to provide, operate and maintain the Network at the required service standard and meet its obligations under Access Agreements, having regard to the circumstances in which Queensland Rail operates its business (including any transitional arrangements agreed between Queensland Rail and the QCA) and including business and corporate overheads and QCA Levy;

**Emergency Possession** means a Possession:

- (a) that is required to rectify a fault with the Network:
  - (i) that is considered by Queensland Rail to be dangerous or potentially dangerous to any person; or
  - (ii) where severe speed restrictions have been imposed that affect the scheduled Train Services of Access Holders; and
- (b) that Queensland Rail intends to carry out within five Business Days after the detection of the fault;

**End User Access Seeker** means an Access Seeker who is, or will be, party to an Access Agreement with a Nominated Rollingstock Operator, granting rights to that Nominated Rollingstock Operator for the non-exclusive utilisation of a specified section of the Network for the purposes of operating Train Services;

**Endorsed Variation Event** means the occurrence of any of the following events:

- (a) a Change in Law, Change to Credit or Impost Change occurs, that either alone or in combination with all other Changes in Law, Changes to Credit or Impost Changes that have occurred since the Approval Date, would cause a change in the costs reflected in any input of the relevant Reference Tariff of greater than 2.5% excluding the impact of any Change in Law, Change to Credit or Impost Change that have previously resulted in a variation of the Reference Tariff; or
- (b) 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; or
- ~~(b)~~(c) contracted Reference Train Services on the West Moreton Network and the Metropolitan Network are greater than those used to develop

Reference Tariffs for the West Moreton Network and the Metropolitan Network ;

**Environmental Harm** means environmental harm as defined in the *Environmental Protection Act 1994* (Qld);

**Escalation Date** means each 1 July in each year;

**Evaluation Period** means:

(a) for the purposes of determining a Reference Tariff to apply for some or all of the Reference Train Services to which that Reference Tariff applies, the period for which that Reference Tariff will apply;

where a Reference Tariff does not apply:

~~(a)(i)~~ for an individual Train Service, the expected duration of the proposed Access Rights in respect of that Train Service; and

~~(b)(ii)~~ for a combination of Train Services, the lesser of:

~~(i)(A)~~ the expected duration of the longest proposed Access Rights in respect of any one of those Train Services; and

~~(ii)(B)~~ ten years;

**Expected Access Revenue** means:

(a) for an individual Train Service, the revenue reasonably expected from the Access Charge from that Train Service; and

(b) for a combination of Train Services, the aggregate revenue reasonably expected from the Access Charges for all Train Services comprising that combination of Train Services, where the expected Access Charges for different Train Service types will be developed on a basis consistent with:

(i) if a Reference Tariff is to be developed for a Train Service type, the proposed Reference Tariff; and

(ii) if **paragraph (b)(i)** of this definition does not apply, current applicable Access Charges, except as provided in **clause 3.1.2(b)(iii)**;

**Extension** includes an enhancement, expansion, augmentation, duplication or replacement of all or part of the Network (excluding Private Infrastructure) and “Extend” or “Extended” will have a comparable meaning;

**Extension Costs** means the costs that would be reasonably expected to be incurred in undertaking an Extension adopting efficient work practices to construct and commission the Extension to the required service standard and to meet the Railway Manager’s obligations under Access Agreements, including:

(a) costs incurred by Queensland Rail and/or an Access Funder in connection with

- (i) obtaining all Authorities required for the purpose of the Extension, including the acquisition, lease, sublease or licence of any land;
  - (ii) designing, constructing and commissioning the Extension, including
    - (i) amounts paid to contractors and suppliers of materials
    - (ii) legal costs
    - (iii) statutory fees and charges
    - (iv) compliance costs; and
    - (v) insurance premiums;
  - (iii) internal administrative, travel, accommodation and overhead costs to the extent that the costs relate to the Extension;
- (b) capitalised interest incurred during the construction of an Extension that Queensland Rail and an Access Funder elects to add to the cost basis of the Extension in accordance with the Financial Accounting Standards Board's (FASB) *Statement of Financial Accounting Standards No. 34, Capitalization of Interest Cost*. Capitalised interest is to be calculated on daily resets and capitalised monthly, from the date the construction costs for an Extension are incurred by Queensland Rail and/or an Access Funder through to the date the Extension is either commissioned by Queensland Rail as a part of the Network or included in Queensland Rail's regulatory asset base;
- (c) but for the avoidance of doubt Extension Costs do not include:
- (i) the GST component of any such costs, expenses or liabilities to the extent that Queensland Rail or an Access Funder is entitled to claim an input tax credit;
  - (ii) any costs, expenses or liabilities for which Queensland Rail has been otherwise reimbursed;
  - (iii) any costs (or component of costs) that have been assessed by either an independent auditor or the QCA and determined to not be prudently incurred in accordance with this Undertaking.

**Extension Costs** ~~means the costs (including any tax, levy or similar amount) related to Extending the Network whether direct or indirect, internal or external or actual or contingent.~~

**Extension Access Principles** means the principles outlined in **Schedule I**.

**Feasibility Study** means a study that, in relation to a preferred Extension solution identified in a Pre-feasibility Study:

- (a) details the project objective for the preferred Extension solution;

- (b) provides a detailed assessment of technical and operating requirements of the preferred Extension solution;
- (c) includes survey and geotechnical investigations to support the level of design and cost accuracy;
- (d) provides a detailed design for the preferred Extension solution (including independent design verification against Queensland Rail's standards, where Queensland Rail has elected not to fund the Extension and the relevant Access Seekers require it); and
- (e) provides the following details of the preferred Extension solution's scope:
  - (i) an optimised project configuration that would provide the targeted additional Capacity to be created by the preferred Extension solution;
  - (ii) a detailed cost estimate with a +/-10% level of accuracy (or such other accuracy where agreed with the funding Access Seekers (acting reasonably) – for example, for larger projects);
  - (iii) a detailed design and construction project schedule;
  - (iv) the basis on which the project contingency was determined;
  - (v) a financial evaluation, including (if applicable) the estimated impact on the relevant Reference Tariff;
  - (vi) a procurement methodology and report on any previous approaches to the construction market that are relevant to the preferred Extension solution; and
  - (vii) a project management plan comprised of:
    - (A) resource management plan;
    - (B) cost management plan;
    - (C) design management plan
    - (D) quality management plan;
    - (E) safety management plan;
    - (F) schedule management plan;
    - (G) risk management plan;
    - (H) project packaging and delivery strategy;
    - (I) procurement management plan;
    - (J) interface management plan;
    - (K) change management plan;
    - (L) environmental management plan;

- (M) project phases, milestones and deliverables;
- (N) project risk assessment report; and
- (O) regulators notification, if needed,

and including the outcomes of any analysis and decisions made in relation to the above matters (with reasons, where applicable).

**Financial Statement** means accounting records prepared annually by Queensland Rail in accordance with section 163 of the QCA Act.

**First Escalation Date** means 1 July 2016;

**Floor Revenue Limit** means the level of revenue that will recover the expected Incremental Cost of providing Access to the individual Train Service or combination of Train Services, as applicable;

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

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

and includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected party;
- (d) a strike, lockout, boycott, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected party is a party to such industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) an act of God;
- (f) war, invasion, act of terrorists, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade, civil disturbance or public disorder;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Prudent Practices or accident or accidental damage to any thing;
- (h) malicious damage or sabotage;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste;
- (j) failure of electricity supply from the electricity grid;
- (k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;

- (l) fire, flood, storm surge, cyclone, tornado, tsunami, earthquake, washaway, landslide, explosion, hail, lightning, severe weather conditions or other catastrophe or natural calamity;
- (m) any act or omission of any person other than the affected party or Queensland Rail (including the presence of any such person on or near the Network), without the express authorisation of Queensland Rail, that results in damage to the Network or the use or operation of the Network being prevented or impeded;
- (n) epidemic or quarantine restriction; and
- (o) delay of a supplier due to any of the foregoing whenever arising,

and, where the affected party is an Access Holder, excludes any cause, event or circumstance in connection with any right to access or use Private Infrastructure that is necessary in order to enter or exit the Network or otherwise operate the Train Services in accordance with the Access Holder's Access Agreement (including any failure by the Access Holder to obtain and maintain such rights, any exercise or performance of such rights and any inconsistency between such rights and the Access Holder's Access Agreement);

**gtk** means the gross tonne kilometres attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rolling Stock utilised in the relevant Train Service (including all goods, products, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Service, as calculated in accordance with the relevant Access Agreement;

**Impost** means a tax, excise, charge, levy, duty, fee, impost, rate, royalty, imposition, withholding, fee for any Authorisation or other licence or approval fee or any other charge which is imposed, applied or administered by, or payable to or by any Authority but excluding any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes;

**Impost Change** means:

- (a) the introduction or imposition of a new Impost;
- (b) a change in the rate, amount or application of an Impost; or
- (c) a change in the basis of calculation of an Impost;

**Incremental Costs** means the costs of providing Access that:

- (a) would not be incurred by Queensland Rail if the individual Train Service or combination of Train Services (as applicable) did not operate on the basis of the assets reasonably required for the provision of Access, including:
  - (i) capital (renewal and expansion) costs; and
  - (ii) the cost of bringing expenditure forward in time; and
- (b) are assessed as Efficient Costs;

**Indicative Access Proposal** means a non-binding written response from Queensland Rail to an Access Application which includes the information set out in **clause 2.4.2**;

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

**Insolvent** means, for an Access Seeker, that at any time in the last five years, one or more of the following events has happened in relation to the Access Seeker:

- (a) the Access Seeker has not been able to pay all its debts from the Access Seeker's own money as and when they become due or has stated that it is unable to do so;
- (b) the Access Seeker has been presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) a resolution is passed that the Access Seeker be wound up or placed in liquidation voluntarily or that an administrator be appointed;
- (d) an application or order has been made for the winding up or dissolution of the Access Seeker (other than an application which is dismissed or withdrawn within ten Business Days after such proceedings were commenced);
- (e) a controller, administrator, receiver, liquidator or provisional liquidator has been appointed to the Access Seeker or in respect of any of its property;
- (f) the Access Seeker has entered into or taken any action to enter into (whether formally or informally) an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;
- (g) a mortgagee has entered into possession of any of the Access Seeker's assets or undertakings; or
- (h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction has occurred in respect of the Access Seeker,

provided that, for the purposes of this definition, a reference to the Access Seeker includes any Related Party of the Access Seeker;

**Interface Risk** means a risk to the safety of persons or property or to the environment<sup>10</sup> arising from the interaction between the Access Seeker's proposed operations and any one or more of:

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<sup>10</sup> Environmental risks include:

- risks in relation to water quality, pollution, contaminated land, nature conservation, hazardous substances and Dangerous Goods, waste and noise; and

- (a) the Network;
- (b) operations on the Network (including those of other Network Participants and Queensland Rail); and
- (c) persons using the Network, persons on or near the Network or members of the public (including any activities on the Network that may affect those matters),

including risks of Environmental Harm arising out of the Rolling Stock Operator's proposed operations on the Network, provided that a reference to operations in this definition includes railway operations as defined in the TRSA;

**Interface Risk Assessment** means an assessment to:

- (a) identify all reasonably foreseeable Interface Risks;
- (b) evaluate the possibility of the Interface Risks occurring and the safety, commercial and other consequences of those Interface Risks;
- (c) identify appropriate controls and measures to adequately manage all Interface Risks (including any training required for the Access Seeker, any director, officer, employee, contractor, agent or consultant of the Access Seeker and any other person under the control or supervision of, or acting for or on behalf of, the Access Seeker);
- (d) identify the party (as between Queensland Rail and the Access Seeker) responsible for implementing such controls and measures and ensuring their on-going effectiveness;
- (e) identify the applicable safeworking procedures and safety standards to be adhered to including Queensland Rail's safety policies and procedures and the Operating Requirements Manual;
- (f) identify the minimum standards relating to the interface between Rolling Stock and the Network with which the Rolling Stock and Train Configurations must comply in order for them to be able to be operated on the relevant parts of the Network;
- (g) identify the environmental procedures and standards to be adhered to including relevant elements of Queensland Rail's environmental management system and the Operating Requirements Manual;
- (h) satisfy the requirements under the TRSA (including for an interface agreement (as defined in the TRSA)) or under any other relevant Laws relating to health or safety; and
- (i) satisfy the relevant requirements under the Operating Requirements Manual for such an assessment;

**Interface Standards** means Queensland Rail's minimum requirements or standards relating to the interface between a Train and the Network (including

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• risks of serious environmental harm, material environmental harm and environmental nuisance as defined in the *Environmental Protection Act 1994* (Qld).

to maintain agreed operating parameters – for example, axle load) with which the applicable Rolling Stock and Train Configurations must comply in order to operate on the Network;

**IRMP** means an interface risk management plan prepared jointly by the Access Seeker and Queensland Rail in accordance with the Operating Requirements Manual which incorporates the outcomes of the relevant Interface Risk Assessment;

**Law** includes:

- (a) any statute, ordinance, code, law, by-law, proclamation, rule or regulation or any other subordinate legislation, whether State, Commonwealth or otherwise;
- (b) the terms of any Authorisation;
- (c) common law and equity;
- (d) this Undertaking; and
- (e) any order, circular, requirement, condition, notice, decree, decision, direction or guidelines of any Authority with which Queensland Rail, an Access Seeker, an Access Holder or other relevant person (as the case may be) is legally required to comply including any requirement to pay fees and charges,

whether now, or at any time in the future, in effect;

**Loading Time** means the time period between:

- (a) the time that a Train Service arrives at the entry signal to the Nominated Loading Facility; and
- (b) the time that the Train Service is ready to depart the Nominated Loading Facility provided that:
  - (i) the Train Service has presented at the exit signal at the Nominated Loading Facility; and
  - (ii) the Rolling Stock Operator for the Train Service has notified the relevant Network Controller that the Train Service is ready to depart the Nominated Loading Facility;

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

~~**Margin** means a rate of 4.12%, being the difference between the WACC as at the Approval Date and the risk free rate component of the WACC, expressed as a positive value;~~

**Material Change** means:

- (a) an Impost Change;

- (b) a Change in Law; or
- (c) a Change to Credit;

**Material Default** means, in respect of any document referred to in **clause 2.8.3(a)(ii)**:

- (a) any breach of a term of that document that could reasonably result or have resulted in the termination of that document; or
- (b) the repeated breach of the terms of that document;

**Maximum Access Charge** has the meaning given to that term in **clause 3.1.2(b)(i)**;

**Metropolitan Network** means that part of the Network bounded to the north by (and including) Nambour station and to the west by (and including) Rosewood and including all branch lines comprised in that part of the Network;

~~**Moody's** means Moody's Investors Service, Inc. and its Related Parties;~~

**Mt Isa Network** means that part of the Network bounded to the east by (and including) Stuart and to the west by (and including) Mt Isa and including all branch lines comprised in that part of the Network;

**Negotiation Cessation Notice** has the meaning given to that term in **clause 2.8.1(a)**;

**Negotiation Period** has the meaning given to that term in **clause 2.7.1(b)**;

**Network** means, ~~subject to clause 1.2.1(b)(i)(C),~~ the rail transport infrastructure (as defined in the TIA); ~~the use of which is taken, pursuant to section 250(1)(b) of the QCA Act, to be a service declared under Part 5, Division 2 of the QCA Act (but excluding any rail transport infrastructure (as defined in the TIA) the use of which is referred to in section 249(2) of the QCA Act);~~

- ~~(a) for which Queensland Rail is the Railway Manager; and~~
- ~~(b) the use of which is taken, pursuant to section 250(1)(b) of the QCA Act, to be a service declared under Part 5, Division 2 of the QCA Act (but excluding any rail transport infrastructure (as defined in the TIA) the use of which is referred to in section 249(2) of the QCA Act);~~

**Network Control** means the control, management and monitoring (including, as applicable, scheduling) of:

- (a) all Train Movements;
- (b) all other operations of Rolling Stock on the Network; and
- (c) any activities affecting or potentially affecting such Train Movements or Rolling Stock operation or the proper, efficient and safe operation and management of the Network;

**Network Control Directions** means instructions, directions and notifications from time to time issued by Queensland Rail for the purpose of Network Control (including, in relation to an Access Holder or an Access Agreement, preventing or minimising the effect of a material breach of the relevant Access Agreement);

**Network Controller** means a person appointed by Queensland Rail from time to time to perform Network Control for a relevant part of the Network;

**Network Management Principles** means the principles set out in schedule ~~FFF~~;

**Network Participant** means:

- (a) any person who holds, or uses any other person's, rights of access to any part of the Network in relation to Train Services; and
- (b) any Accredited rail transport operator (as defined in the TRSA) who uses the Network,

including:

- (c) the relevant Access Holder (and its Nominated Rolling Stock Operator); and
- (d) any person in control of, or operating, any Private Infrastructure that is connected to the Network;

**Nominated Infrastructure** means that part of the Network over which the relevant Reference Train Service travels between the Nominated Loading Facility and Nominated Unloading Facility;

**Nominated Loading Facility** means a loading facility specified for a nominated Reference Train Service in ~~clause 2.2(a)2.2(a)3-2(a)~~ of schedule ~~DDD~~;

**Nominated Rolling Stock Operator** means, for an Access Holder, a Rolling Stock Operator nominated or appointed by that Access Holder in accordance with an Access Agreement for the purpose of operating Train Services for that Access Holder for specified periods in accordance with that Access Holder's Access Rights;

**Nominated Unloading Facility** means an unloading facility specified for a nominated Reference Train Service in ~~clause 2.2(b)2.2(b)3-2(b)~~ of schedule ~~DDD~~;

**North Coast Network** means those parts of the Network bounded to the south by (and including) Nambour station, to the north by (and including) Cairns and to the west by (but excluding) Stuart and including all branch lines comprised in that part of the Network;

**Notice** has the meaning given to that term in **clause 6.3.1**.

**nt** means the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rolling Stock, when loaded, utilised in the relevant Train Service (including all goods, product, persons or matter carried)

less the weight of such Rolling Stock (in tonnes) when empty, as calculated in accordance with the relevant Access Agreement;

**Operating Plan** means an operating plan setting out how the proposed Train Services are to be operated and which either:

- (a) is consistent with the template in **schedule CCG**; or
- (b) where the Access Seeker already has a pre-existing operating plan, includes the same information as that referred to in **schedule CCG**;

**Operating Requirements Manual** means the document set out in **schedule GGG**, as amended from time to time by Queensland Rail in accordance with its rights and obligations under [Access Agreements](#) this Undertaking;

**Operational Constraint** means any temporary or permanent constraint on the operation or use of any part of the Network imposed by Queensland Rail ([acting reasonably](#)) as it considers necessary in relation to the proper, efficient or safe operation or management of the Network (including speed restrictions, load restrictions, Planned Possessions, Urgent Possessions, Emergency Possessions and signalling or overhead restrictions);

**Passenger Priority Obligations** means the obligations of a Railway Manager pursuant to sections 265 and 266 of the TIA;

**Planned Possession** means a Possession (other than an Urgent Possession or an Emergency Possession) where such Possession is entered into the MTP or DTP and adversely affects the operation of Train Services;

