

Queensland Rail's
Draft Access Undertaking 1
March 2012

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Preamble

Queensland Rail is a passenger Operator, responsible for the management and operation of inner-city commuter (City network) and long-distance passenger (Travel network) train services, and a Railway Manager, responsible for approximately 8,000 kilometres of track and associated rail infrastructure in Queensland.

As a Railway Manager, Queensland Rail is responsible for granting, maintaining and managing Access to its Network. Access is provided to a wide range of traffic types including Trains for agricultural products, passengers, intermodal and general freight, bulk minerals and coal.

This Undertaking is a voluntary access undertaking in accordance with the provisions of the Queensland Competition Authority Act 1997 (Qld). This Undertaking has been developed following extensive consultation with key stakeholders. It provides a framework to manage negotiations in an efficient and transparent manner for Operators seeking Access to Queensland Rail's Network. The framework is based on a negotiate/arbitrate model and provides a balanced approach to the provision of Access.

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

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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 ~~Access for passenger Train Services~~ or services other than Access; or
 - (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; [and](#)
 - (ii) 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.
- (d) Nothing in this Undertaking affects, and this Undertaking is subject to, Queensland Rail'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) review and, if applicable, amend the line diagrams (at least every six months) during the Term; and
- (c) notify the QCA at no more than six monthly intervals during the Term of any amendments to the line diagrams during that time interval.

1.3 Consistency and differentiation

- (a) This Undertaking will be applied in a manner that is consistent between Access Seekers in the same circumstances.
- (b) Queensland Rail will comply with its obligations under the [QCA Act](#) (in particular, under sections 100 and 168C of the [QCA Act](#)) in relation to not unfairly differentiating between Access Seekers or between Access Holders.

1.4 Extensions

~~Queensland Rail may~~

1.4.1 Obligation to construct Extensions

- (a) Subject to clauses 1.4.2 and 1.4.3, 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 (in its absolute discretion ~~undertake any Extensions necessary to provide the Additional Capacity required to grant Access Rights requested by an Access Seeker~~) is not willing or able to fund the construction of the Extension.

then Queensland Rail is only obliged to construct the Extension if:

- (iii) all of the following are satisfied:
 - (A) the Access Seeker agrees, and satisfies Queensland Rail that it has the financial capacity, to provide funding (in advance) to Queensland Rail for the costs and expenses to be paid or incurred by Queensland Rail in connection with constructing the Extension;

- (B) Queensland Rail bears no cost or risk in relation to constructing, owning, operating or managing the Extension;
 - (C) if required by Queensland Rail, the Access Seeker has obtained or will obtain all necessary Authorisations and other consents required for Queensland Rail to construct the Extension; and
 - (D) if required by Queensland Rail, the Access Seeker has acquired or procured for Queensland Rail all of the rights and interests in land or any thing that in Queensland Rail's opinion are necessary to construct, own, operate and manage the Extension, (on terms satisfactory to Queensland Rail) including, for example, the inclusion of additional land into Queensland Rail's land tenure arrangements with the State relating to the Network;
- (iv) in Queensland Rail's opinion (in its absolute discretion), 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 Capacity;
 - (E) complies with Queensland Rail's engineering, operational and other requirements; and
 - (F) does not adversely affect Queensland Rail's legitimate business interests (and Queensland Rail's legitimate business interests are otherwise protected);
- (v) both of the following have been satisfied:
- (A) 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 satisfactory to Queensland Rail; and
 - (B) except to the extent expressly agreed otherwise by Queensland Rail (in its absolute discretion), those Access Agreements are or have become unconditional except for conditions relating to the

construction of the Extension or the creation of the relevant Additional Capacity; and

- (vi) all construction, funding, operational and other arrangements relating to the Extension (including any of the matters referred to in **clauses 1.4.1(a)(iii) to (v)**) have been entered into with, or for the benefit of, Queensland Rail (and are or have become unconditional) except to the extent expressly agreed otherwise by Queensland Rail (in its absolute discretion).
- (b) For clarity, if Queensland Rail is not willing or able to fund the construction of an Extension, then Queensland Rail will:
 - (i) discuss with the relevant Access Seeker (or that Access Seeker's Customer) options for that Access Seeker (or that Access Seeker's Customer) to provide funding for the Extension; and
 - (ii) use reasonable endeavours to negotiate and, if terms are agreed, enter into arrangements with that Access Seeker or that Access Seeker's Customer (as applicable) in relation to the funding of the Extension.

1.4.2 Construction, ownership, operation and management of Extensions

An Extension which is funded by an entity other than Queensland Rail will be constructed, owned, operated and managed by Queensland Rail unless otherwise agreed by Queensland Rail (in its absolute discretion).

1.4.3 No restriction

Nothing in **clause 1.4.1**:

- (a) obliges Queensland Rail to bear any cost or risk in relation to constructing, owning, operating or managing an Extension;
- (b) prevents or otherwise restricts Queensland Rail and an Access Seeker (in each party's absolute discretion) from entering into arrangements relating to or in connection with the funding or construction of an Extension necessary to provide Additional Capacity required to grant Access Rights requested by that Access Seeker; or
- (c) restricts, fetters or otherwise limits Queensland Rail's ability to fund and construct Extensions and otherwise invest in the Network (in its absolute discretion).

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).
- (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 discussions

An Access Seeker may request initial meetings with Queensland Rail, prior to submitting an Access Application, to discuss the Access Application and to clarify any matters relating to the negotiation process.

2.1.3 Preliminary information

Subject to **clause 2.2.2(b)**, Queensland Rail will provide to an Access Seeker information¹ requested by that Access Seeker where the Access Seeker can reasonably demonstrate the need for the information for the purpose of preparing its Access Application provided that:

- (a) doing so will not breach a confidentiality obligation binding on Queensland Rail; and
- (b) the information is ordinarily and freely available to Queensland Rail.

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

¹ Such as, path length availability, Available Capacity, axle load limitations, maximum speeds, a description of the relevant part of the Network for which Access Rights are sought, infrastructure characteristics, nominated sectional running times and applicable safeworking requirements.

- (iv) only be disclosed in accordance with this Undertaking or a confidentiality agreement between the parties.
- (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) Either of 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.
- (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.

2.2.3 Responsibility for disclosure

If a Recipient of Confidential Information discloses all or part of that Confidential Information to:

- (a) the directors, company secretary, officers or employees of the Recipient or a Related Party of the Recipient; or
- (b) the Recipient's solicitors, barristers, accountants, technical consultants or other advisers;

under a Confidentiality Exception, then the Recipient:

- (c) must use its best endeavours to ensure that person keeps the Confidential Information confidential; and
- (d) is responsible for the actions and omissions of that person in relation to the Confidential Information as though those actions and omissions were the Recipient's.

2.3 Acknowledgment of an Access Application

2.3.1 Requests for additional information or clarification

Queensland Rail may 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

Within five Business Days after the later of the receipt of:

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

Queensland Rail will, subject to **clauses 2.6.4** and ~~2.8.3~~[2.9.3](#), give the Access Seeker a written acknowledgement of receipt of the Access Application.

2.4 Provision of an Indicative Access Proposal

2.4.1 Time period for provision of Indicative Access Proposal

Subject to **clauses 2.6.4** and ~~2.8.3~~[2.9.3](#), Queensland Rail will use reasonable endeavours to provide an Indicative Access Proposal to the Access Seeker:

- (a) within the estimated time period for doing so indicated in the acknowledgement² given under **clause 2.3.2**; or
- (b) if no such time period is indicated in the acknowledgement, within 20 Business Days after giving the acknowledgment under **clause 2.3.2**.

2.4.2 Inclusions in Indicative Access Proposal

The Indicative Access Proposal will, amongst other things:

- (a) set out the results of an indicative Capacity Analysis;
- (b) indicate 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
- (c) provide a methodology for calculating Access Charges (including an initial estimate of any applicable rates or other inputs for formulae).

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 Queensland Rail will only give such a time estimate in an acknowledgement if Queensland Rail considers that it is not reasonable to provide the Indicative Access Proposal within 20 Business Days after giving the acknowledgement.

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) 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 (in its absolute discretion):
 - (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 Queensland Rail may, (in its absolute discretion,) reject the relevant Access Application by giving notice of that rejection to the Access Seeker.

2.6 Negotiation of an Access Agreement

2.6.1 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 2.6.1(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) Queensland Rail giving the Access Seeker a notice under **clause 2.7.5(a)(iv)(A)**;
 - (C) the Access Seeker notifying Queensland Rail that it no longer wishes to proceed with its Access Application;
 - (D) the date nine months after the date on which the period for negotiations started, or such later date as agreed by the parties;
 - (E) Queensland Rail giving the Access Seeker a Negotiation Cessation Notice; and
 - (F) the occurrence of any other event or circumstance where negotiations cease in accordance with this Undertaking.
- (c) Queensland Rail is not obliged to continue negotiations with an Access Seeker after the Negotiation Period for the relevant Access Application has ceased.

2.6.2 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 additional information relevant to the negotiations, as requested by the Access Seeker (acting reasonably) provided that:
 - (A) doing so will not breach a confidentiality obligation binding on Queensland Rail; and
 - (B) the information is ordinarily and freely available to Queensland Rail;
 - (ii) in order to analyse the impacts and requirements of the operations proposed by the Access Seeker, the Access Seeker must:
 - (A) prepare, and submit to Queensland Rail, a draft Operating Plan³ prior to the parties undertaking the Interface Risk Assessment; and

³ 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;
 - (iii) the parties must jointly:
 - (A) undertake an Interface Risk Assessment⁴; and
 - (B) after the Interface Risk Assessment is completed, develop an IRMP;
 - (iv) the Access Seeker must 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;
 - (v) Queensland Rail will provide a methodology for calculating the Access Charges (including any applicable rates or other inputs for formulae);
 - (vi) Queensland Rail will provide a Capacity Analysis to the Access Seeker;
 - (vii) Queensland Rail will provide a detailed description of the relevant Train Service Entitlement and the initial timetable;
 - (viii) the Access Seeker must demonstrate that the Rolling Stock and Train Configurations for which the Access Rights are applicable are consistent with the Interface Standards incorporated in the IRMP; and
 - (ix) Queensland Rail will provide the other terms comprising the Access Agreement.
- (b) 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.

2.6.3 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 (**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

⁴ Queensland Rail will publish on its website information, standards and requirements that 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 by the parties may cover additional safety and/or Rolling Stock issues and associated controls depending on the circumstances of the particular operation.

- 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;
 - (B) the Access Seeker has no genuine intention of obtaining, or has no reasonable likelihood of using, the Access Rights requested;
 - (C) the Access Seeker is not reputable or of good financial standing; or
 - (D) the Access Application is frivolous in nature;
 - (iii) Queensland Rail (acting reasonably) is not satisfied, at any time, that the Access Seeker meets the prudential requirements set out in **clause 2.8-12.9.1**; or
 - (iv) the Access Seeker fails to comply with the dispute resolution process under **clause 6.1** (including any outcome of that dispute resolution process).
- (b) In forming an opinion referred to in **clause 2.6.3(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 speed and timeliness of the Access Seeker in conducting its negotiations.
- (c) If Queensland Rail gives a Negotiation Cessation Notice to an Access Seeker, then the Access Seeker must, on request by Queensland Rail (in its absolute discretion), pay and, if paid by Queensland Rail, reimburse, Queensland Rail its reasonable costs incurred in negotiations with the Access Seeker.

2.6.4 Frivolous requests for Access

Without limitation to **clause 2.6.3**, if, prior to the start of the Negotiation Period, Queensland Rail (acting reasonably) considers the relevant Access Application

is frivolous in nature, Queensland Rail may reject that Access Application and, if it does so, is not obliged to comply with this Undertaking in relation to that Access Application.

2.6.5 Rail safety and other considerations for ~~passenger-~~ ~~services~~[passengers](#)

If Queensland Rail considers that the use of any proposed Access Rights sought by an Access Seeker may:

- (a) adversely affect the safety of:
- (b) [reasonably be expected to](#) cause any undesirable nuisance or annoyance to ~~or~~; [or](#)
- (c) otherwise adversely affect,

any persons using or intending to use a passenger Train Service, then Queensland Rail may refuse to enter into an Access Agreement with the relevant Access Seeker.⁵

2.7 Access Agreement

2.7.1 Access Rights granted under an Access Agreement

~~(a)~~ 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.

~~(b) Unless otherwise agreed between Queensland Rail and the Access Seeker, the Access Agreement must be consistent with this Undertaking.~~

2.7.2 Access Seekers competing for Access Rights

- (a) If:
 - (i) two or more Access Seekers are seeking Access Rights; and
 - (ii) the grant of Access Rights to one or more of those Access Seekers would result in Access Rights not being able to be granted to the other Access Seekers,

then Queensland Rail will:

- (iii) notify each of those Access Seekers as soon as practicable after it becomes aware of that circumstance; and
- (iv) subject to **clauses 2.7.2(b)** and **(c)** and **clause 2.7.3**, enter into an Access Agreement with the Access Seeker who is ready and willing to execute an Access Agreement with

⁵ For example, Queensland Rail may refuse to enter into an Access Agreement for [non-passenger](#) Train Services that [are proposed to](#) stop or operate immediately adjacent to stations or platforms at a time when the station or platform is or may be in use by passenger Train Services or passengers for Train Services.

Queensland Rail which, in the opinion of Queensland Rail (in its absolute discretion), is the most favourable to Queensland Rail based on:

- (A) the Access Charges that are expected to arise from the Access Agreement;
- (B) the cost and risk to Queensland Rail of providing Access Rights in accordance with the Access Agreement;
- (C) the ability of the Access Seeker to satisfy and to continue to satisfy the prudential requirements set out in **clause 2.9.1**;
- (D) the term of the Access Agreement; and
- (E) any other effects that entering into the Access Agreement may have on Queensland Rail's financial and risk position.