**Possession** means a temporary closure or occupation by Queensland Rail of part of the Network (including closure of Track or isolation of any electrical overhead traction system) for the purpose of carrying out Rail Infrastructure Operations, other work or other activities on or in the proximity of the Network;

**Pre-feasibility Study** means a study that, in relation to the possible Extension solutions identified in a Concept Study for consideration in this stage of the study process (**Possible Extensions**):

- (a) confirms the project objectives in relation to the creation of additional Capacity;
- (b) assesses each of the Possible Extensions in respect of:
  - (i) the technical and operating requirements for that Possible Extension;
  - (ii) an indicative assessment of the additional Capacity that might reasonably be expected by implementing that Possible Extension; and
  - (iii) a preliminary risk assessment for that Possible Extension;
- (c) includes preliminary survey and geotechnical investigation to support the level of design and cost accuracy required for the study;

- (d) identifies as the preferred Extension solution to be studied under a Feasibility Study, the Possible Extension that is fit-for-purpose and the most efficient and effective solution; and
- (e) provides:
  - (i) a high level engineering assessment of the preferred Extension solution in respect of the total cost of ownership, after allowing for risk, for the purpose of minimising that total cost of ownership;
  - (ii) analysis of the technical and economic feasibility of the preferred Extension solution and identifies why it is preferred;
  - (iii) a project budget, with a +/-20% level of accuracy (or such other accuracy where agreed with the funding Access Seekers (acting reasonably));
  - (iv) an indicative design and construct schedule for the preferred Extension solution that includes time tolerances; and
  - (v) potential benefits (including Capacity, maintenance and operating benefits) of the preferred Extension solution; and
- (f) includes a proposed scope, budget, duration and deliverables for a Feasibility Study,

and including the outcomes of any analysis and decisions made in relation to the above matters (with reasons, where applicable);

**Preliminary Information** means the information referred to in **clause 1** of **schedule AAA** (as applicable) and, where that information is published on Queensland Rail's website, that information as published on that website from time to time;

**Preserved Train Path Obligations** means the obligations of a Railway Manager pursuant to section 266A of the TIA;

**Private Infrastructure** means rail transport infrastructure (as defined in the TIA), including but not limited to the track, signalling and electrical overhead traction system (if applicable) for which neither Queensland Rail nor Queensland Rail's successor, assignor or subsidiary is ~~not~~ the Railway Manager;

**Prudent Practices** means the exercise of that degree of diligence, care, foresight, prudence and skill that would reasonably be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

**QCA** means the Queensland Competition Authority as established under the QCA Act;

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

**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 **schedule DDD**;

**Quarter** means a period of three consecutive months commencing on 1 July, 1 October, 1 January or 1 April;

**Queensland Rail** means Queensland Rail Limited ACN 132 181 090;

**Queensland Rail Cause** means, subject to the exceptions set out below, Queensland Rail's inability to make the Network available for the operation of Train Services in accordance with a Train Service Entitlement as a result of:

~~(a)~~ a Planned Possession, Urgent Possession or Emergency Possessionan Operational Constraint;

~~(a)(b)~~ a Force Majeure Event;

~~(b)(c)~~ the derailment of any Train caused solely primarily by an act or omission of Queensland Rail; or

~~(e)(d)~~ any other action by Queensland Rail other than Queensland Rail complying with an obligation in accordance with any applicable Law or the relevant Access Agreement,

except where Queensland Rail's inability to make the Network available for the operation of Train Services in accordance with a Train Service Entitlement is ~~in any way primarily~~ attributable to the Rolling Stock Operator, another Network Participant (other than Queensland Rail) or any other person, ~~or a Force Majeure Event;~~

**Rail Authority** means the authority established under section 6 of the Rail Authority Act;

**Rail Authority Act** means the *Queensland Rail Transit Authority Act 2013* (Qld);

**Rail Infrastructure Operations** means:

- (a) the construction of any rail transport infrastructure (as defined in the TIA) to improve, upgrade, expand, extend, replace or vary the whole or any part of the Network;
- (b) any management, maintenance or operational activities relating to the Network, including the improvement, maintenance, repair, modification, installation, removal, renewal or decommissioning of the whole or any part of the Network; and
- (c) any inspections or investigations of the Network;

**Railway Manager** means an Accredited rail infrastructure manager (as defined in the TRSA);

**Rail Transport Operator** means:

- (a) any person who holds, or uses any other person's rights of access to any part of the Network in relation to Train Services; and
- (b) any Accredited rail transport operator (as defined in the TRSA), including:
- (c) the relevant Access Holder (and its Nominated Rollingstock Operator);and
- (d) any person in control of, or operating, any Private Infrastructure.

**Rail Safety Regulator** means the chief executive referred to in the TRSA;

**Reasonable Demand** means the aggregate of current contracted demand for Access, likely future demand (within a reasonable timeframe) for Access and any reasonable spare Capacity in the Network as determined by Queensland Rail, acting reasonably;

**Recipient** means, in respect of Queensland Rail and an Access Seeker, either party to the extent that it receives information which is provided by or on behalf of the other party during the negotiation of Access (including, as applicable, in an Access Application or by the provision of information prior to an Access Application being made);

**Reference Tariff** means a prescribed Access Charge applicable for a specified Reference Train Service, set out in **schedule DDD**, 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, replaced, varied or escalated in accordance with this Undertaking from time to time);

**Reference Train Service** means a notional Train Service described in **clause 2.12-13.1** of **schedule DDD** in respect of 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;

**Regional Network** means any of the following:

- (a) the Mt Isa Network;
- (b) the North-Coast Network;
- (c) the West Moreton Network; or
- (d) the Metropolitan Network;

**Regional Network Capacity Group** means a group established to assist Queensland Rail to develop each Regional Network Master Plan comprised of those persons referred to in **clause 1.5(d)**.

**Regional Network Master Plan** means the plan relating to Queensland Rail's proposed capital expenditure projects containing the information referred to in **clause 1.5(c)** in relation to each Regional Network.

**Regional Network Planning Forum** means a forum for each Regional Network Capacity Group to meet and discuss the relevant Regional Network Master Plan in accordance with **clause 1.5(g)**.

**Regulatory Asset Base** means the asset value accepted by the QCA for the purpose of developing a Reference Tariff, as maintained by Queensland Rail in accordance with **clause 3.8**;<sup>11</sup>

**Related Party** means a related body corporate as defined in the Corporations Act and, for Queensland Rail, includes the Rail Authority;

**Renewal** means, in relation to an Access Holder's Access Rights that are to expire, the Renewal Access Seeker entering into an Access Agreement to hold or continue to hold Access Rights that are equivalent to the relevant Access Holder's Access Rights immediately prior to their expiry (including with the same destination and origin) for a further term commencing immediately after the expiry of the relevant Access Rights;

**Renewal Access Seeker** means, in relation to an Access Holder's Access Rights that are to expire:

- (a) the Access Holder ~~(where the Access Holder has no Customer)~~;<sup>12</sup> or
- ~~(b) a person<sup>13</sup> nominated by the Access Holder's Customer in writing to Queensland Rail an Access Holder's Rollingstock Operator; or~~
- ~~(b)(c) another Rollingstock Operator competing for the relevant Access Rights~~

**Renewal Application** means an Access Application by a Renewal Access Seeker solely for a Renewal;

**Renewal Timeframe** means, in relation to the submission of a Renewal Application:

- (a) no later than 20 Business Days after the later of:
  - (i) the date on which Queensland Rail gave the relevant notice under **clause 2.9.3(a)**; and
  - (ii) the date that is three years before the expiry of the relevant Access Agreement; and
- (b) no less than two years before the expiry of the relevant Access Agreement;

<sup>11</sup> Separate Regulatory Asset Bases may be maintained for different Reference Tariff inputs in respect of the same Reference Tariff – with the consequence that each of those Regulatory Asset Bases is relevant to the development of that Reference Tariff.

<sup>12</sup> For example, the mine operator who uses the Access Rights to transport coal from its mine is the Access Holder.

~~<sup>13</sup> The Customer may nominate itself, the existing Access Holder or any other person. This opportunity to nominate the person who can lodge a Renewal will give the Customer added flexibility concerning, for example, directly holding Access Rights or changing Operators at the end of an Access Agreement's term.~~

**Review Event** means a material change in circumstances:

- (a) that Queensland Rail can reasonably demonstrate may give rise to a need to vary the relevant Reference Tariff; and
- (b) in respect of which Queensland Rail has given written notice to the QCA of Queensland Rail's intention to propose a variation to that Reference Tariff under **clause 556 of schedule DDD**;

**Rolling Stock** means rolling stock (as defined under the TRSA) that operates on or uses Track;

**Rolling Stock Operator** means a rolling stock operator (as defined under the TRSA) who operates or will operate Rolling Stock on the Network;

**rtp** means, for a Train Service, the amount calculated as follows:

$$\text{rtp} = \max[(A/B), (B/A)]$$

where:

- A** is the maximum number of Reference Train Services at full utilisation; and
- B** is the maximum number of the proposed Train Services at full utilisation,

with those maximums being determined using a readily available simulation package, provided that if:

- (a) the maximum number of proposed Train Services at full utilisation exceeds the maximum number of Reference Train Services at full utilisation; and
- (b) the scheduled section running times of the proposed Train Service are the same as the nominated section running times for the Reference Train Service,

then rtp is deemed to be one;

**Safety Management System** means Queensland Rail's safety management system (as required under the TRSA);

**Safety Matters** means, for the purposes of **clause 4.3.1**, matters which could potentially be hazardous to life and/or property if not addressed promptly.

**Stand Alone provision of Access** means the provision of Access as if the relevant Train Service(s) was (were) the only Train Service(s) provided with Access by Queensland Rail;

**Standard Access Agreement** means a pro forma Access Agreement set out in **schedule HHH**;

**Standard and Poor's** means Standard and Poor's Financial Services LLC and its Related Parties;

**Take or Pay Charge** means a charge or other amount payable by an Access Holder to Queensland Rail under an Access Agreement in relation to the

Access Holder not fully using its Access Rights for a specified period (and for a Reference Train Service is calculated as set out in **clause 445** of **schedule DDD**);

**Term** means the period beginning on the Approval Date and ending on the Terminating Date;

**Terminating Date** means the earlier of:

- (a) 30 June 2020; and
- (b) the date on which this Undertaking is withdrawn in accordance with the QCA Act;

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

**Timetabled Service** means a Train Service, the Train Service Entitlement in respect of which is defined in terms of a specified Train Path at a particular time on a particular day and/or week;

**Through-Running Train** means a Train that operates both on the Network (in accordance with a Train Service Entitlement) and Private Infrastructure over its journey from a specified origin to a specified destination;

**Track** means that part of the Network comprising the rail, ballast, sleepers and associated fittings;

**Train** means any self-propelled configuration of Rolling Stock operating as a unit on Track;

**Train Configuration** means the description of the combination of Rolling Stock comprising a Train including the identification number, gross mass and tare mass of individual items of Rolling Stock and the order in which those Rolling Stock items are placed in the Train;

**Train Movement** means the operation of a Train on the Network by a Network Participant;

**Train Path** means the use of a specified portion of the Network, which may include multiple sections in sequential order, at a specified time;

**Train Service** means a Train operating on the Network from a specified origin to a specified destination;

**Train Service Entitlement** means an Access Holder's entitlement under an Access Agreement to nominate an Operator to operate, in accordance with that Access Agreement, a specified number and type of Train Services over the Network 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;

**Transfer** means the relinquishment by an Access Holder under an Access Agreement of all or part of its Access Rights in order to create Available Capacity that can be used to grant new Access Rights to that Access Holder (who will be an Access Seeker in relation to those new Access Rights) or to an Access Seeker nominated by that Access Holder;

**Transferee** means the relevant Access Seeker for a Transfer;

**Transport Service Payments** means payments to Queensland Rail from DTMR or any other Authority for specified Below Rail Services for nominated sections of the Network;

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

**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 all schedules) as amended from time to time;

~~**Undertaking Risk Free Rate** means the rate calculated:~~

- ~~(a) — by averaging the yield on a five year Commonwealth Government Bond over a 20 trading day period ending as close as practicable to but not later than the date that Queensland Rail offers an Access Agreement to an Access Seeker; and~~
- ~~(b) — in accordance with:
  - ~~(i) — the methodology used by the QCA to determine the yield on such a Commonwealth Government Bond; or~~
  - ~~(ii) — where paragraph (b)(i) of this definition does not apply, the methodology agreed between Queensland Rail and the QCA (acting reasonably) from time to time for the purpose of this definition;~~~~

**Unloading Time** means the time period between:

- (a) the time that a Train Service arrives at the entry signal to the Nominated Unloading Facility; and
- (b) the time that the Train Service is ready to depart the Nominated Unloading Facility provided that:
  - (i) the Train Service has presented at the exit signal at the Nominated Unloading Facility; and
  - (ii) the Rolling Stock Operator for the Train Service has notified the relevant Network Controller that the Train Service is ready to depart the Nominated Unloading Facility;

**Urgent Possession** means a Possession:

- (a) that is required to correct problems in relation to the Network that are considered by Queensland Rail to be potentially dangerous to persons or property; and
- (b) that Queensland Rail intends to carry out within less than three months after the detection of the problem,

other than an Emergency Possession;

Usable Schedule Time means a proposed Train Service that considers an Operator’s ability to utilise Rolling Stock and crew (as contemplated by the Operating Plan) to operate on that proposed Train Service, Queensland Rail must also consider as part of the development of the proposed Train Service, the Operator’s ability to operate any connecting Train Services.

**WACC** means the weighted average cost of capital ~~which:~~

- (a) ~~as which as~~ at the Approval Date, means a rate of 6.93% nominal post-tax; ~~and~~
- ~~(b) after the Approval Date, means a rate equivalent to the Undertaking Risk Free Rate plus the Margin;.~~

**West Moreton Network** means that part of the Network comprising the rail corridor from (and including) Rosewood to Miles, excluding all branch lines not directly connecting coal mine loading facilities to that rail corridor; and

**Year** means the period of 12 months commencing 1 July.

## 7.2 Interpretation

- (a) In this Undertaking, unless the context otherwise requires:
  - (i) words in the singular include the plural and vice versa;
  - (ii) any gender includes the other genders;
  - (iii) if a word or phrase is defined, its other grammatical forms have corresponding meanings;
  - (iv) “include”, “includes” and “including” must be read as if followed by the words “without limitation”;
  - (v) a reference to a person includes a partnership, joint venture, unincorporated association, corporation, government or statutory body or authority and any other entity recognised by law;
  - (vi) 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);
  - (vii) a reference to:

- (A) “dollars” or “\$” is a reference to Australian currency;
- (B) a person includes the person’s legal personal representatives, successors, permitted assignees and persons substituted by novation;
- (C) employees includes secondees;
- (D) constructing includes all associated activities such as designing, installing, procuring and commissioning;
- (E) an Extension includes any part of that Extension;
- (F) conduct includes:
  - (1) a benefit, remedy, discretion, authority or power; and
  - (2) any omission and any representation, statement or undertaking, whether or not in writing;
- (G) time is to local time in Brisbane;
- (H) a month is a reference to a calendar month;
- (I) subject to **clause 7.2(a)(vii)(J)**, a “Part”, “clause” or “schedule” is a reference to the corresponding Part or clause found in **Part 1 to Part 7** of this Undertaking or “schedule” to this Undertaking as amended or replaced from time to time;
- (J) in a schedule to this Undertaking:
  - (1) a “Part” or “clause”, is a reference to a Part or clause of that schedule unless otherwise stated; and
  - (2) a “Part” or “clause” of this Undertaking, is a reference to a Part or clause found in **Part 1 to Part 7** of this Undertaking;
- (K) this or any other document or agreement includes the document or agreement as varied, amended or replaced and despite any change in the identity of the parties to that document or agreement;
- (L) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
- (M) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;

- (viii) if the date on or by which any act must be done under this Undertaking is not a Business Day, the act must be done on or by the next Business Day;
  - (ix) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
  - (x) if a term used in this agreement has the meaning given, or as defined, under any legislation, then that term has the meaning:
    - (A) given, or as defined, under that legislation from time to time; and
    - (B) where that legislation ceases to define that term, last given, or as last defined, under that legislation; and
  - (xi) if there is any inconsistency between matters contained in a Schedule or the Preamble and **Part 1 to Part 7** of this Undertaking, the provisions in **Part 1 to Part 7** of this Undertaking prevail.
- (b) Headings do not affect the interpretation of this Undertaking.
- (c) To the extent that Queensland Rail's obligations under this Undertaking are or become inconsistent with Queensland Rail's obligations under any other Law, this Undertaking does not apply to the extent of that inconsistency.
- (d) If this Undertaking obliges Queensland Rail to provide any information, reports, documents or other material (in whatever form) (**Information**) to the QCA or any other person then, despite any other provision in this Undertaking, Queensland Rail is not required to comply with that obligation if Queensland Rail claims:
- (i) on the ground of self incrimination, a privilege Queensland Rail would be entitled to claim against providing the Information were Queensland Rail a witness in a prosecution for an offence in the Supreme Court; or
  - (ii) that legal professional privilege applies in respect of that Information.
- If Queensland Rail does not comply with an obligation on that basis, Queensland Rail must notify the QCA of this and Queensland Rail or the QCA may apply to the Supreme Court of Queensland for a determination of the validity of such a claim of privilege.
- (e) Despite any other provision in this Undertaking, this Undertaking does not expressly or impliedly waive any claim that Queensland Rail may have to legal professional privilege in respect of any information, reports, documents or other material (in whatever form).

- (f) The preamble to this Undertaking does not affect the interpretation of this Undertaking and no reference may be made to that preamble to interpret this Undertaking.

# Schedule A

## Preliminary Information and Capacity Information

### 1 Preliminary Information

The following preliminary information will be made available on Queensland Rail's website for Access Seekers:

- (a) **(Introduction)** The criteria for the use of data and the purpose of the preliminary information.
- (b) **(Civil Infrastructure)** A description of the railway and Track and any operational constraints, e.g. grades and curves.
- (c) **(Telecommunications)** A description of the communication system used.
- (d) **(Electric Traction)** A general system description.
- (e) **(Interface Requirements)** Information on track gauge, axle loads, train speeds, Rolling Stock gauge and noise limits.
- (f) **(Locality Information)** Terrain information and climatic conditions and resultant system disruptions.
- (g) **(Committed Corridor Upgrades)** Identification of any relevant committed corridor upgrades.
- (h) **(Maps and Drawings)** Corridor maps and Line Diagrams including plans specifying Track Segments and Mainline Paths.
- (i) **(Level Crossings)** The number of level crossings and the type of protection used.
- (j) **(Train Operations)** Sectional running times (calculated based on the projected average sectional running times), maximum Train lengths incident recovery times.
- (k) **(Systems)** A description of operational, safeworking and signalling systems.
- (l) **(Interface Standards)** A copy of the relevant Interface Standards.
- (m) **(Commercial Information)** The applicable Reference Tariff and Standard Access Agreement (if any).

### 2 Capacity Information

For the purpose of **clauses 2.1.2(b)** and **2.7.22-7-2(a)(ii)** of this Undertaking, the Capacity Information is as follows:

(a) Master Train Plan (MTP)

~~(a)(b)~~ the relevant current Daily Train Plan (being the current Daily Train Plan for the relevant day (or days) of the week) for the relevant part of the Network<sup>14</sup> which, for clarity, will be complete and will not be redacted in any way; and

(c) the Network Control diagrams, indicating actual running of Train Services against the relevant Daily Train Plan, for those days for which the Daily Train Plan has been provided under **clause 2(b)2(b)2(a)**.

### 3 Capacity Information for an Extension

(a) For the purpose of clause 2.7.2(b) of this Undertaking, the Capacity Information must identify if an Extension is required to the Network to provide the access rights sought in the Access Application,

(b) If an Extension is required then Queensland Rail must provide detailed information on the required Extension, including:

(i) the capacity analysis, capacity modelling assumptions, and the modelling simulation outputs that underpin Queensland Rail's decision to require an Extension

(ii) either

(A) an outline of the investigations and works in relation to identifying and undertaking the Extension and indicative estimate of the cost of, and timing for, such investigations and works; or

(B) the proposed scope, standard and cost of the rail transport infrastructure (as defined in the TIA) works that will comprise the required Extension

(iii) any information on the Extension that Queensland Rail relied on in developing its response to 3(b)(ii) above

(iv) reasons why Queensland Rail has identified the proposed rail transport infrastructure works as comprising an Extension

(c) Queensland Rail to provide ancillary information for the Access Seeker, including the:

(i) operational integrity of the relevant corridor that is to be extended

(ii) minimum technical, engineering and safety standards required for the required Extension

<sup>14</sup> The relevant current Daily Train Plan provided will not show the whole Network, ~~and as such may not show all Train Services that potentially impact on Existing Capacity.~~ However, Queensland Rail will provide sufficient information about all Train Services that potentially note those other parts of the Network where interaction with other Train Services is most likely to impact on Existing Capacity.

- (iii) design specifications, infrastructure standards for the Network near to or adjoining the required Extension
- (iv) planning procedures developed and maintained by Queensland Rail which need to be taken into account in considering whether to proceed with an Extension
- (v) all necessary authorisations reasonably required by Queensland Rail to proceed with the Extension
- (vi) all rights and interests in land that, in Queensland Rail's opinion are reasonably required and the acquisition terms that would be satisfactory to Queensland Rail, acting reasonably

subject to the Access Seeker having entered into an applicable confidentiality agreement with Queensland Rail, the protocols, standards and procedures an Access Seeker is required to comply with under the terms of the Standard Access Agreement

(d) Queensland Rail to also provide:

- (i) the indicative funding requirements for it to assist the Access Seeker to develop the required Extension through the relevant stage of the Access Seeker's investment process; and
- (b)(ii) a first draft funding agreement that is consistent with the Extension Access Principles in **Schedule I** of this Undertaking.

## Schedule B

### Access Application information requirements

#### 1 Application

- (a) Without limiting the information requirements that an Access Application must satisfy in accordance with this Undertaking, an Access Application must satisfy the information requirements set out in this **schedule BBB**.
- (b) This **schedule BBB** applies as follows:
  - (i) where the proposed Access Application is solely for a Transfer in respect of Transferred Access Rights, **clause 7** applies (and, except as expressly referred to in **clause 7**, **clauses 2 to 6** and **clause 8** do not apply);
  - (ii) where the proposed Access Application is solely a Renewal Application, **clause 8** applies (and, except as expressly referred to in **clause 8**, **clauses 2 to 7** do not apply); and
  - (iii) subject to **clauses 1(b)(i)** and **(ii)**, for all other proposed Access Applications, **clauses 2 to 6** apply with **clauses 7** and **8** only applying to the extent that (if it does at all) the Access Application also in part relates to a Transfer in respect of Transferred Access Rights or is in part a Renewal Application.

#### 2 Access Seeker and Customer details

Relevant identity and contact details including:

- (a) the Access Seeker's name and contact details;
- (b) if the Access Seeker has a Customer, that Customer's name and contact details; and
- (c) if the Access Seeker or its Customer is an unincorporated joint venture, the names and contact details for all of the joint venture participants.

#### 3 Ability to use Access Rights

Information needed to assess matters referred to in **clause 2.8.1(a)** of this Undertaking including the following information about matters to be taken in account under **clause 2.8.1(a)** of this Undertaking:

- (a) where the Access Seeker seeks Access Rights that will be used for a person who is the Access Seeker's Customer, information evidencing that the Access Seeker is reasonably likely to have such a Customer at

~~the commencement date of the Access Agreement. —and for this purpose the effect that granting the Access Rights to the Access Seeker will have on the Access Seeker's ability to attract a Customer in the future;~~

- (b) whether the Access Seeker has secured, or is reasonably likely to secure:
  - (i) the rights required to enter and leave the Network (for example, rights to unload at its destination); and
  - (ii) if applicable, a rail haulage agreement for the operation of Train Services referred to in its Access Application, including within timeframes consistent with the Access Application;
- (c) whether the Access Seeker or its Nominated Rolling Stock Operator has sufficient facilities (including Rolling Stock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to fully utilise the Access Rights sought; and
- (d) where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is sufficient to support full utilisation of the Access Rights sought.

## 4 Form of Access Agreement

Nominate whether the form of Access Agreement that the Access Seeker is seeking will be in the form of the Standard Access Agreement or, where a different form is proposed, a description of (including the contractual outcomes being sought) and reasons for the proposed form.

## 5 Coal and freight Train Services

### 5.1 General Train Service details

Information describing the requested Train Services, including:

- (a) the route of operation (include diagram if necessary) including origin, destination, loading facility, unloading facility and depot;
- (b) the proposed commencement date for Train Services;
- (c) the proposed term of the Access Agreement;
- (d) the method of transporting freight (e.g. containers, louvered wagons, bulk wagons);
- (e) a description of freight/commodity;
- (f) the net tonnes of product per annum for each Year of operation, represented on a monthly basis or, where monthly railings are not even, the proposed distribution of net tonnes;
- (g) the proposed sectional run times;

- (h) the proposed maximum dwell times,<sup>15</sup> time at loading facility, time at unloading facility and time at depot;
- (i) the proposed non standard operating modes or methods (if applicable); and
- (j) the proposed requirements (if any) for the short-term storage of Trains (excluding individual items of Rolling Stock) on the Rail Infrastructure at locations specified by Queensland Rail during Possessions or during the operation of a Train Service.

## 5.2 Timetable requirements

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service or a variation to an existing Train Service for the Access Seeker;
- (b) required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (c) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant; and
- (d) the requirements for shunting or dwell times<sup>16</sup> enroute, separately for forward and return journeys.

## 5.3 Rolling Stock details

~~Information For all Access Seekers other than an End User Access Seeker, information~~ describing the Rolling Stock and Train Configurations, including:

- (a) the proposed number of locomotives per Train;
- (b) the proposed number of wagons per Train;
- (c) the type and class of locomotive;
- (d) the mass of each locomotive (includes full sand and fuel load);
- (e) the type and class of wagons;
- (f) the nominal gross mass of wagon;
- (g) the tare mass of each wagon;
- (h) if carrying containers:
  - (i) the tare mass per container; and
  - (ii) the average number of containers per wagon;

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<sup>15</sup> A dwell time is the time period from when the Train Service arrives at a specified point on its journey until it has completed all relevant activities and is ready to depart from that point and has advised the relevant Network Controller accordingly.

<sup>16</sup> A dwell time is the time period from when the Train Service arrives at a specified point on its journey until it has completed all relevant activities and is ready to depart from that point and has advised the relevant Network Controller accordingly.

- (i) the average proposed load (of product) per wagon;
- (j) the maximum proposed gross tonnes per wagon;
- (k) the maximum axle load of locomotives and wagons;
- (l) the gross tonnes and the nominal payload per Train Service, separately for forward and return journeys; and
- (m) the Comparison Train Length for the proposed Train.

#### **5.4 Infrastructure requirements**

Details of any Extensions and Private Infrastructure and any other rail transport infrastructure that may be necessary for operation of the Train Service, where known.

## **6 Passenger Train Services**

### **6.1 General Train Service details**

Information describing the Train Services, including:

- (a) the route of operation (including a diagram, if necessary);
- (b) the proposed term of the Access Agreement;
- (c) the type of passenger traffic (e.g. long distance, commuter, tourist);
- (d) the proposed sectional run times; and
- (e) the proposed requirements (if any) for the short-term storage of Trains (excluding individual items of Rolling Stock) on the Rail Infrastructure at locations specified by Queensland Rail during Possessions or during the operation of a Train Service.

### **6.2 Timetable requirements**

Information setting out the timetabling requirements, including:

- (a) whether the Access Rights sought are for a new Train Service, or variation to an existing Train Service, for the Access Seeker;
- (b) whether the Access Rights sought are for a new Train Service, or a variation to an existing Train Service, for the Network;
- (c) the required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the proposed Access Agreement term;
- (d) the preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys; and

- (e) the requirements for shunting or dwell times<sup>17</sup> enroute, separately for forward and return journeys.

### **6.3 Rolling Stock details**

Information describing the Rollingstock, including:

- (a) the total number of locomotives per Train;
- (b) the total number of carriages per Train;
- (c) the total number of passenger multiple units (**PMU**) per Train;
- (d) the type and class of locomotive;
- (e) the mass of each locomotive (including full sand and fuel load);
- (f) the type and class of carriage;
- (g) the nominal gross mass of each carriage;
- (h) the type and class of PMU;
- (i) the average gross mass of PMU;
- (j) the maximum number of vehicles including locomotives, carriages or units within PMU;
- (k) the maximum axle load of locomotives and carriages;
- (l) the Comparison Train Length for the proposed Train;
- (m) the gross tonnes per Train Service, separately for forward and return journeys; and
- (n) the maximum operation speed separately for loaded and empty Trains.

### **6.4 Infrastructure requirements**

Details of any Extensions and Private Infrastructure and any other rail transport infrastructure that may be necessary for operation of the Train Service, where known.

## **7 Transfers**

Information relating to the Transfer including:

- (a) relevant identity and contact details relating to the Transferee including:
  - (i) the Transferee's name and contact details;
  - (ii) if the Transferee has a Customer, that Customer's name and contact details; and
  - (iii) if the Transferee or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;

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<sup>17</sup> A dwell time is the time period from when the Train Service arrives at a specified point on its journey until it has completed all relevant activities and is ready to depart from that point and has advised the relevant Network Controller accordingly.

- (b) where the Transferee is not the current Access Holder (**Transferor**) who intends to undertake the relevant Transfer, relevant identify and contact details relating to the Transferor including:
  - (i) the Transferor's name and contact details;
  - (ii) if the Transferor has a Customer, that Customer's name and contact details; and
  - (iii) if the Transferor or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (c) details identifying the Transferor's Access Agreement, and the Access Right under it (including by reference to origin and destination), to which the Transfer relates;
- (d) details referred to in **clauses 3 and 4** with reference to the proposed Transfer;
- (e) the proposed date and term for the Transfer;
- (f) the information referred to in **clause 5.1 to 5.3** or **clauses 6.1 to 6.3** (as applicable);
- (g) evidence that the Transferor's Customer and the Transferee's Customer have been notified of, and have agreed to, the Transfer (except where the Transferor's Customer initiated the Transfer by notice to Queensland Rail); and
- (h) any other information that:
  - (i) it is necessary to provide under this Undertaking; or
  - (ii) is otherwise necessary and has been notified to the Access Seeker by Queensland Rail.

Transferors and Transferees should note that where only part of the Transferor's Access Rights are to be relinquished as a part of the Transfer, that relinquishment will only occur based on whole Train Paths from origin to destination.

## 8 Renewals

Information relating to the Renewal including:

- (a) relevant identity and contact details in relation to the Renewing Access Seeker including:
  - (i) the Renewing Access Seeker's name and contact details;
  - (ii) if the Renewing Access Seeker has a Customer, that Customer's name and contact details; and
  - (iii) if the Renewing Access Seeker or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;

- (b) where the Renewing Access Seeker is not the current Access Holder, relevant contact details for the current Access Holder including:
  - (i) the current Access Holder's name and contact details;
  - (ii) if the current Access Holder has a Customer, that Customer's name and contact details; and
  - (iii) if the current Access Holder or its Customer is an unincorporated joint venture, the names and contact details for all joint venture participants;
- (c) a description identifying the current Access Agreement to which the Renewal relates;
- (d) details referred to in **clauses 3 and 4** with reference to the proposed Renewal;
- (e) whether the Renewal is for all or part of the relevant existing Access Rights and, where for part only, details of the relevant part;
- (f) details of all changes (if any) in:
  - (i) the information referred to in **clause 5.1 to 5.3** or **clauses 6.1 to 6.3** (as applicable)<sup>18</sup>; and
  - (ii) the Operating Plan,from that relating to the relevant existing Access Agreement.<sup>19</sup>

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<sup>18</sup> A Renewal will not require any Extension therefore **clauses 5.4 and 6.4**, as applicable, are not relevant.

<sup>19</sup> It should be noted that a Renewal only arises where a Renewing Access Seeker wishes to hold or to continue to hold (as applicable) Access Rights equivalent to the relevant existing Access Rights. The greater the nature and degree of change the greater the risk that the relevant Access Application will not be a Renewal.

## Schedule C

### Operating Plan Template

***(Insert name of accredited operator responsible for operating train services - include logo and/or picture as required)***

## Operating Plan

for

***(insert title of train services)***

**Document No:** ***(insert identification number for document)***  
**Version:** ***(insert version number)***  
**Date:** ***(insert date of issue)***  
**Authorised by:** ***(insert name of person responsible for authorising operating plan)***

**Document Information**

<b>Current Version:</b>	(Insert current version number)
<b>First Released:</b>	(Insert date first released)
<b>Last Updated:</b>	(Insert date last updated)
<b>Review Before:</b>	(Insert date when due for review)
<b>Content Developer:</b>	(Insert content developer name, if required)
<b>Document Authoriser:</b>	(Insert document authoriser and title)

**Document Amendment History**

Version Number	Date	Section(s) Amended	Summary of the Amendment

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<b>16</b>	<b>APPENDICES</b>

Follow the guidelines in this document to ensure the required information is included. Text in black is suggested headings/wording etc while text in blue provides guidance and should be deleted from final document. Don't forget to update header details.

Note that this document is the primary means of communicating the operational requirements to all involved workers and is of special importance in providing Network Control and train planners with a clear understanding of the train services. Include any information that facilitates this aim.

## 1 Introduction

Provide some general background information in this section regarding the proposed train services.

eg:

- generally describe route and product
- is it a new or modified service?
- is it part of a larger project?

The accredited rail operator who will be responsible for the operation of these train services is (insert name of accredited rolling stock operator).

## 2 Purpose

The draft operating plan must include sufficient detail to fully describe the train services and method of operation including scheduling, route, rolling stock and train configurations.

The draft operating plan may be modified during the negotiation process, however the Operator must finalise the operating plan before train operations commence. The final operating plan must be consistent with the Interface Risk Management Plan (IRMP).

If an Operator wishes to change the operating plan after operations have commenced, Queensland Rail and the Operator will review the interface risk assessment together and agree any necessary updates to the IRMP and/or operating plan.

The purpose of this operating plan is to communicate the operating requirements of the train services to all involved workers and in particular to provide guidance for Queensland Rail Network Controllers.

It describes the required operations on the network, identifies the procedures required and defines relevant responsibilities to enable the train service to be operated safely and reliably and not present any unacceptable risk.

Insert any other applicable information.

### 3 Scope

This operating plan is applicable to the operation of (insert train description) between (insert starting point) and (insert end point) in accordance with Access Agreement (insert title of access agreement).

The network map below indicates the route of the operation.

Insert map of corridors if required to clarify route.

An ATT or TRA must be issued prior to the commencement of this train service.

This procedure is to be read in conjunction with Train Route Acceptance (insert TRA number TRA-XXXX) and/or the relevant Authority to Travel (ATT), if required, which define the specific parts of the network to be used for this operation, the authorised rolling stock and train configurations plus any additional network requirements.

### 4 Definitions

Include definitions of any terms used in this document that require special explanation.

### 5 Associated documents

Include a list of all documents referred to by this plan or documents that are pre-requisites for carrying out this operation - eg Access Agreement, TRA, Technical Standards, Procedures etc.

### 6 Service requirements

Provide details of the proposed train services including:

#### 6.1 Area of operation

- origin
- destination
- entry and exit points
- rolling stock repositioning

#### 6.2 Business aspects

- tonnage profile
- passenger loading & unloading profile
- project service life
- seasonality of haulage / variability of service

### 6.3 Operation

- type of service
- commodity
- train configuration
- special operating parameters
- dangerous goods details
- overload management system
- timing of schedule servicing / provisioning / examining / stowing activities
- crewing plan - crew requirements, location of crew depots, crew change points

### 6.4 Train service levels / Scheduling

- daily, weekly, monthly, annually, as required
- maximum number of services
- dwell times at loading facilities
- dwell times at unloading facilities
- dwell times at crew changes
- dwell times enroute & operational requirements eg for fuelling
- rolling stock operational speed
- indicative timetable requirements (sectional run times)
- connecting services
- critical timings at specified locations
- authority from private infrastructure manager

### 6.5 Alterations to Service Schedule

Where XXXX or Queensland Rail wish to make alterations to the train service, each party will adhere to the requirements set out in the Network Management Principles contained in the Operator Requirements Manual.

## 7 Rolling Stock information

### 7.1 Rolling Stock Data

Insert the appropriate information for the rolling stock being operated – delete any unused rows, columns and tables or add extras as required.

Locomotives		
Class	(Insert the locomotive classes)	
Type	(Insert the locomotive types eg diesel electric, diesel hydraulic, diesel mechanical, electric, steam)	
Number (if applicable)	(Insert the locomotive running number)	
Length	(Insert the length over coupling)	

	lines of each locomotive class)	
Mass	(Insert the mass of each locomotive class in full working order, including fuel and sand, in tonnes)	
Axle Load	(Insert the maximum loading on any locomotive axle)	
Rolling Stock Outline Clearance Category	(Insert the rolling outline that each locomotive class complies with and any out-of-gauge issues)	
Speed	(Insert the maximum approved speed of each locomotive class. If speed in reverse is different, show both forward and reverse)	
Drawgear	(List the drawgear type and strength)	
Train Driver Aids	(List the safeworking and driver alerting equipment fitted eg VCS, ATP, DTC etc)	
Diagram	(Rolling stock diagram number)	

Self Propelled Trains				
Type	(indicate the types of units with fixed rolling stock configuration eg EMU, TILT, RM etc)			
Unit Configuration	(Insert the configuration of vehicles that make up each fixed coupled unit)			
Running Numbers (if applicable)	(Insert the running numbers of the units or vehicles)			
Total Length	(Insert the length of each unit over coupling lines)			
Gross Mass	(Insert the mass of each unit in full working order with maximum number of passengers)			
Tare Mass	(Insert the mass of each empty unit)			
Maximum axle load	(Insert the maximum loading on any axle in the units)			
Rolling Stock Outline Clearance Category	(Insert the rolling outline that each unit complies with and any out-of-gauge issues)			
Speed	(Insert the maximum approved speed of each unit. If speed in reverse is different, show both forward and reverse)			
Drawgear	(List the drawgear type			

Self Propelled Trains				
	and strength)			
Train Driver Aids	(List the safeworking and driver alerting equipment fitted eg VCS, ATP, DTC etc)			
Diagram	(Rolling stock diagram number)			

Passenger Carriages				
Class	(Insert the carriage classes)			
Type	(Insert the carriage types eg sitter, sleeper, dining car etc)			
Length	(Insert the length over coupling lines of each carriage class)			
Gross Mass	(Insert the mass of each carriage in full working order with maximum number of passengers)			
Tare Mass	(Insert the mass of each empty carriage class)			
Axle Load	(Insert the maximum loading on any axle in each carriage class)			
Rolling Stock Outline Clearance Category	(Insert the rolling outline that each carriage class complies with and any out-of-gauge issues)			
Speed	(Insert the maximum approved speed of each carriage class)			
Drawgear	(List the drawgear type and strength)			
Notes	(List any special conditions relating to the operation of each carriage class)			
Diagram	(Rolling stock diagram number)			

Freight Wagons				
Class	(Insert the wagon classes)			
Type	(Insert the wagon types and payload eg open, box, hopper, coal etc)			
Length	(Insert the length over			

Freight Wagons				
	coupling lines of each wagon class)			
Gross Mass	(Insert the mass of each wagon class fully loaded)			
Tare Mass	(Insert the mass of each empty wagon class)			
Axle Load	(Insert the maximum loading on any axle in each wagon)			
Rolling Stock Outline Clearance Category	(Insert the rolling outline that each wagon complies with and any out-of-gauge issues)			
Speed	(Insert the maximum approved speed of each wagon class)			
Drawgear	(List the drawgear type and strength)			
Diagram	(Rolling stock diagram number)			

## 7.2 Train Information

Insert the appropriate information for the train being operated – delete any unused rows. Include provision for movement of rolling stock for recovery, maintenance, operational or other contingency purposes eg vehicle locomotives, train positioning moves.