- (b) If an Access Seeker submits an Access Application for Access Rights that can only be granted using Capacity that will become Available Capacity when an existing Access Agreement expires, then Queensland Rail will use reasonable endeavours to notify the Access Holder for that Access Agreement as soon as reasonably practicable of that Access Application (unless that Access Seeker is the Access Holder for that Access Agreement).
- (c) Subject to **clause 2.7.2(d)**, if:
 - (i) the relevant Access Agreement of an Access Holder notified under **clause 2.7.2(b)** is in respect of Train Services for which there is an applicable Reference Tariff;
 - (ii) that Access Holder has submitted or, within 20 Business Days after being given a notice under **clause 2.7.2(b)**, submits, an Access Application seeking new Access Rights equivalent to all or part of its Access Rights under the relevant Access Agreement and which commence on that Access Agreement's expiry; and
 - (iii) the new Access Rights sought by the Access Holder are for a term that is at least the period for which the Access Seeker referred to in **clause 2.7.2(b)** is seeking Access Rights but no more than 10 years (unless otherwise agreed by Queensland Rail),

then Queensland Rail, despite any other provision in this Undertaking, will not execute an Access Agreement with the Access Seeker referred to in **clause 2.7.2(b)** until the earlier of:

- (iv) the cessation of negotiations with the relevant Access Holder in accordance with this Undertaking; and
- (v) nine months after giving the notice to the relevant Access Holder under **clause 2.7.2(b)**.
- (d) **Clause 2.7.2(c)** does not apply if the relevant Access Holder submits or has submitted its Access Application to Queensland Rail less than ~~{one year}~~ before the expiry of that Access Holder's Access Agreement.

2.7.3 Contracting Available Capacity or Additional Capacity

Queensland Rail is not obliged to enter into an Access Agreement if:

- (a) the Network does not, in Queensland Rail's opinion, have sufficient Available Capacity to meet the Access Seeker's request for Access Rights; and
- (b) Queensland Rail has not agreed to provide Additional Capacity to meet the Access Seeker's request for Access Rights.

2.7.4 Development of Access Agreements

Unless otherwise agreed between Queensland Rail and the Access Seeker, an Access Agreement must be consistent with:

- (a) [this Undertaking](#);
- (b) ~~(a)~~ the terms of a Standard Access Agreement applicable to the relevant type of Train Service; or
- (c) ~~(b)~~ if there is no applicable Standard Access Agreement, the principles in **schedule DC** (provided that those principles do not limit the matters which may be included in an Access Agreement).

2.7.5 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 practicable provided that Queensland Rail is not required to execute the Access Agreement before the Access Seeker; and
 - (iv) if the Access Seeker does not execute that Access Agreement within 20 Business Days after receiving

Queensland Rail's offer (or such longer period as agreed by Queensland Rail), Queensland Rail may (in its absolute discretion):

- (A) withdraw its offer by notice in writing to the Access Seeker; and
 - (B) cease negotiations with that Access Seeker.
- (b) 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.

2.7.6 Transfer, ~~relinquishment and resumption~~ of Access Rights

~~(a) An Access Agreement must include terms which allow Queensland Rail to reduce Access Rights where the Access Holder has under-utilised the Access Rights granted to it under that Access Agreement.~~

~~(b)~~ 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.

2.8 New Standard Access Agreements

(a) The QCA may give Queensland Rail a notice requiring it to submit a proposed standard access agreement that is:

- (i) for a specified type of Train Service not covered by a Standard Access Agreement; and
- (ii) consistent with this Undertaking and the principles contained in **schedule C**.

(Proposed Standard Access Agreement), if the QCA has a reasonable expectation that this is warranted on the basis of there being sufficient interest from Access Seekers and after taking into account each of the matters set out in section 138(2)(a) to (h) of the QCA Act.

(b) For the purpose of this **clause 2.8**:

- (i) a notice given by the QCA under **clause 2.8(a)** will be treated as if it were an initial undertaking notice given by the QCA under the QCA Act;
- (ii) a Proposed Standard Access Agreement submitted by Queensland Rail to the QCA in accordance with this **clause 2.8** 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.](#)
- (c) [For clarity, after a Proposed Standard Access Agreement is approved by the QCA in accordance with this **clause 2.8** this Undertaking will apply as though it were amended to include the Proposed Standard Access Agreement as a Standard Access Agreement.](#)

[2.9](#) ~~2.8~~ Prudential requirements

[2.9.1](#) ~~2.8.1~~ Access Seekers must satisfy prudential requirements

An Access Seeker must at all times satisfy the following prudential requirements namely:

- (a) the Access Seeker must not be Insolvent;
- (b) 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:
 - (i) this Undertaking (or the 2008 Undertaking);
 - (ii) any agreement with Queensland Rail; or
 - (iii) any agreement under which access to Private Infrastructure has been provided to the Access Seeker or a Related Party of the Access Seeker; and
- (c) must be able to demonstrate to Queensland Rail 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).

[2.9.2](#) ~~2.8.2~~ Requirement to demonstrate satisfaction of prudential requirements

Queensland Rail may, at any time, require an Access Seeker to demonstrate, within a reasonable period of no more than 10 Business Days, that the Access Seeker satisfies the prudential requirements set out in [clause 2.8.1-2.9.1](#).

[2.9.3](#) ~~2.8.3~~ Consequence of failing to satisfy prudential requirements

Despite any other provision of this Undertaking, if the Access Seeker cannot satisfy the prudential requirements referred to in [clause 2.8.1-2.9.1](#) to Queensland Rail's satisfaction (acting reasonably), then Queensland Rail may refuse to commence negotiations, or may cease negotiations, with that Access Seeker.

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
- (b) provide a return on the value of assets and investment commensurate with the regulatory and commercial risks involved.

If Queensland Rail earns 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 3.2.3** 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 Applying a Ceiling Revenue Limit

Queensland Rail in setting the methodology, rates and other inputs for calculating Access Charges for an Access Seeker's proposed Train Services 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 for that Train Service or combination of Train Services, as applicable.

3.2.2 Applying a Floor Revenue Limit

(a) Subject to **clause 3.2.2(b)**, Queensland Rail may (in its absolute discretion) set the methodology, rates and other inputs for calculating Access Charges for an Access Seeker's proposed Train Services 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 below the Floor Revenue Limit for that Train Service or combination of Train Services, as applicable.

(b) [For the purposes of clause 3.2.2\(a\), Queensland Rail must only exercise the discretion under clause 3.2.2\(a\) where:](#)

- (i) [Queensland Rail receives Transport Service Payments for any part of the Network that will be used by the Access Seeker's proposed Train Services;](#)
- (ii) [after taking into account the relevant Transport Services Payments the Expected Access Revenue would not fall below the Floor Revenue Limit; and](#)
- (iii) ~~(b) For the purposes of clause 3.2.2(a), if the Access Seeker's proposed Train Services comprise all of the Train Services using the relevant part of the Network, then Queensland Rail will determine the Floor Revenue Limit after giving consideration to~~[the methodology, rates and other inputs for calculating the relevant Access Charges includes a mechanism that allows Queensland Rail to vary the Access Charges from time to time in response to any decrease in](#) the relevant Transport Service Payments ~~(if any) for that part of the Network.~~

3.2.3 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:

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

where:

- AV₀** 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 3.2.3(c)**, at the commencement of the Evaluation Period;
- n** is the number of years in the Evaluation Period;
- t** is each year within the Evaluation Period from **4one** to n;
- CRL_t** 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_t** is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;
- M_t** is the Efficient Costs for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;
- 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; and

AV_n is the value of assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s), assessed in accordance with **clause 3.2.3(c)**, at the end of the Evaluation Period.