Train Information		
Description	Payload	(Insert the payload eg coal train, general freight etc)
	Type	(Insert the types of trains eg unit train, container train, general freight etc)
	Operation	(Insert the method of operation eg distributed power, push/pull, headend power etc)
Locomotives	Classes	(Insert the classes of locomotives in the train)
	Number	(Insert the maximum number of locomotives in the train)
	Location	(Insert the locomotive location in the train or any limitations)
Wagons/Carriages	Classes	(Insert the classes of wagons/carriages in the train)
	Number	(Insert the maximum number of wagons/carriages in the train)
	Order	(Insert the wagon/carriage order in the train or any limitations)
Train Mass	Loaded	(Insert the loaded train gross tonnage excluding locos)
	Empty	(Insert the empty train gross tonnage excluding locos)
Train Length	Comparison Length	(Insert the comparison train length for the longest train - including locomotives)
Train Speed	Loaded	(Insert the maximum approved speed of each loaded train)

	Empty	(Insert the maximum approved speed of each empty train)
Load Tables		(Insert relevant load table identification)
Special Conditions	1	(Insert any special conditions related to the operation of the train eg out-of-gauge, overloads etc)
	2	(Insert any special conditions related to the operation of the train eg out-of-gauge, overloads etc)
	3	(Insert any special conditions related to the operation of the train eg out-of-gauge, overloads etc)

### 7.3 Rolling Stock Compliance Status

Provide information regarding the current status of certification of the rolling stock and train configurations to the interface standards. Include reference to certificate numbers where appropriate.

If the rolling stock or train configurations are not yet fully certified, this section should detail:

- any identified non-compliances to interface standards
- any interface standards to which compliance is not yet fully proven eg brake system static testing successfully carried out, full performance compliance to be proven by on-track testing
- any systems not yet functioning eg vigilance system not commissioned

The above items should be backed up by an interim compliance certificate.

## 8 Safety systems

Include in this section details of train safety systems in place eg ATP, vigilance, SPD etc

## 9 Communication systems

Include in this section details of communication systems available for use eg train radio, mobile phone, satellite phone etc.

## 10 Interface arrangements

Include details of interface arrangements for entering/exiting private sidings and other networks including permission from the other track manager.

Include handover details where rolling stock is handed over to/from another rolling stock operator.

## 11 Contingency and recovery

Include in this section any arrangements in the event of failure of the rolling stock, special recovery arrangements regarding coupling etc and any other contingency plans identified as part of the risk assessment. Also include train information and certification for altered train configurations required for recovery eg additional locomotives.

## 12 Emergency management plans

Include in this section any arrangements for the management of emergencies including rolling stock, dangerous goods and other incidents.

## 13 Safety and environment risk assessment

(Enter name of operator) has carried out a safety and environment risk assessment of the proposed train services and has reviewed the Interface Risk Management Plan in the Access Agreement.

Include in this section any additional safety and environmental controls identified to minimise any risks associated with the proposed operation.

## 14 Responsibilities and contact details

Enter details of responsible people and their contact information - phone numbers, emails etc.

Responsibility	Organisation	Contact Person	Title	Contact Details

## 15 General comments

Include any other general information required for the operation of these train services.

## 16 Appendices

Add copies of associated documents, test records, risk assessments etc as necessary

## Schedule D

### Reference Tariffs

#### ~~1 Background~~

##### ~~1.1 AT<sub>1(W)</sub> and AT<sub>2(W)</sub> – the West Moreton Network Reference Tariff inputs~~

- ~~(a) Queensland Rail has set the Reference Tariff inputs in this **schedule D** relating to the West Moreton Network (that is, AT<sub>1(W)</sub> and AT<sub>2(W)</sub>) consistent with the pricing principles set out in **Part 3** of this Undertaking and section 168A of the QCA Act and the matters discussed in this **clause 1**.~~
- ~~(b) Applying:~~
- ~~(i) a generally accepted regulatory building block approach (including generally accepted asset valuations consistent with past regulatory practice);~~
  - ~~(ii) current rail traffic forecasts on the West Moreton Network; and~~
  - ~~(iii) sound economic principles,~~
- ~~the Reference Tariff would generate Expected Access Revenue that is the same as the Ceiling Revenue Limit.~~
- ~~(c) However, Queensland Rail has elected to set the Reference Tariff at a significantly lower level taking into account:~~
- ~~(i) the pricing principles under section 168A of the QCA Act;~~
  - ~~(ii) Queensland Rail's desire to maximise traffic on the West Moreton Network and the potential effect that setting a higher Reference Tariff might have on that objective, particularly having regard to current market circumstances;~~
  - ~~(iii) the Reference Tariff under the 2008 Undertaking (including Access Charges being paid under existing Access Agreements); and~~
  - ~~(iv) volume forecasts including Queensland Rail's likely risk exposure to higher or lower volumes.~~
- ~~(d) In setting the Reference Tariff at a lower level than the level needed to generate Expected Access Revenue at the Ceiling Revenue Limit, Queensland Rail is taking volume risk. Again, this is done having regard to the matters listed in **clause 1.1(c)**.~~
- ~~(e) After having regard to the matters listed in **clause 1.1(c)**, Queensland Rail's proposed Reference Tariff inputs relating to the West Moreton~~

~~Network, when aggregated and expressed on a \$/000gtk basis, result in a nominal Reference Tariff of \$19.41/000gtk.~~

~~(f) For illustrative purposes:~~

~~(i) the equivalent Reference Tariff inputs under the 2008 Undertaking (including any variations or CPI escalations), when expressed on a \$/000gtk basis, come to \$19.41/000gtk; and~~

~~(ii) if those Reference Tariff inputs were set at a level such that the Reference Tariff would generate Expected Access Revenue equal to the Ceiling Revenue Limit, then those Reference Tariff inputs, when aggregated and expressed on a \$/000gtk basis, (**Ceiling Price**) would come to \$34.92/000gtk.~~

## ~~1.2 **AT<sub>1(M)</sub> and AT<sub>2(M)</sub> – the Metropolitan Network Reference Tariff inputs**~~

~~(a) As coal carrying Train Services transporting coal to the Fisherman Islands coal loader at the Port of Brisbane need to travel over the Metropolitan Network, the Reference Tariff has been structured so that it has specific Reference Tariff inputs relating to the Metropolitan Network (that is, AT<sub>1(M)</sub> and AT<sub>2(M)</sub>).~~

~~(b) While a Regulatory Asset Base has been proposed in relation to the Metropolitan Network, that Regulatory Asset Base does not set an asset value for all of the relevant assets in the Metropolitan Network.~~

~~(c) The Reference Tariff inputs have been separately identified for the Metropolitan Network because:~~

~~(i) some Train Services to which the Reference Tariff applies only use the Metropolitan Network; and~~

~~(ii)(i) while the Reference Tariff inputs relating to the Metropolitan Network are, as at the Approval Date, the same as those relating to the West Moreton Network, it is possible that the Reference Tariff inputs relating to the Metropolitan Network and those relating to the West Moreton Network may diverge over time, subject to the QCA's approval.~~

## 21 Term and application

(a) The Reference Tariff set out in this **schedule DDD** is effective during the Term.

(b) The Reference Tariff applies in relation to setting Access Charges for all coal carrying Train Services operating solely on either the Metropolitan Network or both the West Moreton Network and the Metropolitan Network. In accordance with **clause 3.3(c)(i)3.3(c)(i)3.3(b)(i)** of this Undertaking, those Access Charges will be consistent with the Reference Tariff except to the extent that there are differences in the cost and risk to Queensland Rail of providing Access for the relevant

Train Service compared to the Reference Train Service referred to in **clause 1.3(a)3** below.

~~(c) — As at the Approval Date this **schedule D** only sets out a single Reference Tariff, despite this Undertaking setting out various provisions that are drafted providing for the possibility that in the future there might be more than one Reference Tariff.~~

## **32** Reference Train Service

### **3.12.1** Description of Reference Train Service

The description of the Reference Train Service for the Reference Tariff set out in this **schedule DDD** is as follows:

- (a) **(Commodity)** The Reference Train Service carries only bulk coal.<sup>20</sup>
- (b) **(Geographic scope)** The Reference Train Service operates:
  - (i) either solely on the Metropolitan Network or on both the West Moreton Network and the Metropolitan Network; and
  - (ii) to and from a specified Nominated Loading Facility and a specified Nominated Unloading Facility.<sup>21</sup>
- (c) **(Characteristics)** Each Reference Train Service:
  - (i) has a maximum Relative Train Length, including the locomotives, of 675 metres;<sup>22</sup>
  - (ii) has two locomotives and 41 wagons;
  - (iii) has a maximum axle load of 15.75 tonne with loading in excess of this maximum axle load dealt with in accordance with the relevant load variation table;<sup>23</sup>
  - (iv) utilises only diesel traction;
  - (v) complies with the maximum speeds permitted on the Nominated Infrastructure as specified by Queensland Rail;
  - (vi) complies with the Interface Standards applicable to the Nominated Infrastructure;

<sup>20</sup> In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

<sup>21</sup> Diagrams showing the location of the Nominated Loading Facilities and the Nominated Unloading Facilities will be provided by Queensland Rail to Access Seekers on request.

<sup>22</sup> This Train length comprises the following: static train length (which is the straight addition of individual rolling stock lengths) plus an allowance of 2% of this static train length for train handling accuracy and for slack movement in drawgear (includes free slack in the drag box, compression of the draftgear, clearance/free slack due to coupler wear and pin clearance at the yoke).

<sup>23</sup> As published by Queensland Rail in relation to the Reference Train Service or a Train Service of the same type as the Reference Train Service that identifies allowable overloads for wagons and bogies and specifies relevant Operational Constraints and additional charges, where applicable, for such overloads.

- (vii) is otherwise compatible with the Nominated Infrastructure and requires no additional expenditure by Queensland Rail to implement varied Below Rail controls identified in the IRMP;
  - (viii) operates in accordance with nominated sectional running times specified by Queensland Rail for that Reference Train Service;
  - (ix) has a Loading Time that does not exceed the relevant time specified in **clause 2.2(a) 3.2(a)** provided that the Nominated Loading Facility is available for use by the Reference Train Service when that Reference Train Service arrives at the Nominated Loading Facility;
  - (x) has an Unloading Time that does not exceed the relevant time specified in **clause 2.2(b) 3.2(b)** provided that the Nominated Unloading Facility is available for use by the Reference Train Service when that Reference Train Service arrives at the Nominated Unloading Facility;
  - (xi) operates with an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
  - (xii) has the ability to operate on the configuration of the Nominated Infrastructure existing at the Approval Date without limiting the ability of existing Train Services to operate in accordance with their Train Service Entitlements and does not require an Extension;
  - (xiii) utilises bottom dump wagons with the “KWIK DROP” door operating mechanism suitable for use on the West Moreton Network or Metropolitan Network; and
  - (xiv) utilises measures to minimise coal spillage and/or leakage en route that are reasonable, having regard to the practices existing at the Approval Date.
- (d) **(Dangerous Goods)** The Reference Train Service does not carry any Dangerous Goods.
- (e) **(Below Rail Services)** The Reference Train Service:
- (i) only requires services from Queensland Rail that are Below Rail Services; and
  - (ii) assumes Below Rail Services comprised in Access are provided in accordance with this Undertaking.
- (f) **(Conditions of Access)** The Reference Train Service will operate in accordance with the terms and conditions of the Standard Access Agreement.

- (g) **(Train Service Entitlement)** The Train Service Entitlement for the Reference Train Service will be:
- (i) based on its Trains being available for operation 24 hours per day and 365 days per year; and
  - (ii) specified in terms of Timetabled Service and will comply with the applicable corridor scheduling procedures.

### **3.22.2 Loading and unloading facilities**

- (a) The Nominated Loading Facilities (together with loading times) are the loading facilities for coal at the following locations:

<b>Nominated Loading Facility locations</b>	<b>Loading Time (hours)</b>
Ebenezer	2
Jondaryan (New Acland)	2
Macalister (Wilkie Creek)	2.5
Columboola (Cameby Downs)	1.7

- (b) The Nominated Unloading Facilities (together with unloading times) are the unloading facilities for coal at the following locations:

<b>Nominated Unloading Facility locations</b>	<b>Unloading Time (hours)</b>
Fisherman Islands coal loader	1.9

## **43 Reference Tariff**

### **4.13.1 Calculation of the Reference Tariff**

- (a) The Reference Tariff for a Reference Train Service is calculated as follows:

$$\left( AT_{1(W)} \cdot \frac{gtk_{(W)}}{1000} \right) + \left( AT_{2(W)} \cdot rtp_{(W)} \right) + \left( AT_{1(M)} \cdot \frac{gtk_{(M)}}{1000} \right) + \left( AT_{2(M)} \cdot rtp_{(M)} \right) + (QCA Levy \cdot nt) + AC + TP$$

where:

**AT<sub>1(M)</sub>** and **AT<sub>1(W)</sub>** are the variable parts of the Reference Tariff specified as AT<sub>1(M)</sub> and AT<sub>1(W)</sub> in **clause 3.1(e)4.1(e)** (as varied, amended or replaced from time to time in accordance with this Undertaking or the QCA Act);

**AT<sub>2(M)</sub>** and **AT<sub>2(W)</sub>** are the fixed parts of the Reference Tariff specified as AT<sub>2(M)</sub> and AT<sub>2(W)</sub> in **clause 3.1(e)4.1(e)** (as varied, amended or replaced from time to time in accordance with this Undertaking or the QCA Act);

- gtk<sub>(W)</sub>** is the gtk for the relevant Train Service relating to the West Moreton Network;
- gtk<sub>(M)</sub>** is the gtk for the relevant Train Service relating to the Metropolitan Network;
- rtp<sub>(W)</sub>** is the rtp for the relevant Train Service relating to the West Moreton Network – which will be zero if the Train Service does not use the West Moreton Network;
- rtp<sub>(M)</sub>** is the rtp for the relevant Train Service relating to the Metropolitan Network;
- AC** is any applicable Adjustment Charge (from time to time).
- TP** is any applicable Take or Pay Charge (from time to time).

- (b) For the purposes of the calculation under **clause 3.1(a)4.1(a)**, the amounts of AT<sub>1(M)</sub>, AT<sub>1(W)</sub>, AT<sub>2(M)</sub>, AT<sub>2(W)</sub>, the QCA Levy, any Adjustment Charge and any Take or Pay Charge are GST exclusive. An Access Charge calculated based on the Reference Tariff will have an amount for GST added to it.
- (c) For the purposes of this **schedule DDD**, a Train Service is a one way Train Service, that is, the journey from the Nominated Loading Facility to the Nominated Unloading Facility is one Train Service, and the return journey from the Nominated Unloading Facility to the Nominated Loading Facility is a second Train Service.
- (d) For the purposes of **clause 3.1(a)4.1(a)**, gtk will be assessed for the relevant Train Service over the billing period for the Access Charge which is based on the Reference Tariff being calculated.
- (e) Subject to **clauses 3.24.2** and **56**, the amount of the Reference Tariff inputs are as follows:

Reference Tariff Input	\$	
	A Train Service not using the West Moreton Network	A Train Service using the West Moreton Network
AT <sub>1(M)</sub>	<del>19.44</del> <u>13.38</u>	<del>9.74</del> <u>6.69</u>
AT <sub>2(M)</sub>	<del>230.5</del> <u>180.08</u>	<del>1568.33</del> <u>1106.04</u>
AT <sub>1(W)</sub>	0	<del>9.74</del> <u>7.94</u>
AT <sub>2(W)</sub>	0	<del>3259.66</del> <u>2668.33</u>
QCA Levy	0.03684	0.03684

#### **4.23.2 Escalation of Reference Tariff inputs**

- (a) Each Reference Tariff input specified in **clause 3.1(e)4.1(e)**, except the QCA Levy, will automatically escalate annually on each Escalation Date

commencing on the First Escalation Date in accordance with the following formula:

$$AT_n = AT_{n-1} \cdot \left( \frac{CPI_n}{CPI_{n-1}} \right)$$

where:

- AT<sub>n</sub>** means the value of the relevant Reference Tariff input to apply after escalation;
- AT<sub>n-1</sub>** means the escalated value of the relevant Reference Tariff input immediately prior to the relevant Escalation Date or, for the First Escalation Date, means the relevant Reference Tariff input referred to in **clause 3.1(e)4.1(e)**;
- CPI<sub>n</sub>** means the CPI for the Quarter which commenced six months prior to the Escalation Date for which the variable AT<sub>n</sub> is being determined; and
- CPI<sub>n-1</sub>** means the CPI for the Quarter which commenced 18 months prior to the Escalation Date for which the variable AT<sub>n</sub> is being determined.
- (b) Queensland Rail will publish the escalated Reference Tariff inputs on its website within five Business Days after each Escalation Date commencing with the First Escalation Date.
- (c) Where an error has been made in the calculation of the escalated Reference Tariff inputs, Queensland Rail will correct the error so that the relevant Reference Tariff inputs are escalated in accordance with **clause 3.2(a)4.2(a)**.
- (d) For clarity, if:
- (i) the basis of assessment of the CPI is altered in a material way; or
  - (ii) the CPI ceases (or is likely to cease) to be:
    - (A) published; or
    - (B) published at sufficiently regular intervals for the purpose of the calculation in **clause 3.2(a)4.2(a)**,

Queensland Rail may submit a draft amending access undertaking to the QCA in relation to the amendment or replacement of the CPI.

## 54 Take or pay

- (a) The revenue that Queensland Rail is entitled to earn in relation to Reference Train Services includes Take or Pay Charges in accordance with this **clause 45**.