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

- (b) For the purposes of determining the variables under **clause 3.2.3(a)**, the assumed traffic task resulting from the Train Services(s) over the Evaluation Period is the forecast, as reasonably determined by Queensland Rail, for the traffic task resulting from the Train Service(s) over the Evaluation Period (including making allowance for any changes in traffic task that are expected to result from the commencement of projects that impact significantly on the traffic task).
- (c) The value of assets used in **clause 3.2.3(a)** is determined using, ~~to the extent that the value of the assets for the relevant part of the Network;~~ the Depreciated Optimised Replacement Cost methodology.
- (i) ~~is included in the Regulatory Asset Base, the value of the assets contained in the Regulatory Asset Base; or~~
 - (ii) ~~is not included in the Regulatory Asset Base, the Depreciated Optimised Replacement Cost methodology.~~

3.3 Limits on price differentiation

- (a) Queensland Rail may 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**.
- (b) The methodology, rates and other inputs for calculating Access Charges formulated by Queensland Rail for an Access Seeker may vary from:
- (i) an applicable Reference Tariff to reflect differences in the cost and risk to Queensland Rail of ~~making~~providing Access-~~available~~ to that Access Seeker compared to the basis on which the Reference Tariff was determined; 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 a Train Service with similar characteristics to that Access

Seeker's proposed Train Service,⁶ ~~on a unit rate basis to reflect differences in the cost and risk to Queensland Rail of providing Access Rights to that Access Seeker compared to the other Access Seekers or Access Holders,~~

(A) on a unit rate basis to reflect differences in the cost and risk to Queensland Rail of providing Access to that Access Seeker compared to the other Access Seekers or Access Holders; and

(B) ~~including~~ to reflect:

(1) ~~(iii)~~ 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) ~~(iv)~~ changes in circumstances ~~which have occurred in any market~~ that have had, or may have, a material effect on the ability or willingness of Access Holders or Access Seekers to pay Access Charges or proposed Access Charges; or

(4) ~~(v)~~ limitations on Available Capacity,

over time.

3.4 Reference Tariffs

3.4.1 Application of Reference Tariffs

- (a) A Reference Tariff is 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.
- (b) 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.**

⁶ 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 ~~term~~ duration and terms of the relevant Access Agreement.

3.4.2 Review of Reference Tariffs

~~Schedule A will specify~~

- (a) ~~Subject to **clause 3.4.2(b)**, **schedule A** specifies~~ the period for which a Reference Tariff is effective and how the Reference Tariff may be reviewed during this period.

~~[Drafting Note: the Reference Tariffs are intended to be reviewed two years after the Approval Date. The provisions in relation to that review are yet to be drafted.]~~

(b) ~~Without limitation to **clause 3.4.2(a)**:~~

- (i) ~~Queensland Rail will, prior to 30 June 2013 (or such later date as approved by the QCA), review the Reference Tariffs and submit to the QCA proposed new Reference Tariffs that are to take effect from 1 July 2013 (including, if Queensland Rail wishes to do so, a determination or review, as applicable, of the asset value for the West Moreton System for the purpose of developing the Reference Tariffs);~~
- (ii) ~~if Queensland Rail does not submit proposed new Reference Tariffs in accordance with **clause 3.4.2(b)(i)**, then Queensland Rail will be taken to have submitted the Reference Tariffs under this Undertaking as the proposed new Reference Tariffs; and~~
- (iii) ~~for the purpose of this **clause 3.4.2(b)**:~~
- (A) ~~Queensland Rail's submission of proposed new Reference Tariffs under this **clause 3.4.2(b)** will be treated as if it were a draft access undertaking submitted by Queensland Rail under the QCA Act in response to an initial undertaking notice given by the QCA;~~
- (B) ~~Queensland Rail and the QCA will act in accordance with the provisions of the QCA Act as though this were the case; and~~
- (C) ~~for clarity, after new Reference Tariffs are approved by the QCA in accordance with this **clause 3.4.2(b)**, this Undertaking will apply as though it were amended to replace the Reference Tariffs with those new Reference Tariffs with effect on and from 1 July 2013.~~

3.5 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:

- (a) the cost and risk to Queensland Rail of ~~making~~[providing](#) Access-
~~available~~;
- (b) (if a Reference Tariff applies to the Train Service type) the applicable Reference Tariff (including any matters under **schedule A**); and
- (c) (if no Reference Tariff applies to the Train Service type) the methodology, rates and other inputs for calculating Access Charges offered to other Access Seekers in respect of a Train Service with similar characteristics to that Access Seeker's proposed Train Service.⁷

3.6 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.

~~3.7 Maintenance of Regulatory Asset Base~~

~~Queensland Rail will maintain the Regulatory Asset Base in accordance with schedule B.~~

⁷ 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 ~~term~~[duration and terms](#) of the relevant Access Agreement.

Part 4 Network Management Principles

4.1 ~~Train scheduling and provision of information~~

- (a) Queensland Rail will:
 - (i) perform scheduling, Train Control and associated services;
and
 - (ii) provide Capacity related information to Access Holders,
in accordance with the Network Management Principles⁸ and subject
to the terms of each Access Holder's Access Agreement.
- (b) Each Train Service Entitlement will:
 - (i) ~~(b) Each Train Service Entitlement will~~ 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.
- (c) Queensland Rail will, subject to the Network Management Principles,
manage the scheduling of train plans, including the MTP and DTP, to
optimise the use of the Network from time to time.

⁸ For clarity, the Network Management Principles are set out in schedule B.

Part 5 Reporting

5.1 Quarterly network train performance reports

5.1.1 Obligation to publish quarterly report

- (a) Subject to **clause 6.4(c)**, within 20 Business 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.

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 **clauses 6.4(b)**, the four preceding Quarters;
 - (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 Railway 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 Railway Operator; and
 - (C) where that cancellation occurred for any other reason;
 - (v) the number of major reportable incidents, 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 the area of the Network bounded to the north by Nambour and to the west by Rosewood); and
 - (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; and
- (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 for the purpose of:
- (i) transporting coal; and
 - (ii) transporting freight products and bulk minerals (other than coal).

5.2 Annual report on negotiation process

5.2.1 Obligation to publish annual report

- (a) Subject to **clauses 6.4(b) and (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.

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 information received in accordance with **clause 2.1.3** 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 nominated in **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) for those 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 Proposals;
- (g) the number and percentage of Access Applications in relation to which Queensland Rail has received a notice from an Access Seeker for a Dispute in relation to the preparation of an Indicative Access Proposal;
- (h) the number and percentage of Access Applications in relation to which Queensland Rail has given a Negotiation Cessation Notice in accordance with **clause 2.6.3**; and
- (i) the number of Access Agreements executed by Queensland Rail.