- (b) Subject to clause 5(c), Take or Pay Charges will be determined for:
- (i) each Year during which the relevant Train Services are entitled to operate; or
  - (ii) the relevant part of a Year, if the relevant Train Services were only entitled to operate for part of the first or last Year during the term of the relevant Access Agreement because that entitlement commenced on a date other than 1 July or expired or terminated on a date other than 30 June,

(**Take or Pay Period**) and invoiced for each Take or Pay Period after the end of that Take or Pay Period.

(c) Take or Pay Charges will only be determined and charged where the revenue that Queensland Rail earns in relation to Reference Train Services in a Year is less than the Approved Ceiling Revenue Limit for that Year.

~~(e)~~(d) The amount of the Take or Pay Charges for a Take or Pay Period will be the amount which is ~~8~~100% of the amount calculated for that Take or Pay Period as follows:

$$\frac{\left( \left( AT_{1(W)} \cdot \frac{gk_{(W)}}{1000} \right) + AT_{2(W)} + \left( AT_{1(M)} \cdot \frac{gk_{(M)}}{1000} \right) + AT_{2(M)} \right) * NTNO}{\left( \left( AT_{1(W)} \cdot \frac{gk_{(W)}}{1000} \right) + AT_{2(W)} + \left( AT_{1(M)} \cdot \frac{gk_{(M)}}{1000} \right) + AT_{2(M)} \right) * NTNO}$$

where:

- (i) **AT<sub>1(M)</sub>**, **AT<sub>1(W)</sub>**, **AT<sub>2(M)</sub>** and **AT<sub>2(W)</sub>** are the Reference Tariff inputs applicable on the last day of that Take or Pay Period;
- (ii) **gk<sub>(W)</sub>** is the average gtk for the relevant Train Services calculated using a nominal payload as determined by Queensland Rail (acting reasonably) relating to the West Moreton Network;
- (iii) **gk<sub>(M)</sub>** is the average gtk for the relevant Train Services calculated using a nominal payload as determined by Queensland Rail (acting reasonably) relating to the Metropolitan Network; and
- (iv) **NTNO** means the number of relevant individual Train Services that were entitled to be operated for the Take or Pay Period in accordance with the relevant Train Service Entitlement and did not operate (excluding Train Services that did not operate due to Queensland Rail Cause),

provided always that the amount of Take or Pay Charges for a Take or Pay Period ~~will not be less than zero.~~;

(v) will not be less than zero;

- (vi) will not be such as to result in the revenue that Queensland Rail earns in relation to Reference Train Services in a Year being more than the Approved Ceiling Revenue Limit;
- (vii) where those charges would, but for **clause 4(d)(vi)**, result in the revenue that Queensland Rail earns in relation to Reference Train Services in a Year being more than the Approved Ceiling Revenue Limit, will be determined equitably across the relevant Train Services.
- (e) When invoicing Take or Pay Charges, Queensland Rail will also include information on how the Take or Pay Charge was determined and evidence of compliance with **clause 4(c)** and the proviso to **clause 4(d)**.
- (f) The Approved Ceiling Revenue Limit for Reference Train Services are shown below in 2015-16 dollars

<u>Year</u>	<u>Approved Ceiling Revenue Limit for Reference Train Services</u>
<u>2015-16</u>	<u>47,169,313.00</u>

- ~~(d)~~(g) The Approved Ceiling Revenue Limit in **clause 4(f)** will automatically escalate annually on each Escalation Date commencing on the First Escalation Date in accordance with the formula in **clause 3.2(a)** and Queensland Rail will publish the escalated Approved Ceiling Revenue Limit along with the information published pursuant to **clause 3.2(b)**.

## 65 Variation of Reference Tariffs

### 6.15.1 Obligation to submit a variation

- (a) Queensland Rail:
  - (i) may submit a variation of a Reference Tariff to the QCA, if Queensland Rail considers that the variation will promote efficient investment in the coal transport supply chain in the West Moreton Network or Metropolitan Network; or
  - (ii) will submit a variation of a Reference Tariff to the QCA, subject to **clause 5.1(c)**~~5.1(e)~~~~6.1(e)~~ within three months after:
    - (A) Queensland Rail becomes aware that an Endorsed Variation Event, or a Review Event, has occurred; or
    - (B) a written notice being given to Queensland Rail by the QCA in accordance with **clause 5.1(b)**~~5.1(b)~~~~6.1(b)~~.
- (b) The QCA may give Queensland Rail a written notice requiring it to submit a variation of a Reference Tariff if it has failed to submit a variation of a Reference Tariff under

**clause 5.1(a)(ii)(A)5.1(a)(ii)(A)6.1(a)(ii)(A)** in respect of an Endorsed Variation Event.

- (c) The QCA may grant Queensland Rail an extension of the time for submitting, or resubmitting, a variation of the Reference Tariff if:
- (i) Queensland Rail requests an extension of time; and
  - (ii) the extension of time is reasonable or necessary.

If the QCA grants Queensland Rail an extension of time under this **clause 5.1(c)5.1(e)6.1(e)**, Queensland Rail must submit or resubmit the variation of a Reference Tariff within the time specified by the QCA.

### **6.25.2 Development of Reference Tariff variation by the QCA**

The QCA may develop a variation of a Reference Tariff that is consistent with the requirements under this **clause 5.56** for such a variation:

- (a) if Queensland Rail does not comply with a written notice given by the QCA under **clause 5.1(b)5.1(b)6.1(b)** or **5.4(c)(ii)5.4(c)(ii)6.4(c)(ii)** for it to submit, or resubmit, a variation of a Reference Tariff; or
- (b) if the QCA refuses to approve a variation of a Reference Tariff resubmitted by Queensland Rail in accordance with a notice given by the QCA under **clause 5.4(c)(ii)5.4(c)(ii)6.4(c)(ii)**.

### **6.35.3 Requirements for Reference Tariff variation**

- (a) A variation of a Reference Tariff submitted by Queensland Rail in accordance with **clause 5.1(a)5.1(a)6.1(a)** must:
  - (i) nominate the Reference Tariff to be varied;
  - (ii) include details of the methodology, data and assumptions used to vary the Reference Tariff;
  - (iii) if the variation is submitted under **clause 5.1(a)(i)5.1(a)(i)6.1(a)(i)**, include information on:
    - (A) the matters set out in **clause 3.2** of **Part 3** of this Undertaking; and
    - (B) why Queensland Rail considers that the variation of the Reference Tariff will promote efficient investment in the coal transport supply chain in the West Moreton Network or Metropolitan Network; and
  - (iv) if the variation is submitted under **clause 5.1(a)(ii)(A)5.1(a)(ii)(A)6.1(a)(ii)(A)**, include evidence that the Endorsed Variation Event or Review Event has occurred.
- (b) If the QCA considers it appropriate, the QCA may publish details of Queensland Rail's proposed variation of a Reference Tariff and invite and consider comments from stakeholders regarding that proposed variation (provided that Queensland Rail must be given a reasonable

period in which to respond to the QCA in respect of any such comments).

#### **6.45.4 Decision to approve or refuse to approve variation**

- (a) The QCA may approve a variation of a Reference Tariff submitted by Queensland Rail in accordance with **clause ~~5.1(a)5.1(a)6.1(a)~~** if the QCA is satisfied:
  - (i) for a variation submitted under **clause ~~5.1(a)(i)5.1(a)(i)6.1(a)(i)~~**, that the variation is consistent with the Undertaking;
  - (ii) for a variation submitted in respect of an Endorsed Variation Event or Review Event (Event), that:
    - (A) the Event has occurred; and
    - (B) the variation has been calculated as if all other Reference Tariffs were also being recalculated due to the occurrence that caused the Event; and
    - (C) the variation reflects the cost impact on Queensland Rail resulting from the relevant Event (including the impact on incremental maintenance, and incremental capital, costs): and, if applicable, the contracted Reference Train Services on the West Moreton Network and the Metropolitan Network being greater than those used to develop Reference Tariffs for the West Moreton Network and the Metropolitan Network.
- (b) If the QCA approves a variation to a Reference Tariff:
  - (i) it will give Queensland Rail a notice in writing stating the reasons for its decision;
  - (ii) the variation will apply:
    - (A) from the first day of the month immediately following the date of the occurrence of the Endorsed Variation Event or Review Event (as applicable); or
    - (B) where the date of the occurrence of the Endorsed Variation Event or Review Event is the first day of a month, from that date; and
  - (iii) Queensland Rail must:
    - (A) publish details of the variation on its website; and
    - (B) advise Access Holders and Access Seekers, in relation to the relevant Reference Train Service, of the variation.
- (c) If the QCA refuses to approve a variation to a Reference Tariff, it will give Queensland Rail a written notice:

- (i) stating the reasons for its refusal and the way it considers that the variation should be amended; and
- (ii) if that variation was required to be submitted by Queensland Rail in relation to an Endorsed Variation Event, requiring Queensland Rail to:
  - (A) vary the Reference Tariff in the way the QCA considers it appropriate; and
  - (B) resubmit the variation to the QCA,  
within 20 Business Days after Queensland Rail receives the notice issued to Queensland Rail under this ~~clause 5.4(c)5.4(c)6.4(c)~~.
- (d) Queensland Rail will comply with a notice given under ~~clause 5.4(c)(ii)5.4(c)(ii)6.4(c)(ii)~~.
- (e) The QCA may approve a variation to a Reference Tariff that was:
  - (i) resubmitted under ~~clause 5.4(c)(ii)5.4(c)(ii)6.4(c)(ii)~~; or
  - (ii) developed by the QCA under ~~clause 5.25-26.2~~,  
if the QCA is satisfied that the variation of the Reference Tariff:
    - (iii) is consistent with the matters specified under ~~clause 5.4(a)5.4(a)6.4(a)~~ (provided that for the purposes of so applying ~~clause 5.4(a)5.4(a)6.4(a)~~ the relevant variation will be treated as though it was submitted by Queensland Rail under the relevant provision in ~~clause 5.1(a)5.1(a)6.1(a)~~); and
    - (iv) if ~~clause 5.4(e)(i)5.4(e)(i)6.4(e)(i)~~ applies, is consistent with the relevant notice given by the QCA under ~~clause 5.4(c)5.4(c)6.4(c)~~.
- (f) If the QCA refuses to approve a variation to a Reference Tariff that was resubmitted under ~~clause 5.4(c)(ii)5.4(c)(ii)6.4(c)(ii)~~, the QCA will give Queensland Rail a notice in writing stating the reasons for its refusal.
- ~~(f)(g)~~ References in this clause to variation of a Reference Tariff include a reference to a variation to the Approved Ceiling Limit related to the variation of the Reference Tariff.

## 76 Adjustment Charges

### 7.16.1 Recovery or reimbursement of Adjustment Charges

- (a) If:
  - (i) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the QCA's approval of that Reference Tariff,<sup>24</sup> or

<sup>24</sup> The Reference Tariff set out in this schedule, as at the Approval Date, only commences on the Approval Date – see ~~clause 14.2~~ of this schedule.

- (ii) the QCA approves a variation of a Reference Tariff and that variation applies from or takes effect on a date prior to the QCA's approval of the variation,

Queensland Rail is entitled to recover from or will reimburse to, as applicable, each relevant Access Holder, or to adjust the amount payable by each relevant Access Holder by, the amount (**Adjustment Charge Amount**) which is the sum of:

- (iii) the aggregate of the differences, applicable to that Access Holder for each month (or part thereof) since the date on which the Reference Tariff or the variation of the Reference Tariff was to apply or take effect (Effective Date) until the date on which that Reference Tariff was approved by the QCA or the date on which the variation of the Reference Tariff was approved by the QCA, as applicable, between:
  - (A) the Access Charges paid or payable by that Access Holder in respect of the Train Services operated by or for that Access Holder during that month (or part thereof); and
  - (B) the Access Charges that would have been paid or payable by that Access Holder in respect of those Train Services if the Access Charges were calculated in accordance with the Reference Tariff or the variation of the Reference Tariff referred to in **clause 6.1(a)(i)6.1(a)(i)7.1(a)(i)** or **(ii)** on and from the Effective Date; and
- (iv) the aggregate of the interest calculated in accordance with **clause 6.1(b)6.1(b)7.1(b)** in respect of the amount of each difference comprising the amount calculated in accordance with **clause 6.1(a)(iii)6.1(a)(iii)7.1(a)(iii)**,

by making adjustments to the Access Charges (**Adjustment Charge**) payable by Access Holders so as to recover or reimburse, as applicable, the Adjustment **Charge** Amount (subject to the provisions of this Undertaking).

- (b) The interest referred to in **clause 6.1(a)(iv)6.1(a)(iv)7.1(a)(iv)** must be calculated:
  - (i) in respect of the amount of each difference comprising the amount calculated in accordance with **clause 6.1(a)(iii)6.1(a)(iii)7.1(a)(iii)**;
  - (ii) on the basis that the interest:
    - (A) accrues and is charged from day to day; and
    - (B) is capitalised at the end of each month and will thereafter itself bear interest;
  - (iii) at the rate equal to, for interest accruing in a month:

- (A) the mid-point of the one month Bank Bill Swap Rate as published by the Australian Financial Markets Association (or its successor) for the Business Day immediately prior to the 21st day of the previous month; or
  - (B) if that rate is no longer published, the rate will be an appropriate equivalent rate determined by Queensland Rail (acting reasonably); and
- (iv) for the period commencing on the date when the Access Charges paid or payable by the relevant Access Holder used to calculate the applicable difference in accordance with **clause ~~6.1(a)(iii)(A)~~~~6.1(a)(iii)(A)~~~~7.1(a)(iii)(A)~~** were due and payable and ending on the date when the Adjustment Charge is to be due and payable.

### **7.26.2 Obligation to submit Adjustment Charges**

Queensland Rail:

- (a) may, if it submits a variation of a Reference Tariff and that variation is proposed to apply or take effect on a date prior to the date on which the QCA will approve the variation; or
- (b) must, if:
  - (i) the QCA approves a variation of a Reference Tariff and that variation applies or takes effect on a date prior to the date on which the QCA approves the variation; or
  - (ii) this Undertaking specifies that a Reference Tariff is applicable or effective from a date prior to the QCA's approval of that Reference Tariff,

submit proposed Adjustment Charges to the QCA.

### **7.36.3 Requirements for Adjustment Charge submission**

- (a) Where Queensland Rail submits proposed Adjustment Charges to the QCA in accordance with **clause ~~6.26.27.2~~**, Queensland Rail's submission must, without limitation:
  - (i) identify, subject to **clause ~~6.3(b)~~~~6.3(b)~~~~7.3(b)~~**, the Access Holders to which the proposed Adjustment Charges will apply;
  - (ii) set out the proposed Adjustment Charges for each Access Holder including details of how those proposed Adjustment Charges were calculated; and
  - (iii) indicate the billing period(s) in respect of which the proposed Adjustment Charges are to be applied.
- (b) For the purposes of **clause ~~6.3(a)(i)~~~~6.3(a)(i)~~~~7.3(a)(i)~~**:

- (i) an Adjustment Charge may only apply to an Access Holder (**New Access Holder**) that did not run the Train Services to which that Adjustment Charge relates (**Past Train Services**) if:
  - (A) the Access Holder who ran the Past Train Services no longer has (or, at the time when the Adjustment Charges are to be applied, will have ceased to have) a rail haulage agreement with the Customer for the Past Train Services in respect of Train Services with the same origin and destination as the Past Train Services;
  - (B) the New Access Holder has a rail haulage agreement with the Customer referred to in **clause ~~6.3(b)(i)(A)~~~~6.3(b)(i)(A)~~~~7.3(b)(i)(A)~~** (including that Customer's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services or the New Access Holder was that Customer (or is that Customer's successor or assign); and
  - (C) the New Access Holder has been granted Access Rights with the same origin and destination as the Past Train Services; and
- (ii) no Adjustment Charge will apply to an Access Holder who ran the Past Train Services if that Access Holder has, at the time when the Adjustment Charges are to be applied, ceased to have a rail haulage agreement with the Customer for the Past Train Services (including that person's successors and assigns) in respect of Train Services with the same origin and destination as the Past Train Services provided that with the cessation of that rail haulage agreement, the applicable Access Rights were either relinquished or expired.
- (c) If the QCA considers it appropriate, the QCA may publish details of Queensland Rail's submission of proposed Adjustment Charges and invite and consider comments from stakeholders regarding the proposed Adjustment Charges (provided that, to the extent that stakeholders provide comments, Queensland Rail must be given a reasonable period in which to provide a response to those comments to the QCA).

#### **7.46.4 Decision to approve or refuse to approve variation**

- (a) Where Queensland Rail submits proposed Adjustment Charges to the QCA in accordance with **clause ~~6.26.27.2~~**, the QCA must approve:
  - (i) the Access Holders to which the Adjustment Charges will apply;
  - (ii) the Adjustment Charges that are to apply to each Access Holder;
  - (iii) the billing period(s) in respect of which the Adjustment Charges will be applied; and

- (iv) if applicable, the interest rate selected by Queensland Rail under **clause 6.16.17-1(b)(iii)(B)** applies, if the QCA is satisfied that Queensland Rail has acted reasonably in selecting that rate.
- (b) If the QCA refuses to approve the proposed Adjustment Charges, the QCA must give Queensland Rail a notice in writing:
  - (i) stating the reasons for its refusal and the way in which the QCA considers the proposed Adjustment Charges should be amended so as to constitute (excluding any interest component) a reasonable recovery or reimbursement, as applicable to any under or over recovery of Access Charges by Queensland Rail that relate to each Access Holder; and
  - (ii) requiring Queensland Rail to vary the proposed Adjustment Charges in the way the QCA considers it appropriate and resubmit the amended proposal to the QCA within 20 Business Days after Queensland Rail receives the notice.
- (c) Queensland Rail must comply with a notice given under **clause 6.4(b)6.4(b)7.4(b)**.
- (d) The QCA must approve a resubmitted proposal for Adjustment Charges, if the resubmitted proposal has been amended or developed in accordance with the QCA's notice given under **clause 6.4(b)6.4(b)7.4(b)**.
- (e) Queensland Rail must comply with an approval of the QCA given in accordance with **clause 6.4(a)6.4(a)7.4(a)** or (d) including in applying the Adjustment Charge approved for each Access Holder to the calculation of Access Charges payable by that Access Holder.

#### **7.56.5 Review of Access Charges to provide for Adjustment Charges**

- (a) To the extent that Queensland Rail is lawfully able to do so, the calculation of Access Charges under an Access Agreement must be reviewed and varied to provide for the payment of Adjustment Charges approved by the QCA in accordance with **clause 6.4(a)6.4(a)7.4(a)** or (d) by the relevant Access Holder including that:
  - (i) any variation of a Reference Tariff approved by the QCA to apply or take effect on a date prior to the date on which the QCA approves the variation; or
  - (ii) any Reference Tariff that the Undertaking states is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; and
- (b) the Access Charges payable by the Access Holder must include any applicable Adjustment Charge approved by the QCA from time to time in relation to or in connection with:
  - (i) any variation of a Reference Tariff approved by the QCA to apply or take effect on a date prior to the date on which the QCA approves the variation; or
  - (ii) any Reference Tariff that the Undertaking states is applicable or effective from a date prior to the date on which that Reference Tariff was approved by the QCA; and
- (c) an Adjustment Charge so determined by the QCA must be applied to the calculation of the amount of the invoice for charges payable by the

Access Holder under the Access Agreement for the relevant billing period.