~~5.3 Capital expenditure and regulatory asset base reports~~

~~5.3.1 Capital Expenditure Report to the QCA~~

~~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 the Regulatory Asset Base:~~

- ~~(a) the name of the project;~~
- ~~(b) the location of the project;~~
- ~~(c) the amount of the capital expenditure; and~~
- ~~(d) information to support the QCA's assessment of the prudence of the capital expenditure in accordance with **clauses 2 to 5 of schedule B.**~~

5.3.2 Regulatory Asset Base Roll-forward Report to the QCA

- ~~(a) Unless otherwise agreed between Queensland Rail and the QCA, Queensland Rail will, within 20 Business Days after receiving notification by the QCA of its acceptance of capital expenditure for inclusion in the Regulatory Asset Base under **clause 2.1 of schedule B** for the subject Year, provide Queensland Rail's proposed roll-forward of the Regulatory Asset Base to the QCA in accordance with **clause 1.1 of schedule B**, including details of:
 - ~~(i) the opening value of the Regulatory Asset Base for the subject Year;~~
 - ~~(ii) indexation of the Regulatory Asset Base;~~
 - ~~(iii) depreciation of the Regulatory Asset Base;~~
 - ~~(iv) capital expenditure that is included in the Regulatory Asset Base;~~
 - ~~(v) disposals and transfers from the Regulatory Asset Base; and~~
 - ~~(vi) the closing value of the Regulatory Asset Base for the subject Year.~~~~
- ~~(b) The QCA will accept the proposed roll-forward of the Regulatory Asset Base if Queensland Rail has complied with **clause 1.1 of schedule B** in preparing that roll-forward.~~
- ~~(c) If the QCA:
 - ~~(i) accepts the roll-forward of the Regulatory Asset Base, the QCA must notify Queensland Rail of that acceptance; or~~
 - ~~(ii) refuses to accept the roll-forward of the Regulatory Asset Base:
 - ~~(A) the QCA must notify Queensland Rail of the reasons why the QCA considers Queensland Rail has not complied **clause 1.1 of schedule B**;~~~~~~

- ~~(B) Queensland Rail may provide to the QCA a revised roll-forward of the Regulatory Asset Base and additional information in relation to Queensland Rail's compliance with **clause 1.1** of **schedule B**; and~~
- ~~(C) the QCA must consider that revised roll-forward of the Regulatory Asset Base and additional information (if any) in the place of or in addition to (as applicable) the roll-forward provided by Queensland Rail under **clause 5.3.2(a)**.~~

5.3.3 ~~Public Regulatory Asset Base Roll-forward Report~~

~~Within 20 Business Days after receiving notification by the QCA of its acceptance of Queensland Rail's roll-forward of the Regulatory Asset Base for a Year under **clause 5.3.2**, Queensland Rail will publicly release an annual report (in a format to be agreed with the QCA from time to time) containing the following information for the relevant Year:~~

- ~~(a) the opening value of the Regulatory Asset Base;~~
- ~~(b) the indexation of the Regulatory Asset Base;~~
- ~~(c) the depreciation of the Regulatory Asset Base;~~
- ~~(d) the capital expenditure that has been added to the Regulatory Asset Base, separately identifying individual projects with a value in excess of \$10 million;~~
- ~~(e) the disposals and transfers from the Regulatory Asset Base;~~
- ~~(f) the closing value of the Regulatory Asset Base; and~~
- ~~(g) for comparative purposes, the value of the Capital Indicator.~~

5.3 ~~5.4~~ General reporting obligations

5.3.1 ~~5.4.1~~ Accuracy

- (a) Queensland Rail will use reasonable endeavours to ensure the reports referred to in **clauses 5.1, 5.25.1** and **5.3.35.2** are accurate.
- (b) If, in Queensland Rail's opinion, there is a material error in a report published or provided under **clauses 5.1 5.2** or **5.3.3, 5.2**, then it will, as soon as reasonably practicable, take the steps it considers reasonable to correct that error.

5.3.2 ~~5.4.2~~ Information requested by the QCA

- (a) Subject to **clause 5.4.25.3.2(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 ~~(including, for example, determining whether it should require the conduct of an audit under **clause 5.4.3**)~~.

- (b) A notice given by the QCA under **clause 5.4.25.3.2(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 5.4.25.3.2(a)** by the day stated in the request unless it has a reasonable excuse for non-compliance.

5.4.3 ~~Audit requested by the QCA~~

~~The QCA may request Queensland Rail to undertake an audit in relation to whether any specific conduct or decisions of Queensland Rail comply with this Undertaking provided that the QCA:~~

- ~~(a) has reasonable grounds to consider that an audit is necessary; and~~
- ~~(b) has given Queensland Rail written notice of those grounds and the reasons why it considers an audit is necessary.~~

5.4.4 Requirements for audits

~~If the QCA, under **clause 5.4.3**, has requested Queensland Rail to undertake an audit, then Queensland Rail must conduct the audit (at the QCA's cost) in accordance with the following process:~~

- ~~(a) 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 or replacement auditor as soon as practicable;~~
- ~~(b) the auditor must be independent of Queensland Rail and **appropriately qualified** and experienced;~~
- ~~(c) the QCA's approval of an auditor continues unless and until withdrawn in accordance with **clause 5.4.4(d)**;~~
- ~~(d) if the QCA reasonably considers that an audit was not conducted to a satisfactory standard, the QCA may, within three months after completion of the audit, notify Queensland Rail in writing that its approval of that Auditor in relation to the next audit to be commenced in respect of such matters is withdrawn;~~
- ~~(e) the Auditor will have a duty of care to the QCA in conducting 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;~~
- ~~(f) 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 the audit plan;~~

- ~~(g) the audit plan will:
 - ~~(i) consist of a proposed work program for the execution of the audit, including audit costs (which will be payable by the QCA); and~~
 - ~~(ii) provide for 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;~~~~
- ~~(h) subject to **clause 5.4.4(i)**, Queensland Rail will provide any relevant information the Auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the Auditor as reasonable after consultation with Queensland Rail;~~
- ~~(i) the Auditor must enter into a confidentiality agreement with Queensland Rail requiring the Auditor to keep information provided by Queensland Rail confidential and to only use that information to conduct the audit and complete the audit report; and~~
- ~~(j) the Auditor will provide to Queensland Rail and the QCA a copy of:
 - ~~(i) the audit report (which the QCA may publish); and~~
 - ~~(ii) any letter or report from the Auditor accompanying the audit report which explains the audit findings in greater detail.~~~~

Part 6 Administrative provisions

6.1 Dispute and complaint resolution process

6.1.1 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.

6.1.2 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 6.1.2(a)**, senior management representatives of the parties (who, for a party, are senior to that party's representative(s) referred to in **clause 6.1.2(a)**) must, within 10 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 6.1.2(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 6.1.2(a) and (b)**) ~~for resolution~~ [who must use reasonable endeavours to resolve the Dispute within 10 Business Days \(or such longer period as agreed by the parties\) after the Dispute has been so referred.](#)

6.1.3 Resolution by QCA

- (a) If a Dispute is not resolved under **clause 6.1.2** within ~~20 Business Days after the Dispute Notice Date~~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 ~~under~~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 ~~under~~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.

6.1.4 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 6.1.3(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 (including to require Queensland Rail to do, ~~to~~ 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 or this Undertaking;
- (iii) the QCA had jurisdiction to make the Decision under this Undertaking;
- (iv) the QCA was authorised to make the Decision under this Undertaking;
- (v) the QCA's Decision 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 underin 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 Queensland Rail may seek an order suspending the operation of the Decision and a stay of any proceedings under the 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 (**Notice**) relating to this Undertaking 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, email or facsimile.

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);
 - (iii) facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient (and that report is conclusive

evidence that the addressee received the facsimile in full at the time indicated on that report); and

- (iv) email, 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) unless the sender receives an automated message that the email has not been delivered, whichever happens first,

provided that, if a Notice is given:

- (v) after 5:00pm in the place of receipt; or
- (vi) 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.

- (c) A party is not entitled to object to a facsimile being illegible unless the party requests retransmission within a four hour period after the time when the facsimile was taken to have been given (provided that only time between 8:30am and 5:00pm on Business Days may be used to calculate that period).

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 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.
- (b) 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.

- (c) 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.
- (d) 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.

Part 7 Definitions and interpretation

7.1 Definitions

In this Undertaking:

2008 Undertaking means QR 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 Railway 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-Train 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;

Access means:

- (a) the non-exclusive right to use a specified section of the Network; and
- (b) for non-passenger Train Services, excludes the right to use those parts of the Network provided for the benefit of passengers or passenger Train Services including:
 - (i) ~~passenger~~ stations and platforms [used predominantly for passengers or passenger Train Services](#); and
 - (ii) yards and associated facilities used to stage, maintain or store Rolling Stock used for passenger Train Services,

for the purposes 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:

- (a) prepared in writing using the current Queensland Rail application form for the relevant type of Train Service; and
- (b) that includes:
 - (i) all of the information required to fully and properly complete the application form; and
 - (ii) 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 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;

~~Act means the Queensland Competition Authority Act 1997 (Qld);~~

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) of schedule A**;

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;

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

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

~~**Asset Management Plan** means an asset management plan provided by Queensland Rail to the QCA under **clause 2.3(a)** of **schedule B**;~~

~~**Asset Replacement Expenditure** means expenditure on capital projects required to maintain the Network (other than Extensions for Additional Capacity) — for example, the replacement of life expired or obsolete assets;~~

~~**Auditor** means an auditor appointed by Queensland Rail and approved by the QCA in accordance with **clause 5.4.4(a)**;~~

Authorisation means any consent, accreditation, authorisation, registration, filing, lodgement, notification, agreement, [certificate](#), [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, [governmental](#) or judicial body or authority including local government, a court or a tribunal;
- (c) any corporation ~~or~~ 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 any~~ of the foregoing acting in that capacity;

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 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) Train Control ~~Services~~; and
 - (ii) the implementation of procedures and systems, including supporting communications systems, for the safe operation of ~~Trains~~ [Train Services](#) and protection of work sites on the Network,

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

Business Day means a day ~~that~~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 and Extensions required to grant the requested Access Rights (including an outline of the investigations and works in relation to undertaking the Extensions and indicative estimate of the cost of and timing for such investigations and works),

which provides a basis for the negotiation of an Access Agreement;

~~**Capital Indicator** means the annual capital expenditure allowance approved by the QCA, from time to time, for the purpose of assessing the relevant Reference Tariffs;~~

~~**Capital Expenditure Carryover Account** means the account maintained by Queensland Rail recording the difference between Approved Capital Expenditure and the Capital Indicator in the manner specified in **clause 7 of schedule B**;~~

Ceiling Revenue Limit has the meaning given to that term in **clause 3.2.3**;

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 ~~conditions attaching~~requirements relating to that Authorisation ~~or the attachment of~~including any new terms ~~or~~ 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 ~~conditions which are~~ a basis that is materially less favourable than ~~those attached to~~ the original Authorisation;
- (g) an amendment to this Undertaking; or
- (h) a change in the application or interpretation of this Undertaking resulting from a decision of a court or other Authority;

Change in Relevant Taxes to Credit means:

- (a) ~~the imposition of a new Relevant Tax;~~ (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) ~~an increase in the rate of a Relevant Tax; or~~ any change in the funding or other support received by Queensland Rail from any Authority in relation to any relevant part of the Network;
- (c) ~~a change in the basis of calculation of a Relevant Tax;~~

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 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 provision of the Network by Queensland Rail that are not Incremental Costs for any particular Train Service;

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) ~~at the time of, and at all times after, the disclosure to the Recipient, the information's disclosure by the Recipient might reasonably be expected to affect the commercial affairs of the Disclosing Party; or the Recipient knows or ought to know that the information is confidential;~~
[confidential;](#)
- (b) [the information is by its nature confidential; or](#)
- (c) ~~(b)~~ at the time of the disclosure to the Recipient, the information is marked or otherwise indicated as confidential when disclosed,

excluding information that:

- (d) ~~(e)~~ was in the Recipient's lawful possession prior to the disclosure; or
- (e) ~~(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)**; or
- (b) any disclosure or use of Confidential Information:
 - (i) to the extent necessary to:
 - (A) the Recipient's directors, ~~company secretary,~~ officers or employees; or
 - (B) the directors, ~~company secretary,~~ officers or employees of a Related Party of the Recipient;
 - (ii) to the extent required or compelled by any Law;
 - (iii) to the extent necessary for the conduct of any legal proceedings (including any dispute resolution process under this Undertaking or the [QCA](#) Act);
 - (iv) to the extent required under any stock exchange listing requirement or rule;
 - (v) to the [Rail](#) Safety Regulator or the QCA;
 - (vi) 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);

- (vii) 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);
- (viii) 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; ~~or~~
- (ix) if Queensland Rail is the Recipient, ~~requested by~~to the shareholding Ministers (as defined ~~under~~in the *Government Owned Corporations Act 1993* (Qld)) of Queensland Rail;
- (x) for the purpose of facilitating Train Control ~~directions~~Directions where the disclosure of information is by Queensland Rail in the usual course of undertaking Train Control ~~Services~~; or
- (xi) by any person involved in clearing an incident or emergency that is preventing or affecting the operation of Train Services on the Network;

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

- (a) any special, indirect or consequential loss;
- (b) any economic loss in respect of any claim in tort;
- (c) any loss of profits, loss of production, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill, wasted overheads or any damage to credit rating whatsoever; and
- (d) any loss arising out of any Claim by a third party, whether arising in contract, in tort (including negligence), under any law, as a consequence of fraud or otherwise and whether present or future, fixed or unascertained, actual or contingent, but does not include:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a party) that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person; or
- (e) a loss (including a loss arising out of a Claim by a third party) in respect of:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a party) that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person; or

- (f) [in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;](#)

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 \(or other successor, authority or instrumentality having jurisdiction in the matter\)](#);

Customer means:

- (a) ~~Customer means~~ a person that the Access Holder or Access Seeker is providing or intending to provide Train Services (as an Operator) for or on behalf of, and for the purpose of providing such Train Services, the Access Seeker or Access Holder is acquiring or has acquired Access Rights; [and](#)

(b) [in schedule C:](#)

- (i) [any person that has a rail haulage agreement or arrangement with the Access Holder in relation to the Access Rights;](#)
- (ii) [any consignor of goods to be transported by the Access Holder;](#)
- (iii) [any person with title to, or an interest in, any thing to be transported by the Access Holder; and](#)
- (iv) [any other person directly or indirectly benefitting from, or for whom the Access Holder operates, the Train Services;](#)