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For the purpose of any Access Agreement executed prior to the Approval Date, the calculation of rtp (as defined under **clause 7.1** of this Undertaking) is taken to be set out in this **schedule ~~DD~~**.

# Schedule E

## Maintaining the Regulatory Asset Bases

### 1 Maintenance of Regulatory Asset Bases

#### 1.1 Roll forward principles

On an annual basis, Queensland Rail will roll forward the asset values in each Regulatory Asset Base, applying the following principles:

- (a) the opening asset value will be indexed for the Year using CPI;
- (b) depreciation of the assets will be calculated for the Year using asset lives and a depreciation profile endorsed by the QCA;
- (c) the value of asset disposals and transfers during the Year will be subtracted from the Regulatory Asset Base;
- (d) capital expenditure will be added to the Regulatory Asset Base, where that capital expenditure is accepted into the Regulatory Asset Base by the QCA in accordance with **clause 2.12.12.4**; and
- (e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with **clause 1.21.21.2**.

#### 1.2 Adjusting the value of assets in the Regulatory Asset Base

- (a) The value of assets contained in a Regulatory Asset Base may be increased by Queensland Rail by including:
  - (i) at the end of the Term, the value of intangible assets that were not included in the initial valuation of assets contained in the Regulatory Asset Base; or
  - (ii) the ~~Depreciated Optimised Replacement Cost (DORC) value~~, subject to approval by the QCA of additional sections of the Network incorporated into the West Moreton Network, provided that the increase in asset value must first be accepted by the QCA.
- (b) The QCA will not require the value of assets contained in the Regulatory Asset Base to be reduced unless:
  - (i) the QCA made its decision to accept the capital expenditure in the Regulatory Asset Base on the basis of information provided by Queensland Rail that Queensland Rail knew, or should have known, was false or misleading at the time it provided the information; or

(ii) circumstances arise in the future where demand for Access has deteriorated to such an extent that regulated prices based on an unoptimised asset value would result in a further decline in demand for Access.

~~(ii)~~(iii) It becomes clear that there is a possibility of actual (not hypothetical) bypass.

### 1.3 Capital expenditure report

- (a) Unless otherwise agreed between Queensland Rail and the QCA, Queensland Rail will, within four 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 Queensland Rail considers should be included in a Regulatory Asset Base:
- (i) the name of the project;
  - (ii) the location of the project;
  - (iii) the amount of the capital expenditure; and
  - (iv) information, where applicable, to support the QCA's assessment of the prudence of the capital expenditure under **clauses 222 to 555** (except to the extent that the QCA has already accepted that capital expenditure as prudent in scope, standard or cost).
- (b) If the information set out in a report provided to the QCA under this **clause 1.31.31.3** is insufficient, the QCA may request additional relevant information in accordance with **clause 2.2(b)2.2(b)2.2(b)**.
- (c) Information provided to the QCA under this **clause 1.31.31.3** (including in response to a request under **clause 2.2(b)2.2(b)2.2(b)**) will be accompanied by a statement signed by Queensland Rail's Chief Executive Officer confirming that information is, in all material respects, correct.

### 1.4 Regulatory Asset Base roll forward report to the QCA

- (a) Unless otherwise agreed between Queensland Rail and the QCA, to the extent that the QCA, under **clause 2.12.12.1**, has accepted the capital expenditure into a Regulatory Asset Base, Queensland Rail will, within four weeks after that acceptance, provide to the QCA Queensland Rail's roll-forward of the Regulatory Asset Base under **clause 1.11.11.1**, subject to **clause 1.21.21.2**, including details of:
- (i) the opening value of the Regulatory Asset Base for the relevant 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;
  - (v) disposals and transfers from the Regulatory Asset Base; and

- (vi) the closing value of the Regulatory Asset Base for the relevant Year (which will be the opening value of the Regulatory Asset Base for the following Year),

separately reported for Rosewood to Jondaryan, Jondaryan to Macalister and Macalister and Jondaryan to Columboola.

- (b) Information provided to the QCA under this **clause 1.41.41.4**:
  - (i) will be accompanied by a statement signed by Queensland Rail's Chief Executive Officer confirming that information is, in all material respects, correct; and
  - (ii) must be based on the roll forward principles in **clause 1.14.14.4**.

## 2 Acceptance of capital expenditure into the Regulatory Asset Base

### 2.1 Requirements for acceptance of capital expenditure into the Regulatory Asset Base

- (a) The QCA will accept capital expenditure into a Regulatory Asset Base if that capital expenditure:
  - (i) is or has been accepted by the QCA as:
    - (A) prudent in scope in accordance with **clause 333**;
    - (B) prudent in the standard of works in accordance with **clause 444**; and
    - (C) prudent in cost in accordance with **clause 555**; and
  - (ii) has been incurred; and
  - (iii) either:
    - (A) the capital expenditure project has been commissioned; or
    - (B) formally discontinued.
- (b) The QCA must notify Queensland Rail in writing if it accepts capital expenditure into a Regulatory Asset Base.
- (c) If the QCA is considering refusing to accept all or part of any capital expenditure into a Regulatory Asset Base:
  - (i) the QCA must give Queensland Rail a draft of the QCA's decision (including a statement of reasons and the way it considers the capital expenditure should be adjusted);
  - (ii) Queensland Rail may revise the capital expenditure and/or provide additional information supporting its view that the capital expenditure should be included in the Regulatory Asset Base; and

- (iii) the QCA must consider that revision and/or additional information when deciding whether to accept or refuse to accept the capital expenditure into the Regulatory Asset Base.
- (d) If the QCA refuses to accept all or part of any capital expenditure into a Regulatory Asset Base, the QCA must give Queensland Rail a notice of the QCA's decision (including a statement of reasons).
- (e) If Queensland Rail does not obtain the QCA's acceptance of any matters under **clauses 333** to **555** in relation to a capital expenditure project at any time, then this does not affect its right to seek any such acceptance under **clauses 333** to **555** at a later time.
- (f) For the avoidance of doubt, the Capital Indicator does not imply any acceptance by the QCA of that level of capital expenditure into a Regulatory Asset Base.

## 2.2 Assessing prudence of capital expenditure

For the purposes of **clauses 333**, **444** and **555**:

- (a) the QCA:
  - (i) in assessing whether capital expenditure is prudent:
    - (A) must only consider information available, or reasonably available, to Queensland Rail at the time of making the investment decision; and
    - (B) may, as it considers necessary:
      - (1) take advice from independent advisors using appropriate benchmarks and experience, provided that it gives Queensland Rail a copy of that advice as soon as reasonably practicable and in any event no later than with its notice under **clause 2.2(a)(ii)2.2(a)(ii)2.2(a)(iii)**; and
      - (2) consult with relevant stakeholders; and
  - (ii) must give Queensland Rail a notice of any determination that it makes under **clauses 333**, **444** or **555** (as applicable) and, if that determination is a refusal to accept anything (in whole or part), that notice must state the reasons for that refusal;
- (b) the QCA may request additional information from Queensland Rail that is reasonably required to make any determination under **clauses 333**, **444** or **555** (as applicable) after receiving the request from Queensland Rail to make such a determination; and
- (c) Queensland Rail must respond to a request by the QCA under **clause 2.2(b)2.2(b)2.2(b)** as soon as reasonably practicable after receiving that request.

### 3 Prudency of scope

#### 3.1 Assessment of prudency of scope

- (a) Assessing the prudency of scope of works for a capital expenditure project involves assessing whether the works are reasonably required.
- (b) The QCA's acceptance of the prudency of scope for a capital expenditure project may be requested at any time including prior to the capital expenditure being incurred.

#### 3.2 Process for acceptance of prudency of scope

~~(a)~~ Queensland Rail may request the QCA to, and the QCA will, subject to clause 3.2(c), accept the scope of a capital expenditure project as prudent if it is Customer or Access Holder specific capital expenditure (provided it is an Access Holder who has no Customer) for a branch line to a mine which is to be included as a loading point for a Reference Tariff, and the scope of the capital expenditure has been accepted by that Customer or Access Holder.

~~(a)(b)~~ Before the QCA can accept capital expenditure referred to in clause 3.2(a), Queensland Rail must demonstrate to the QCA that Queensland Rail has undertaken reasonable consultation with any Access Holder who may be adversely affected by that capital expenditure.

~~(b)(c)~~ If clause 3.2(a)3.2(a)3.2(a) does not apply or acceptance is not sought or obtained under clause 3.2(a)3.2(a)3.2(a), Queensland Rail, ~~an Access Seeker, an Access Holder or a Customer or an Access Funder~~ may request the QCA's acceptance of the scope of a capital expenditure project as prudent in accordance with clause 3.2(d)3.2(d)3.2(e).

~~(e)(d)~~ If a request is made under clause 3.2(c)3.2(e)3.2(b), the QCA will accept the scope of a capital expenditure project as prudent if it is demonstrated to the QCA's reasonable satisfaction, having regard to the factors set out in clause 3.2(e)3.2(e)3.2(d), that:

- (i) Queensland Rail had reasonable grounds for proceeding with a project given the circumstances relevant at the time the investment decision was made; or
- (ii) if clause 3.2(d)(i)3.2(d)(i)3.2(e)(i) does not apply, reasonable grounds exist for proceeding.

~~(d)(e)~~ The factors that the QCA will have regard to for the purposes of clause 3.2(d)3.2(d)3.2(e) are:

- (i) the need to accommodate what is reasonably required to comply with Access Agreements;
- (ii) the extent of Reasonable Demand, and the need for new capital expenditure projects to accommodate that demand;
- (iii) the age and condition of existing assets and the need for replacement capital expenditure projects;

- (iv) Queensland Rail's obligations under any Laws, including health, safety and environmental Laws;
- (v) the appropriateness of Queensland Rail's processes to evaluate and select proposed capital expenditure projects, including the extent to which alternatives are evaluated as part of the process;
- (vi) the extent to which the capital expenditure project was subjected to Queensland Rail's processes to evaluate and select proposed capital expenditure projects; and
- (vii) the extent to which consultation has occurred with relevant stakeholders about the capital expenditure project.

### 3.3 Excluded Capital Expenditure

- (a) If:
  - (i) the capital expenditure for a capital expenditure project has been incurred by Queensland Rail; and
  - (ii) the QCA, in assessing the prudence of scope of that capital expenditure project for the purposes of **clause 3.2(d)3.2(d)3.2(e)**, determines that the scope of the capital expenditure project is in excess of that needed to accommodate Reasonable Demand, then the QCA may also determine the element of the prudent costs of the capital expenditure project that was not needed to meet Reasonable Demand (**Excluded Capital Expenditure**).
- (b) If the QCA has determined Excluded Capital Expenditure in respect of a capital expenditure project, then:
  - (i) that Excluded Capital Expenditure will be set aside and escalated at the rate of the WACC from the date of commissioning of the capital expenditure project until the full scope of the capital expenditure project is accepted by the QCA as required to meet Reasonable Demand (whether on one occasion or in parts over time); and
  - (ii) when the QCA accepts that all or part of the excluded aspects of the capital expenditure project are required to meet Reasonable Demand:
    - (A) the QCA will accept all or the relevant part of the Excluded Capital Expenditure into the relevant Regulatory Asset Base at its escalated value; and
    - (B) if only part of the Excluded Capital Expenditure is included in a Regulatory Asset Base, **clause 3.3(b)(i)3.3(b)(i)3.3(b)(i)** will continue to apply to the remainder.

## 4 Prudency of standard of works

### 4.1 Assessment of prudency of standard of works

- (a) Assessing the prudency of standard of works for a capital expenditure project involves assessing whether the works are of a reasonable standard to meet the requirements of the scope for that capital expenditure project and are not overdesigned such that they are beyond the requirements of that scope.
- (b) The QCA's acceptance of the prudency of standard of works for a capital expenditure project may be requested at any time including prior to the capital expenditure being incurred.

### 4.2 Process for acceptance of prudency of standard of works

- (a) Queensland Rail or an Access Funder may request the QCA's acceptance of the standard of works of a capital expenditure project as prudent in accordance with this **clause 444**.
- (b) If a request is made under **clause 4.2(a)4.2(a)4.2(a)**, the QCA will accept the standard of works of a capital expenditure project as prudent if:
  - (i) it is demonstrated to the QCA's reasonable satisfaction, having regard to the factors set out in **clause 4.2(c)4.2(c)4.2(c)**, that:
    - (A) Queensland Rail had reasonable grounds for its design of the relevant infrastructure given the circumstances relevant at the time that the design was prepared; or
    - (B) if Queensland Rail is yet to proceed with the project, reasonable grounds exist for the design of the relevant infrastructure; or
  - (ii) the proposed works are consistent in all material respects with the existing standard and configuration of adjacent infrastructure or existing infrastructure with similar usage levels, or its modern engineering equivalent, to the extent that the standard of the adjacent or existing infrastructure has previously been accepted by the QCA as being reasonable.
- (c) The factors that the QCA will have regard to for the purposes of **clause 4.2(b)(i)4.2(b)(i)4.2(b)(i)** are:
  - (i) the requirements of Rolling Stock Operators and what is reasonably required to comply with Access Agreements;
  - (ii) current and likely future usage levels;
  - (iii) the requirements of the codes developed by the Rail Industry Safety And Standards Board (RISSB) Limited ACN 105 001 465 in relation to the standards required for rail infrastructure in Australia;

- (iv) the requirements of other relevant Australian design and construction standards;
- (v) Queensland Rail’s design standards contained within the Safety Management System; and
- (vi) all relevant Law and the requirements of any Authority (including the Safety Regulator).

## 5 Prudency of costs

### 5.1 Assessment of prudency of costs

- (a) Assessing the prudency of costs for a capital expenditure project involves assessing whether the costs are reasonable for the scope and standard of work done or to be done.
- (b) The QCA’s acceptance of the prudency of costs for a capital expenditure project may be requested at any time (including, for the purposes of **clause 5.25-25.2**, prior to the capital expenditure being incurred).

### 5.2 Process for acceptance of prudency of costs where there is an approved procurement strategy

- (a) If the QCA has approved a procurement strategy for a capital expenditure project under **clause 6.1(b)6.1(b)6.1(b)**, Queensland Rail or an Access Funder may request the QCA’s acceptance of the costs of that capital expenditure project as prudent in accordance with this **clause 5.25-25.2**.
- (b) If a request is made under **clause 5.2(a)5.2(a)5.2(a)**, the QCA will accept as prudent:
  - (i) the value of a contract if the QCA is satisfied:
    - (A) that contract provisions regarding contract variations and escalation accord with good commercial practice; and
    - (B) that, after taking into account any certification from an auditor engaged in accordance with **clause 6.26-26.2**, the tender for the contract has been conducted in accordance with the approved procurement strategy;
  - (ii) where the value of a contract has been accepted as prudent in accordance with **clause 5.2(b)(i)5.2(b)(i)5.2(b)(i)**, the value of variations and/or escalations under that contract if:
    - (A) the contract has been managed in accordance with the approved procurement strategy;
    - (B) the auditor engaged in accordance with **clause 6.26-26.2** has certified that the contract variations

and/or escalations have been handled in a manner consistent with the relevant contract provisions; and

- (C) the QCA is satisfied that the cost of contract variations and/or escalations is otherwise appropriate, having regard to whether:
  - (1) adequate consideration was given to properly managing the risk of contract variations and/or escalation or the allocation of potential risks during the awarding and management of the contract;
  - (2) the contract has been appropriately managed having regard to the matters in **clause ~~6.1(c)(iv)~~~~6.1(e)(iv)~~~~6.1(e)(iv)~~**; and
  - (3) the contract has been managed with regard to a prudent balance between costs, schedule and minimising disruption to Committed Capacity during construction; and
- (iii) all costs, paid for by or incurred by Queensland Rail, that Queensland Rail can demonstrate were prudently paid for or incurred and solely and directly related to complying with **clause ~~666~~**.

### 5.3 General process for acceptance of prudence of costs

- (a) If **clause ~~5.25-25.2~~** does not apply or acceptance is not sought or obtained under **clause ~~5.25-25.2~~**, Queensland Rail **or an Access Funder** may request the QCA's acceptance of the costs of a capital expenditure project as prudent in accordance with this **clause ~~5.35-35.3~~**.
- (b) If a request is made under **clause ~~5.3(a)~~~~5.3(a)~~~~5.3(a)~~**, the QCA will accept the costs of a capital expenditure project as prudent if the costs are reasonable for the scope and standard of works undertaken having regard to the matters set out in **clause ~~5.3(c)~~~~5.3(c)~~~~5.3(c)~~** given the circumstances relevant at the time when the costs were incurred or the capital expenditure project was undertaken (as applicable).
- (c) The factors that the QCA will have regard to for the purposes of **clause ~~5.3(b)~~~~5.3(b)~~~~5.3(b)~~** are:
  - (i) the level of such costs relative to the scale, nature, cost and complexity of the project;
  - (ii) the circumstances prevailing in the markets for:
    - (A) engineering, equipment supply and construction;
    - (B) labour; and
    - (C) materials;
  - (iii) where the QCA has approved a procurement strategy for the capital expenditure project under **clause ~~6.1(b)~~~~6.1(b)~~~~6.1(b)~~**, the

extent to which Queensland Rail has achieved compliance with that procurement strategy; and

- (iv) the manner in which the capital expenditure project has been managed by Queensland Rail given the circumstances at the time when relevant management decisions and actions were made or undertaken, including Queensland Rail's balancing of:
  - (A) safety during construction and operation;
  - (B) compliance with environmental requirements during construction and operation;
  - (C) compliance with Laws and the requirements of Authorities;
  - (D) minimising disruption to the operation of Train Services during construction;
  - (E) accommodating reasonable requests of Access Holders (and, if applicable, their Customers) to amend the scope and sequence of works undertaken to suit their needs;
  - (F) minimising whole of asset life costs including future maintenance and operating costs;
  - (G) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
  - (H) aligning other elements in the supply chain; and
  - (I) meeting contractual timeframes and dealing with external factors.