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 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 requirements of Access Holders; and
- (c) depreciation of the optimised replacement asset value will be undertaken over the useful life of the 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 6.1.1(a)**;

Dispute Notice has the meaning given to that term in **clause 6.1.1(a)(ii)**;

[Dispute Notice Date has the meaning given to that term in clause 6.1.2\(a\);](#)

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;

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 serious fault with the Network:
 - (i) that is considered by Queensland Rail to be dangerous ~~to either Access Holders or Queensland Rail employees~~ [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 less than five Business Days after the detection of the [serious](#) fault;

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

- (a) a Change in Law, [Change to Credit](#) or ~~a~~ [Impost](#) Change ~~in Relevant Taxes~~ occurs, that either alone or in combination with all other Changes in Law, [Changes to Credit](#) or [Impost](#) Changes ~~in Relevant Taxes~~ that have occurred since the Approval Date, would cause a change in the costs reflected in, for Reference Tariffs specified in **schedule A**, ~~the AT~~ [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 ~~in Relevant Taxes~~ 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;

Escalation Date means each 1 July in each year;

Evaluation Period means:

- (a) for an individual Train Service, the expected duration of the proposed Access Rights in respect of that Train Service; and
- (b) for a combination of Train Services, the lesser of:
 - (i) the expected duration of the longest proposed Access Rights in respect of any one of those Train Services; and
 - (ii) 10 years;

~~**Excluded Capital Expenditure** has the meaning given to that term in **clause 3.3(a) of schedule B**;~~

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);

First Escalation Date means {1 July 2012};

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 ~~the~~[such](#) industrial action or would be able to influence or procure the settlement of such industrial action;
(e) 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 ~~Good Engineering~~[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 ~~from the combustion of nuclear fuel~~;
(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) ~~(m)~~ epidemic or quarantine restriction; and
- (o) ~~(n)~~ delay of a supplier due to any of the foregoing whenever arising;

~~**General Expansion Capital Expenditure** means expenditure on capital projects (including for Extensions) required to expand, create or enhance Capacity excluding Asset Replacement Expenditure and the capital expenditure referred to in clause 3.2(a)(ii) of schedule B;~~

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

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, product, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Service;

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 ~~20~~10 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~~[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 Assessment means an assessment to:

- (a) identify, to the extent reasonably practicable, all Interface Risks;
- (b) assess the likelihood and consequences of those Interface Risks occurring and any factors relevant to the management of those Interface Risks; and
- (c) nominate suitable control mechanisms to manage the Interface Risks within a risk management framework;

Interface Risks means all risks to the safety of persons ~~and~~[or](#) property ~~and~~[or](#) to the environment⁸⁹ arising from the interaction between the Access Seeker's proposed operations and [any one or more of](#):

- (a) the Network;
- (b) ~~existing~~ operations on the Network (including [those of other Train Services and any Below Rail operations](#)[Rail Transport Operators 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),

provided that a reference to operations in this definition includes railway operations as defined ~~under~~[in](#) the TRSA;

Interface Standards means Queensland Rail's minimum requirements or standards relating to the interface between a Train and the Network (including to maintain agreed operating parameters – for example, ~~sectional running times~~[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:

- (a) identifying the Interface Risks associated with the Access Seeker's proposed operations; and

⁸⁹ Environmental risks include:¹ risks in relation to water quality, pollution, contaminated land, nature conservation, hazardous substances and ~~dangerous goods~~[Dangerous Goods](#), waste and noise; and¹ ~~possible~~ risks of serious environmental harm, material environmental harm and environmental nuisance as defined in the *Environmental Protection Act 1994* (Qld).

- (b) ~~outliningspecifying~~ the ~~controls~~control measures agreed between Queensland Rail and the Access Seeker to manage those Interface Risks to an acceptable level, including:
- (i) the standards, procedures and systems relevant to the management of the Interface Risks;
 - (ii) the relevant Interface Standards;
 - (iii) ~~measures~~requirements for monitoring, ~~education~~, awareness, ~~training~~competence and complaint handling;
 - (iv) the audit, inspection and review regime; and
 - (v) the particular party responsible ~~(including financially responsible)~~ for implementing each element of the IRMP; and
- (c) which satisfies the requirements for an interface agreement between rail transport operators under the TRSA and the requirements under all other Laws relevant to the management of Interface Risks.

~~In this definition, provided that~~ a reference to operations in this definition includes railway operations as defined ~~under~~in the TRSA;

Law includes:

- (a) any ~~legislation, subordinate legislation,~~ statute, ordinance, code, ~~regulation, by-law, decree or other law~~law, by-law, proclamation, rule or regulation or any other subordinate legislation, whether State, Commonwealth or otherwise;
- (b) the terms of any Authorisation;
- (c) ~~(b)~~ common law and equity; and
- (d) ~~(c)~~ any order, circular, requirement, condition, notice, ~~consent, accreditation, order, approval, permit, circular, licence, certification, authority, rule, permission~~decree, decision, direction or ~~similar thing~~guidelines of an Authority granted, issued, given or imposed pursuant to anything specified in ~~paragraphs (a) or (b) of this definition~~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 ~~in effect~~ 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 Operator for the Train Service has notified the relevant Train 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 [4.77%](#), being the difference between the WACC as at the Approval Date and the risk free rate component of the WACC ~~as determined by the QCA in its final decision approving this Undertaking~~, expressed as a positive value;

Material Default means, in respect of any document referred to in **clause [2.8.12.9.1\(b\)](#)**:

- (a) any breach of a term of that [agreement 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\(b\)\(i\)](#)**;

Negotiation Cessation Notice has the meaning given to that term in **clause [2.6.3\(a\)](#)**;

Negotiation Period has the meaning given to that term in **clause [2.6.1\(b\)](#)**;

Network means the rail transport infrastructure [\(as defined in the TIA\)](#):

- (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](#));⁹¹⁰

Network Management Principles means the principles set out in **[schedule CB](#)**;

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;

⁹¹⁰ In this definition, a term defined ~~under~~[in](#) the [QCA Act](#) has the meaning given to that term ~~under~~[in](#) the [QCA Act](#).