## 6 Approval of a procurement strategy

### 6.1 Process for the approval of a procurement strategy

- (a) Where the QCA has approved the scope of a capital expenditure project as prudent in accordance with **clause 333**, Queensland Rail may request the QCA's approval of a procurement strategy for all or part of that capital expenditure project.
- (b) If a request is made under **clause 6.1(a)6.1(a)6.1(a)**, the QCA will approve Queensland Rail's procurement strategy if the QCA is satisfied that the procurement strategy:
  - (i) is in accordance with good industry practice;
  - (ii) will generate an efficient and competitive outcome;
  - (iii) will avoid conflict of interest or collusion amongst tenderers;

- (iv) is prudent in the circumstances of the capital expenditure project including having regard to:
  - (A) the factors set out in **clause ~~6.1(c)~~~~6.1(e)~~~~6.1(e)~~**; and
  - (B) whether the procurement strategy tends to assist in achieving the requirements for prudence of costs set out in **clause ~~5.35~~~~35.3~~**; and
- (v) will avoid unreasonable exposure to contract variation claims.
- (c) The factors that the QCA will have regard to for the purposes of **clause ~~6.1(b)(iv)(A)~~~~6.1(b)(iv)(A)~~~~6.1(b)(iv)(A)~~** are whether, in the procurement strategy:
  - (i) there is a clear process for the calling of tenders, including having clear specifications for tenders, and processes for mitigating conflicts of interest (except when it is assessed that calling tenders is likely to be less advantageous than an alternative means of negotiating a contract);
  - (ii) there is a tender assessment process which contains clear and appropriate processes for determining the successful tender, with any decisions to approve a tender that is not the lowest tender being appropriately justified and documented;
  - (iii) the basis of payment for works is clearly specified and the basis for undertaking the works is in accordance with good commercial practice;
  - (iv) there is a process for managing contracts before and after award that accords with good commercial practice for a project of the type and scale of the capital expenditure project and provides appropriate guidance on the criteria that Queensland Rail should apply to decisions regarding the management of the capital expenditure project, including:
    - (A) safety during construction and operation;
    - (B) compliance with environmental requirements during construction and operation;
    - (C) minimising disruption to Committed Capacity during construction;
    - (D) accommodating the reasonable requests of Access Holders and, if applicable, their Customers to change the scope and sequence of construction to suit their needs;
    - (E) a prudent balance between:
      - (1) a higher price in return for more certainty as to final cost;

- (2) a lower price accepting that final cost may be less certain; and
  - (3) costs, schedule and minimising disruption to Committed Capacity during construction;
  - (F) minimising whole of asset life costs including future maintenance and operating costs; and
  - (G) minimising total project cost which may at times not be consistent with minimisation of individual contract costs;
- (v) there is a process for managing contract variations and/or escalation that occurs post award of a contract, requiring that reasonable consideration be given to managing the risk of contract variations and/or escalation and the allocation of potential risks during the management of the contract and requiring the provision of clear documentary evidence regarding the nature and reasonableness of any variation and/or escalation; and
  - (vi) Queensland Rail has engaged an auditor in accordance with **clause 6.26.26-2** to monitor compliance with the procurement strategy.
- (d) The QCA will give Queensland Rail a notice in writing regarding:
    - (i) whether the procurement strategy is approved; and
    - (ii) if the QCA decides not to approve the procurement strategy (in whole or part) the reasons for its refusal and the way the processes under the procurement strategy may be amended to obtain the QCA's approval.

## 6.2 Implementation of approved procurement strategy

- (a) As part of the implementation of a procurement strategy approved by the QCA under **clause 6.16.16-1**, Queensland Rail will engage an independent external auditor to audit the compliance of Queensland Rail's tender and contract management processes with the approved procurement strategy approved in accordance with the following process:
  - (i) Queensland Rail will appoint the auditor, after obtaining the QCA's approval of the auditor (including the terms of engagement);
  - (ii) the auditor will be required to acknowledge and accept that the auditor owes a separate 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 Queensland Rail and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence;
  - (iii) the auditor must agree the processes for conducting an audit with Queensland Rail and obtain the QCA's approval of the audit process (which will consist of a proposed work program, including audit costs, for the execution of the audit);

- (iv) Queensland Rail will, within a reasonable time, provide any relevant information the auditor reasonably requires for the purpose of conducting the audit;
  - (v) if required by Queensland Rail, the auditor will enter into a confidentiality agreement with Queensland Rail in relation to any information provided by Queensland Rail 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 detailed in **clause 6.2(a)(vi)**~~6.2(a)(vi)~~~~6.2(a)(vi)~~ below;
  - (vi) the auditor will compile an audit report:
    - (A) identifying whether Queensland Rail has complied in all material respects with the approved procurement strategy including in relation to contract variations and/or escalation; and
    - (B) if the auditor identifies that Queensland Rail has not complied in all material respects with the approved procurement strategy, detailing:
      - (1) the relevant non-compliance;
      - (2) any reasons stated by Queensland Rail for the relevant non-compliance; and
      - (3) whether the non-compliance was reasonable in the circumstances;
  - (vii) the auditor will provide to Queensland Rail and the QCA:
    - (A) progress reports on the audit process every six months; and
    - (B) a copy of the audit report upon completion of the audit (which the QCA may publish if it considers it appropriate); and
  - (viii) if the QCA considers that any of the auditor's reports (whether progress reports or a final report) are lacking in detail or otherwise deficient, the QCA may direct Queensland Rail to instruct the auditor to review the relevant report and, in doing so, to address the concerns of the QCA.
- (b) For the purpose of **clause 555**:
- (i) the costs incurred by Queensland Rail in relation to an external auditor engaged in accordance with this **clause 6.26.26.2** will form part of the capital expenditure for the relevant capital expenditure project and the QCA will accept those costs as prudent; and
  - (ii) the QCA will treat all other costs paid or incurred by Queensland Rail in implementing or otherwise complying with a procurement strategy approved by the QCA under **clause 6.16.16.1** as capital

expenditure and will accept those costs for inclusion in the relevant Regulatory Asset Base if the QCA is satisfied that they were prudently incurred.

## 7 Capital Expenditure Carryover Account

- (a) Queensland Rail will maintain registers in which it will annually record all Approved Capital Expenditure (including identifying the relevant capital expenditure by project) in relation to the West Moreton Network and the Metropolitan Network.
- (b) If, at the end of each Year, the Approved Capital Expenditure differs from the relevant Capital Indicator for West Moreton Network or the Metropolitan Network<sup>25</sup> ( as applicable), the difference will be entered in the Capital Expenditure Carryover Account. The balance recorded in the Capital Expenditure Carryover Account will be deemed as:
  - (i) an under recovery of revenue, where the Approved Capital Expenditure exceeds the relevant Capital Indicator; or
  - (ii) an over recovery of revenue, where the Approved Capital Expenditure is less than the relevant Capital Indicator.
- (c) The balance recorded in the Capital Expenditure Carryover Account will include:
  - (i) a return on capital component, calculated as the difference between the return on capital assumed for the relevant Capital Indicator and the return on capital that should have applied for the Approved Capital Expenditure, accrued at the WACC;
  - (ii) a depreciation component, calculated as the difference between the depreciation assumed for the relevant Capital Indicator and the depreciation that should have applied for the Approved Capital Expenditure; and
  - (iii) a tax depreciation component, calculated as the difference between the tax depreciation assumed for the relevant Capital Indicator and the tax depreciation that should have applied for the Approved Capital Expenditure,and will be calculated using the modelling parameters and assumptions used to determine the relevant Reference Tariff.
- (d) The balance in the Capital Expenditure Carryover Account at the end of each Year will be rolled forward at the WACC.
- (e) The balance in the Capital Expenditure Carryover Account at the end of the Term will be taken into account when determining:

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<sup>25</sup> For clarity, the Capital Indicator for the Metropolitan Network for the Term is taken to be zero.

- (i) in relation to the West Moreton Network, ~~the Ceiling Price (as defined under clause 1.1(f)(ii) of schedule D~~ Reference Tariff; and
- (ii) in relation to the Metropolitan Network, the Reference Tariff input(s) relating to (in whole or part) the Regulatory Asset Base applicable to the Metropolitan Network,

relevant to the next undertaking on the basis of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking and the Reference Tariff last applicable under this Undertaking was set at a level such that it would generate Expected Access Revenue equal to the Approved Ceiling Revenue Limit, the balance in the Capital Expenditure Carryover Account will be recovered from, or returned to, Access Holders (as the case may be) in the form of a single payment following the Terminating Date.

# Schedule F

## Network Management Principles

### 1 Application

Unless otherwise required by any Law, the Network Management Principles set out in this **schedule FFF** will apply in relation to all Train Services.

### 2 Train Planning Principles

#### 2.1 Master Train Plan Principles

- (a) A MTP will indicate the Capacity necessary to satisfy all relevant Train Service Entitlements, all of Queensland Rail's passenger Train Services, and time allocated for Planned Possessions.
- (b) Access Holders' Train Service Entitlements and Queensland Rail's passenger Train Services will be allocated particular Train Paths.
- (c) A MTP will be in a form that sets out the time/distance (location) relationship of the Train Services and other activities on the relevant part of the Network and is readily convertible to a DTP.
- (d) Queensland Rail will notify all Access Holders and any other affected parties (for example, parties that are affected by the availability of access to the Network including operators of rail and port facilities) whose activities are affected by any modifications to a MTP at least 20 Business Days prior to the commencement of the modification (except in the case of an Urgent Possession or Emergency Possession)<sup>26</sup>.
- (e) Subject to **clause 2.1(f)2.1(f)2.1(f)**, an Access Holder must give Queensland Rail sufficient notice of any requested changes to a MTP to enable Queensland Rail to consider the requested changes and, if Queensland Rail agrees to the making of those modifications, to comply with **clause 2.1(d)2.1(d)2.1(d)**.
- (f) A notice given by an Access Holder under **clause 2.1(e)2.1(e)2.1(e)** must be given no less than:
  - (i) six months prior to the date to which the change relates, where the change relates to a passenger Train Service; or
  - (ii) three months prior to the date to which the change relates, where the change relates to a non-passenger Train Service.

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<sup>26</sup> Notification to parties other than Access Holders may be done by posting suitable information to Queensland Rail's website.

- (g) Except as otherwise provided in an Access Agreement, the cancellation of a Train Service does not excuse either Queensland Rail or an Access Holder from any relevant obligations under that Access Agreement.
- (h) Queensland Rail will publish on its website the MTPs applicable as at the Approval Date and will update the MTPs published on its website, from time to time, so that the MTPs published are those applicable as at the last semi-anniversary or anniversary of the Approval Date, as applicable.
- (i) Despite **clause ~~2.1(h)2.1(h)2.1(h)~~**, an Access Holder or their Customer may (acting reasonably) request a copy of the current MTP from Queensland Rail, from time to time, and if Queensland Rail receives such a request Queensland Rail will provide a copy of the relevant MTP to that Access Holder or Customer as soon as reasonably practicable.
- (j) The MTPs published under **clause ~~2.1(h)2.1(h)2.1(h)~~**, or provided under **clause ~~2.1(i)2.1(i)2.1(i)~~**, will be complete and will not be redacted in any way.
- (k) Nothing in this **schedule FFF** requires the preparation and publication of a single MTP that applies to the Network as a whole. Queensland Rail may prepare separate MTPs (and, as a consequence, DTPs) for different parts of the Network.

#### **Modifying a MTP**

- (l) Subject to **clauses ~~2.1(m)2.1(m)2.1(m)~~**, a MTP may be modified by Queensland Rail from time to time.
- (m) Queensland Rail will not modify the MTP where the modification would result in an Access Holder's scheduled Train Services not being met, unless Queensland Rail:
  - (i) has consulted with that Access Holder; and
  - (ii) to the extent that the modification is not within the scope of that Access Holder's Train Service Entitlement, has agreed the modifications with that Access Holder (such agreement not to be unreasonably withheld).

## **2.2 Daily Train Plan Principles**

- (a) A DTP will indicate all scheduled Train Services and Planned Possessions in a form that indicates the time/distance (location) relationship of all activities,
- (b) A DTP represents an expected performance target that each Access Holder must comply with for its Train Services, for a particular day of operation for a specified part of the Network.
- (c) At least one Business Day prior to the day of operation, Queensland Rail will schedule a DTP and provide all relevant Access Holders and Infrastructure Service Providers and any other affected parties (including for example, relevant operators of rail and port facilities) with a copy of

that DTP. For clarity, the DTP provided will be complete and will not be redacted in any way.

- (d) Except as otherwise provided in an Access Agreement, the cancellation of a Train Service does not excuse either Queensland Rail or an Access Holder from any relevant obligations under an Access Agreement.

#### **Scheduling a DTP in variation from a MTP**

- (e) A DTP may be scheduled in variation to a MTP by Queensland Rail, without consultation, where, at least two Business Days prior to the day of operation, and prior to the DTP being scheduled:

(i) any of the following apply:

(A) an Access Holder requests a short-term change to the times at which any of its Train Services, as scheduled in the MTP, operate;

(B) an Access Holder requests to run an Ad Hoc Train Service; or

~~(C) Queensland Rail modifies the times at which any of its passenger Train Services, as scheduled in the MTP, operate;~~

provided that the variation does not result in any other Access Holder's scheduled Train Services not being met; or

~~(ii) a Planned Possession is cancelled.~~

- (f) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the day of operation, and prior to the DTP being scheduled, Queensland Rail wishes to make a short-term change to the times at which one or more scheduled Train Services operate, provided that:

(i) the change is intended to accommodate:

(A) the modification of an existing Planned Possession;

(B) the creation of an Urgent Possession; or

(C) any other Operational Constraint affecting the DTP; and

~~(ii) where the variation would result in an Access Holder's scheduled Train Services not being met, Queensland Rail has, for changes under clause 2.2(f)(i)(A) and (C), consulted, and made reasonable endeavours to reach agreement in relation to the proposed modifications, with that the relevant Access Holders; and-~~

~~(ii)(iii) for changes under clause 2.2(f)(i)(B), Queensland Rail has used its reasonable endeavours to consult with the relevant Access Holders.~~

- (g) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the day of operation, and prior to the DTP being scheduled, Queensland Rail makes a short-term change to the times at which one or more scheduled Train Service/s operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlement, for the purpose of accommodating an Emergency Possession provided that where the variation would result in an Access Holder's scheduled Train Services not being met, Queensland Rail has consulted with that Access Holder.
- (h) A DTP may be scheduled in variation from a MTP by Queensland Rail where at least two Business Days prior to the day of operation, and prior to the DTP being scheduled, Queensland Rail and all affected Access Holders agree to the modification provided that where Queensland Rail seeks such a modification, Queensland Rail:
  - (i) invites affected Access Holders to consider the variation in an appropriate forum;<sup>27</sup> at least 36 hours prior to the day of operation; and
  - (ii) gives each of those parties a copy of the proposed variation at least 12 hours prior to the scheduled consideration of the variation.
- (i) For clarity, Queensland Rail may schedule a DTP in variation from a MTP under any one of **clauses 2.2(e)2.2(e)2.2(e)** to **(h)(h)(h)** even if Queensland Rail cannot do so under, or does not comply with, any of the other of those clauses in respect of that modification.

#### **Making modifications to a DTP once scheduled**

~~(j)(a)~~ Queensland Rail may make modifications to a scheduled DTP on a case by case basis ~~without the need for consultation:~~

- (i) where:
  - (A) before the day of operation, Queensland Rail receives a request from an Access Holder to run an Ad Hoc Train Service; or
  - (B) before a Train Service commences operation, the Access Holder requests a change to the time at which its Train Service will operate and that change is within the scope of the Access Holder's Train Service Entitlement,

provided that the modification does not result in any other Access Holder's scheduled Train Services not being met; or

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<sup>27</sup> This could include a face-to-face meeting, a telephone conference or any other forum that provides the affected parties with the best opportunity to participate.

(ii) where, before the commencement of a relevant Train Service, Queensland Rail notifies the Access Holder that an Emergency Possession is required.

~~(ii)(iii)~~ Queensland Rail has used reasonable endeavours to notify and consult with any Access Holder whose Train Services may be affected by the modification or any other affected party.

## 2.3 Minimising the adverse ~~affects~~ effects of Possessions

(a) To the extent that:

(i) a MTP is to be modified under ~~clause 2.12.12.1~~; or

(ii) a DTP is to be scheduled in variation from a MTP under ~~clause 2.22.22.2~~,

~~for a Planned Possession, Urgent Possession or Emergency Possession~~, Queensland Rail will use its reasonable endeavours to minimise any material adverse ~~a~~ effects on Train Services that will be caused by that modification or variation.

(b) In determining what (if anything) can and should be done under ~~clause 2.3(a)2.3(a)2.3(a)~~ to minimise any material adverse ~~a~~ effects, Queensland Rail may take into account:

(i) all relevant commercial, operational and other matters relating to the Network including:

(A) the proper, efficient and safe operation and management of the Network; and

(B) Prudent Practices; and

(ii) the extent to which the modification or variation is consistent with the scope of any relevant Train Service Entitlements.

~~(c)~~ Subject to clause 2.3(b), Queensland Rail must use its reasonable endeavours to offer an Access Holder, affected by a modification referred to in clause 2.3(a)(i) or (ii), an Alternative Schedule Time.

~~(e)(d)~~ For clarity, an Access Holder's Train Services cannot be materially adversely affected for the purpose of this ~~clause 2.32.32.3~~ to the extent that the modification or variation referred to in ~~clause 2.3(a)(i)2.3(a)(i)2.3(a)(i)~~ or ~~(ii)(ii)(ii)~~ does not prevent those Train Services operating ~~substantially~~ in accordance with the Access Holder's Train Service Entitlement.

~~(d)(e)~~ The amount of time prior to the relevant Possession commencing may affect the degree of consideration given to minimising adverse ~~affects~~ effects and what can be done to minimise adverse ~~affect~~ effects.

~~(f)~~ Nothing in this ~~clause 2.32.32.3~~ obliges Queensland Rail to pay compensation to Access Holders whose Train Services are adversely affected.

## **2.4 Disputes**

Except in relation to Emergency Possessions and Urgent Possessions, if there is a dispute between an Access Holder and Queensland Rail in relation to any proposed changes or modifications to either the MTP or DTP, the proposed change will not take effect until the dispute has been resolved using the dispute resolution provisions of the Undertaking.

~~(e)~~

## **3 Network Control Principles**

### **Objective**

- (a) The prime objective of Network Control is to facilitate the safe running of Train Services, and the commencement and completion of Possessions, as scheduled in the DTPs.
- (b) Queensland Rail will manage the Network based on entry/exit times as specified in the DTPs with the objectives of managing Train Services according to their schedule for on time exit, not contributing to late running and, if a Train Service is running late, making up time and holding the gain where reasonably possible.
- (c) A deviation from a DTP by Queensland Rail and/or an Access Holder on the day of running in accordance with this **clause 333** does not necessarily excuse either party from any relevant obligations relating to the conduct in question.

### **Access Holders**

- (d) Access Holders must ensure that Above Rail issues, including Train crewing, locomotive and wagon availability and loading and unloading requirements, are appropriately managed to ensure that such issues do not adversely affect a DTP.

### **Provision of Network Control information**

- (e) Queensland Rail will provide an Access Holder with:
  - (i) real time Network Control information that indicates actual running of that Access Holder's Train Services against the relevant DTP;
  - (ii) subject to reasonable terms and conditions, access to Network Control diagrams that indicate actual running of that Access Holder's Train Services against the relevant DTP; and
  - (iii) subject to reasonable terms and conditions, information about the type of Train Services operated on the same network (including, for example, coal, freight, passenger and livestock Train Services) to assist Access Holders to determine whether the Network Controller is applying the principles in this **schedule FFF** in a consistent manner between Access Holders.

### Traffic Management Decision Making Matrix

- (f) Where the operation of a Train Service differs from a DTP, the Network Controller will apply the Traffic Management Decision Making Matrix in **clause 3(h)3(h)3(h)**, for the purposes of giving a Network Control Direction.
- (g) In the context of the Traffic Management Decision Making Matrix the meaning of “On Time”, “Ahead” and “Late” are determined by the scheduling of paths in the relevant DTP. For example, if a Train Service is travelling in accordance with the path allocated to it in the relevant DTP, it is running “On Time”.
- (h) The Traffic Management Decision Making Matrix is as follows:

		Train Service A - Current Status	
		Train Service Running “On Time” or “Ahead”	Train Service Running “Late”
Train Service B - Current Status	Train Service Running “On Time” or “Ahead”	Rule 2	Rule 1
	Train Service Running “Late”	Rule 1	Rule 3

Rule 1. The “Late” Train Service may be given priority provided that the other Train Service will still meet its “On Time” objective, subject to the principles for managing deviations from the DTP in **clause 3(i)3(i)3(i)**.

Rule 2. Both Train Services must meet their “On Time” objective.

Rule 3. Give priority to the Train Service that (in the Network Controller’s opinion), based on its performance, will lose the least time (or make up more time) and hold a greater gain, subject to the principles for managing deviations from the DTP in **clause 3(i)3(i)3(i)**.

### Principles for managing deviations from a DTP

- (i) It is necessary for Network Controllers to have sufficient discretion to take into account the varying objectives of different traffic types, and the circumstances of a particular part of the Network, in assessing the priority to be given to Train Services and other activities on the Network. Network Controllers will apply the following principles in managing deviations from a DTP:

- (i) a Train Service may be given priority over other Train Services if it is reasonably necessary to do so:
  - (A) due to, or to avoid, an accident, emergency or incident relating to any part of the Network;
  - (B) to remedy, or to mitigate or avoid, the operation of Train Services on any part of the Network being congested, prevented or otherwise materially adversely affected;
  - (C) to remedy, or to mitigate or avoid, any Emergency Possession or Urgent Possession on any part of the Network being prevented or otherwise materially adversely affected; or
  - (D) to ensure the safe operation of any part of the Network;
- (ii) subject to **clause ~~3(i)(i)3(i)(i)3(i)(i)~~**, passenger Train Services may be given priority over other Train Services if the Network Controller reasonably believes that this is necessary to seek:
  - (A) to bring a “Late” passenger Train Service back to being “On Time” or closer to being “On Time”;
  - (B) to prevent that “Late” passenger Train Service becoming “Later”; or
  - (C) to avoid an “On Time” or “Ahead” passenger Train Service that is operating, is scheduled to operate, or will be scheduled to operate in the Metropolitan Network during any peak period<sup>28</sup> from becoming a “Late” passenger Train Service;
- (iii) subject to **clause ~~3(i)(i)3(i)(i)3(i)(i)~~**, livestock Train Services may be given priority over other Train Services if the Network Controller believes that this is desirable taking into consideration the livestock being transported (including, for example, the welfare of the livestock);
- (iv) subject to **clauses ~~3(i)(i)3(i)(i)3(i)(i)~~ to ~~(iii)(iii)(iii)~~**, a Train Service may be given priority over other Train Services if it is necessary to do so to remedy, or to mitigate or avoid, any Planned Possession on any part of the Network being prevented or otherwise materially adversely affected; and
- (v) subject to **clauses ~~3(i)(i)3(i)(i)3(i)(i)~~ to ~~(iv)(iv)(iv)~~**, where a Train Service is running “Late” due to a Below Rail Delay, it may be given preference over other Train Services if the Network

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<sup>28</sup> The time periods: (a) from 6:00am to 9:00am; and (b) from 3:30pm to 6:30pm, on Business Days or as otherwise notified by Queensland Rail (acting reasonably) from time to time.

Controller believes that this is consistent with the critical objectives of the Train Services in question, and that it will result in less aggregated consequential delays to other Train Services than otherwise would be the case.

# Schedule G

## Operating Requirements Manual

# Schedule H

## Standard Access Agreement

## Schedule I – Extension Access Principles

### 1 Undertaking Premises

- (a) Queensland Rail cannot be forced to fund an Extension other than in accordance with this Undertaking or the provisions of the Act regarding the determination of access disputes.
- (b) Queensland Rail should not be able to exploit its monopoly power.
- (c) Where Queensland Rail has elected, at their option, not fund an Extension, an:
  - (i) Access Seeker should have the right to fund an Extension to create the Additional Capacity required to accommodate its Access Application; or
  - (ii) Access Holder should have the right to fund an Extension to create the Additional Capacity to remedy or replace sections of the network damaged or destroyed by a Force Majeure Event;
  - (iii) Access Holder should have the right to fund an Extension to increase the Capacity in a System.

### 2 Undertaking Coverage

- (a) Queensland Rail will undertake all Extensions of the Network under the auspices of this Undertaking and the QCA Act such that Queensland Rail will provide even-handed dealing with all Access Seekers, Access Funders and Access Holders.
- (b) Access Charges in respect of Access Rights which are able to be provided as a result of an Extension will be determined in accordance with the pricing principles incorporated in this Undertaking unless Queensland Rail and an Access Funder agree an alternative approach is appropriate in the circumstances.
- (c) The QCA has the following roles:
  - (i) making binding arbitration determinations in relation to access disputes between Queensland Rail and an Access Funder arising from negotiations on or under Extension and Funding Agreements (unless otherwise agreed).

### 3 Access Funding Condition

- (a) The Access Funding Condition
  - (i) requires the Access Funder to:
    - (A) fund some or all of the capital costs of the Extension, including the following project stages of an Extension:

- (1) Concept Study;
    - (2) Prefeasibility Study;
    - (3) Feasibility Study;
    - (4) Construction and commissioning;
  - (B) fund Queensland Rail's Efficient Costs Incurred in developing and constructing the Extension;
  - (C) execute a Funding Agreement to comply with clause 3(b)(i); and
- (ii) requires Queensland Rail to:
  - (A) construct, own and commission the Extension required to create the Additional Capacity to deliver the contracted Access Rights; and
  - (B) operate and maintain the Network in accordance with the Undertaking;
- (iii) does not exempt Queensland Rail from bearing those costs it would routinely incur when assessing an access application;
- (iv) cannot be used by Queensland Rail to require Access Funders to fund any costs incurred in an Extension if those costs are assessed to be not prudently incurred;
- (v) requires the legitimate business interests of the parties to be addressed and agreed by the parties acting reasonably or failing agreement requires an access determination by the QCA in accordance with the QCA Act including section 119.
- (b) Nothing obliges Queensland Rail to bear some or all of any Extension Costs incurred in extending the Network in advance of a Funding Agreement being executed by the Access Funder.
- (c) No additional fees or on-costs may be charged by Queensland Rail in respect of the Funding Agreement, unless there are additional costs or risks assumed by Queensland Rail which Queensland Rail would not have assumed but for the Extension. Queensland Rail must act reasonably in calculating any additional costs or risks and must provide justification for the additional costs and/or risks.
- (d) If a number of Access Funders fund an Extension, the Access Funders should be given Access Rights for the Additional Capacity in proportion to the funding that they provide.
- (e) Where an Extension has been, or is being, funded by an Access Funder (**First Party**) and a subsequent party lodges an Access Application for Access Rights that were, or are being, created as a result of that funding by the First Party (**Subsequent Party**), Queensland Rail will:

- (i) take into account advice from the First Party to determine, acting reasonably, whether to apply similar funding requirements in its negotiations with the Subsequent Party;
  - (ii) require the Subsequent Party to execute a Funding Agreement to share responsibility in respect of part of the funding originally borne by the First Party where it is reasonable for the Subsequent Party to do so; and
  - (iii) re-negotiate the terms of the First Party’s Funding Agreement to reflect the fact that the Subsequent Party is sharing the responsibility that was originally borne by the First Party, if paragraph (ii) above applies.
- (f) For the purposes of determining whether this clause applies to a Subsequent Party, a Subsequent Party will be deemed to use the funded Extension, if the Subsequent Party’s Train Service would have required Additional Capacity if the funded Extension had not been built.

#### 4 Funding Agreement

- (a) The execution of a Funding Agreement will oblige Queensland Rail to:
- (i) provide Access Rights to the Access Funder in accordance with an Access Agreement which is conditional only on the Extension being commissioned
  - (ii) assist (including study), construct and commission an Extension consistent with a commercially balanced allocation of risks and liabilities
  - (iii) transfer to the Access Funder the full economic benefit that Queensland Rail derives from the Extension over the economic life of the Extension in accordance with Contributions AASB 1004 standard.

#### 5 Full Economic Benefit Transfer

- (a) The capitalised cost of an Extension will include all Extension Costs expended by the Access Funder on the Extension in accordance with the Undertaking.
- (b) The capitalised cost of an Extension will be used to calculate the full economic benefit that is to be transferred from Queensland Rail to the Access Funder over the economic life of the Extension, regardless of whether or not the Access Funder remains an Access Holder over that time period.
- (c) The full economic benefit derived by Queensland Rail as a result of the capital contribution comprises:

- (i) an amount equal to the return on and of the capital component of Access Charges from any Access Holders that utilise the Capacity created by an Access Funder's contributed asset (with Queensland Rail being entitled to receive an amount equal to the components of Access Charges based on managing, maintaining and operating the network); and
- (ii) any tax or other financial benefit accruing to Queensland Rail as legal owner of the Rail Transport Infrastructure covered by the Access Funding Condition, where the risks have been transferred to the Access Funder as a result of the Access Funding Condition.
- (d) The Funding Agreement should be such that Queensland Rail receives no benefit (tax or cash flow) from the Access Funder's contributed asset, with Queensland Rail retaining only the portion of Access Charges related to its operating and maintenance costs.
- (e) Where the Access Charges from the contributed asset are not sufficient to cover both the return to the Access Funder, and the operating and maintenance costs for that section of the network, Queensland Rail should only be obliged to return the amount it has received from Access Charges net of the operating and maintenance costs in any given year (with Access Holders that continue to use the relevant Rail Transport Infrastructure receiving priority over Access Holders that have ceased using it, where Access Charges are not sufficient to cover all returns of capital).
- (f) The Funding Agreement should enable an independent auditor to audit compliance with Part 5 of the Undertaking, from time to time and as reasonably required by the Access Funder over the economic life of the asset.

## 6 Access Funder Rights and Responsibilities

- (a) The Access Funder, at their option, can elect to

  - (i) undertake the study stages of an Extension with the assistance of Queensland Rail so that the Extension complies with the clause 1.4 of the Undertaking; or
  - (ii) require Queensland Rail to undertake the study stages of an Extension so that the Extension complies with the clause 1.4 of the Undertaking.
  - (iii) execute separate Funding Agreements with Queensland Rail for each stage of the Extension.
- (b) The Access Funder is required to fund all of Queensland Rail's Extension Costs including, but not limited to:

- (i) providing assistance to the Access Funder to develop the scope, standard and cost of the Extension at each stage of the Extension project
- (ii) undertaking an Extension study or investigation on behalf of the Access Funder at each stage of the Extension project
- (iii) constructing and commissioning an Extension.
- (c) Subject to **clause 5(a)** above, the Access Funder will absorb all costs incurred by the Access Funder that relate to the Extension and are assessed by the QCA (in accordance with **clause 1.4.6** of the Undertaking) to be inefficient or not prudently incurred.

## 7 Queensland Rail Rights and Responsibilities

- (a) Queensland Rail, at the request of an Access Funder, and in accordance with **clause 1.4.2(c)** of the Undertaking, will promptly:
  - (i) provide the Access Funder with all reasonably required information on the Extension;
  - (ii) provide a first draft contract to underpin negotiations of a Funding Agreement; and
  - (iii) subject to executing a Funding Agreement in accordance with **clause 1.4.3(b)** of the Undertaking:
    - (A) provide all project assistance that is reasonably required by an Access Funder to develop an Extension to the required study standard;
    - (B) apply for any Authorisation, land tenure or land rights required for the Extension; and
    - (C) construct, commission and own the Extension.
- (b) Subject to **clause 3(c)** above, Queensland Rail will absorb all costs incurred by Queensland Rail that relate to the Extension and are assessed by the auditor or the QCA (in accordance with **clause 1.4.6** of the Undertaking) to be inefficient or not prudently incurred.

## 8 Extension Studies

- (a) Queensland Rail should collaborate with Access Funders in relation to key matters affecting the cost and timing of the Extension, including, but not limited to, project scope, standard, approvals, procurement strategy, cost, construction and timing.
- (b) Prior to the execution of a study Funding Agreement, the:
  - (i) Access Funder and Queensland Rail must agree the scope of works to be delivered by Queensland Rail at the relevant study stage;

- (ii) Queensland Rail must provide an Access Funder with
  - (A) an estimate of the reasonable Extension Costs it expects to incur during the relevant study stage;
  - (B) project controls to manage the timing and cost risks in the Funding Agreement; and
  - (C) a timetable for the completion of the scope of works.
- (c) Queensland Rail must expeditiously assist, investigate and/or undertake studies for an Extension that is funded by an Access Funder and report variations to the agreed timetable.
- (d) The study Funding Agreement should appoint an independent auditor to audit Queensland Rail's compliance with requiring the Access Funder to fund its Extension Costs.
- (e) The independent auditor is to undertake a compliance audit on the completion of the scope of works in each Funding Agreement. Queensland Rail's costs that are not assessed by the independent auditor to be prudently incurred Extension Costs are to be reimbursed back to the Access Funder.

## 9 Extension Construction

- (a) Queensland Rail must expeditiously construct Extensions funded by Access Funders.
- (b) Access Funders should be given the opportunity to collaborate with Queensland Rail in relation to key matters affecting the cost and timing of the Extension, including, but not limited to, project scope, standard, cost, procurement strategy, construction and timing.
- (c) Prior to the execution of a Funding Agreement:
  - (i) the Access Funder and Queensland Rail, both acting reasonably, must agree;
    - (A) the Extension project scope to be delivered by Queensland Rail in constructing and commissioning the Extension;
    - (B) the procurement strategy to provide that the Extension project complies with the prudence tests contained in Schedule E of the Undertaking;
    - (C) the estimated cost of the construction project;
    - (D) the project timetable for the commissioning of the Extension;
    - (E) the inclusion of appropriate project controls and/or contract terms for the Access Funder to manage the timing and cost risks in constructing and commissioning the Extension;

- (F) funding, operational; and other material arrangements reasonably required for the construction of the Extension; and
    - (G) rights of inspection and audit in relation to each party's compliance with the Funding Agreement.
  - (d) The Extension Funding Agreement should appoint an independent auditor to audit Queensland Rail's compliance with requiring the Access Funder to fund its Extension Costs.
  - (e) The independent auditor is to undertake a compliance audit on the commissioning of the Extension. Queensland Rail's costs not assessed by the independent auditor to be prudently incurred Extension Costs are to be reimbursed back to the Access Funder.

## 10 Funding Agreement Terms and Conditions

### 10.1 Allocation of Contract Risks

- (a) The identification, allocation and management of risks should be balanced and contract risks should be allocated to the party best placed to manage the risk.
- (b) An appropriate balancing of risks in a Funding Agreement should recognise the following risk positions of the parties in an Extension undertaken:
  - (i) a Funding Agreement is only required if Queensland Rail elects, at its option, to not fund an Extension;
  - (ii) apart from funding an Extension, an Access Funder has to comply with the Undertaking;
  - (iii) the Undertaking gives Queensland Rail responsibility for:
    - (A) approving the efficient scope and standard of an Extension;
    - (B) efficiently constructing and owning the Extension;
    - (C) operating and maintaining the Network, inclusive of the Extension; and
  - (iv) the efficient cost of an Extension should be assessed in accordance with Schedule E of the Undertaking.
- (c) A balancing of risks in a Funding Agreement should provide appropriate project controls for the Access Funder to manage the cost and timing risks that it has accepted in funding an Extension to accommodate its request for Access.

## **10.2 Security**

- (a) As per clause 1.4.1(b)(iii) of the Undertaking, Queensland Rail may require the Access Funder to provide a bank guarantee in support of its commitments under a Funding Agreement.
- (b) Any required bank guarantee should reflect the cash flow risk that Queensland Rail has taken on in the Extension and may provide the ability for Queensland Rail to issue 3-6 month 'cash calls' in advance to cover Queensland Rail's costs during construction of the Extension.
- (c) Where an Access Funder defaults on a cash call, Queensland Rail is entitled to

  - (i) require some form of security deposit equivalent to its financial exposure, where the default was not attributable to a legitimate Dispute; and
  - (ii) stop all construction activities until the default has been remedied.
- (d) An Access Holder paying a cash security deposit should be credited with interest on the security at a market-based rate for as long as it is held by Queensland Rail.
- (e) The Access Funder shall not be entitled to commence Train Services specified in the Access Agreement unless and until all provisions of the Funding Agreement are completed or complied with. Queensland Rail will use all reasonable endeavours to facilitate the Access Funder's completion or compliance with such provisions.

## **10.3 Infrastructure Management**

Queensland Rail is responsible for the management, operation and control of the Extension during construction and commissioning, in accordance with the Undertaking.

## **10.4 Insurance**

Insurances are to be effected by the parties to appropriately provide for the relevant insurance risks in the construction of the Extension.

## **10.5 Indemnities and Liabilities**

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

## **10.6 Limitation of Liability**

- (a) The liabilities of the parties for default shall be limited as agreed in the Funding Agreement.
- (b) The Funding Agreement will specify the circumstances in which each party has a claim against the other party for delays in the Extension project caused by breach of the Funding Agreement or negligence by the other party.

- (c) Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim.

### **10.7 Default, suspension and termination**

The Funding Agreement will specify reasonable events of default and mutual rights of suspension and termination having regard to the commercial interests of both parties.

### **10.8 Force Majeure Event**

- (a) The obligations of either party (other than an obligation to pay monies outstanding) will be suspended where by reason of a Force Majeure Event that party is delayed in, or prevented from, carrying out its obligations under the Funding Agreement.
- (b) The Funding Agreement will provide for a process that might result in termination of the Funding Agreement if circumstances of a prolonged Force Majeure Event prevent the performance by a party of its obligations.

### **10.9 Assignment**

On commissioning of the Extension, the Access Funder may assign the whole of its Economic Benefit Transfer calculated in accordance with **clause 5** of this **Schedule I**, under the Funding Agreement to another person, with the prior written consent of Queensland Rail (such consent not to be unreasonably withheld).

### **10.10 Representation and warranties**

The Funding Agreement may set out representations and warranties given by both the Access Funder to Queensland Rail and Queensland Rail to the Access Funder.

### **10.11 Confidentiality**

The Funding Agreement must not prevent an Access Funder from referring any issue, regardless of confidentiality, to the QCA for review in accordance with the dispute resolution processes under the QCA Act and Undertaking (as applicable).

### **10.12 Material Change**

- (a) Extension Costs may need to be adjusted to reflect the net impact of any material change where such material change results in a variation to the net cost of Queensland Rail performing its obligations under the Funding Agreement.
- (b) A material change will be defined in the Funding Agreement and should be limited to changes in taxes, laws or approvals and are to be assessed on a case-by-case basis in consultation with the Access Funder.

### **10.13 Disputes**

If there is a dispute in relation to negotiation or completion of any study or Extension including regarding whether Queensland Rail has:

- (a) complied with the undertaking; or
- (b) unnecessarily delayed the Extension; or
- (c) inefficiently managed the construction and commissioning of the Extension.

the QCA will arbitrate (having regard to relevant matters including Queensland Rail's compliance with the undertaking, the construction project timetable and any circumstances Queensland Rail claims have delayed the construction).