Nominated Loading Facility means a loading facility specified for a nominated Reference Train Service in **clause 2.2(a) of schedule A**;

Nominated Railway Operator means, for an Access Holder, an 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) of schedule A**;

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;

Operating Plan means an operating plan setting out how the proposed Train Services are to be operated and which is consistent with information, standards and requirements published by Queensland Rail on its website for such operating plans;

Operational Constraint means any ~~restriction~~ [temporary or permanent constraint](#) on the [operation or use](#) of any part of the Network, ~~including but not limited to~~ [imposed by Queensland Rail as it considers necessary in relation to the proper, efficient or safe operation or management of the Network \(including speed restrictions, load restrictions, Planned Possessions, Urgent Possessions, Emergency Possessions ~~or~~ and signalling or overhead restrictions\)](#);

Operator means a person who operates or will operate Rolling Stock on the Network;

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

Planned Possession means a Possession ~~that~~ [\(other than an Urgent Possession or an Emergency Possession\) 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 ~~infrastructure maintenance, Extensions, or~~ [Rail Infrastructure Operations](#), other work ~~or other activities~~ on or in the proximity of the Network ~~which may affect the safety of any person or property~~;

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 ~~under~~ [in](#) the TIA), including but not limited to the track, signalling and electrical overhead traction system (if applicable) for which ~~Queensland Rail or a Related Party of~~ Queensland Rail is not the Railway Manager;

Proposed Standard Access Agreement has the meaning given to that term in **clause 2.8(a)**;

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 A**;

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

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 ~~where~~ Queensland Rail ~~does not'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 ~~Possessions~~**Possession**, Urgent ~~Possessions~~**Possession** or Emergency ~~Possessions~~**Possession**;
- (b) a Force Majeure Event affecting Queensland Rail; or
- (c) any other action by Queensland Rail ~~the need for which is primarily attributable to the acts or omissions of Queensland Rail and which directly results in the Network not being so available~~**other than** Queensland Rail exercising a right or complying with an obligation in accordance with this Undertaking, any applicable Law or the relevant Access Agreement,

except where Queensland Rail's inability to do so is in any way attributable to the Operator, another Rail Transport Operator (other than Queensland Rail) or any other person;

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 Safety Regulator means the chief executive referred to 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 Railway Operator); and

(d) ~~provided that the above reasons are not in any way attributable to any Access Holder (or its Nominated Railway Operator) or the owner, or any~~ person in control of, or operating, any Private Infrastructure;

~~**Railway Manager** has the meaning given to that term in the TIA;~~

~~**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 an indicative Access Charge applicable for a specified Reference Train Service, set out in **schedule A**, 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 2.1 of schedule A** in respect ~~to~~^{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;

~~**Regulatory Asset Base** means the asset value for that part of the West Moreton System that is west of Rosewood accepted by the QCA for the purpose of developing Reference Tariffs for coal carrying Train Services, as maintained by Queensland Rail in accordance with **clause 3.7**;~~

Related Party means a related body corporate as defined in the Corporations Act;

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

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 5 of schedule A**;

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

rtp means the number of reference Train Paths that are taken to be used by the relevant Train Service calculated in accordance with **clause 7(b)(i) of schedule A**;

~~**Safety Management System** means a system developed by Queensland Rail to manage all risks associated with the provision of the Network and safe management of Train operations on the Network, including specifically those risks identified in any Interface Risk Assessments, and which forms a basis upon which Queensland Rail is accredited under Part 5 of the TRSA as a rail infrastructure manager (as defined under the TRSA);~~

~~**Safety Regulator** means the chief executive referred to in the TRSA (initially being the chief executive of DTMR);~~

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 ED**;

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 4 of schedule A**);

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

Terminating Date means the earlier of:

- (a) [where the Approval Date is 1 July, the day before the fifth anniversary of the Approval Date;](#)
- (b) [where the Approval Date is not 1 July, the last day of the fourth full Year after the Approval Date; and](#)
- (c) ~~Terminating Date~~ means the earlier of **[30 June 2017]** and 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;

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 ~~and~~, 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 Controller~~ means a person performing Train Control Services;

Train Control Services 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;~~

~~and Train Control~~ has a related meaning;

Train Control Directions means [instructions, directions and notifications from time to time issued by Queensland Rail for the purpose of Train Control](#)

[\(including, in relation to an Access Holder or an Access Agreement, preventing or minimising the effect of a material breach of the relevant Access Agreement\).](#)

[Train Controller means a person appointed by Queensland Rail from time to time to perform Train Control for a relevant part of the Network;](#)

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 the operation of a Train on the Network between a specified origin and a specified destination;

Train Service Entitlement means an Access Holder's entitlement under an Access Agreement to operate a specified number and type of Train Services over the 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;

Transport Service Payments means payments to Queensland Rail from DTMR 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 ~~as set out or referred to in its approval of this Undertaking~~; 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 Operator for the Train Service has notified the relevant Train 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;

WACC means the weighted average cost of capital which:

- (a) as at the Approval Date, means a rate of ~~9.96%~~ nominal post-tax, ~~as approved by the QCA in its final decision approving this Undertaking~~; and
- (b) after the Approval Date, means a rate equivalent to the Undertaking Risk Free Rate plus the Margin.

West Moreton System means that part of the Network comprising the rail corridor from the port at Fisherman Islands to Macalister (Wilkie Creek), including all branch lines directly connecting coal mine loading facilities and coal unloading 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) ~~(i) a~~ reference to a person includes a partnership, ~~an unincorporated~~ joint venture, ~~an unincorporated~~ association,

~~a~~ corporation, ~~a~~ government or statutory body or authority and any other entity recognised by law;

(vi) ~~(iii)~~ where:

- (A) a group of persons are in a partnership, an unincorporated joint venture, an unincorporated association or other similar arrangement; and
- (B) that group of persons together execute or seek to execute an agreement (including an Access Agreement or a rail haulage agreement) or such an agreement is executed or is sought to be executed for or on behalf of that group of persons,

then that group of persons is deemed to constitute a single person, Customer, Access Seeker or Access Holder (as applicable);

(vii) ~~(iii)~~ a reference to:

(A) “dollars” or “\$” means a reference to Australian ~~dollars~~ currency;

~~(iv) words importing the singular number include the plural number and vice versa;~~

~~(v) words importing any gender include the other gender;~~

~~(vi) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;~~

(B) ~~(vii) any reference to a person includes that the~~ person’s ~~executors, administrators, permitted assigns or permitted subcontractors or, being a company, its~~ legal personal representatives, successors, permitted ~~assigns or permitted subcontractors and the obligation of any party extends to those~~ assignees and persons substituted by novation;

(C) constructing includes all associated activities such as designing, installing, procuring and commissioning;

(D) an Extension includes any part of that Extension;

(E) ~~(viii) a reference to~~ conduct includes:

(1) ~~(A)~~ a benefit, remedy, discretion, authority or power; and

- (2) ~~(B)~~ any omission and any representation, statement or undertaking, whether or not in writing;
- (ix) ~~every agreement or other undertaking expressed or implied by which more than one person agrees or otherwise undertakes any obligations or derives any benefit binds or enures for the benefit of those persons jointly and each of them severally;~~
- (x) ~~clause headings are for reference purpose only;~~
- (xi) ~~any reference to the words “include” “includes” or “including” must be read as if they are followed by the words “without limitation”;~~
- (E) ~~(xii) any reference to~~ time is to local time in Queensland Brisbane;
- (G) ~~(xiii) any reference to~~ a month is a reference to a calendar month;
- (H) ~~(xiv) subject to clause 7.2(a)(xv), reference to~~ vii)(I), 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;
- (I) ~~(xv) in a Schedule to this Undertaking, a reference to:~~
- (1) ~~(A)~~ a Part or Clause, is a reference to a Part or Clause of that Schedule unless otherwise stated; and
- (2) ~~(B)~~ 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;
- (J) ~~(xvi) a reference to~~ this or any other document or agreement includes the document or agreement as varied, amended or replaced ~~from time to time~~ and despite any change in the identity of the parties to that document or agreement;
- (K) ~~(xvii) a reference to~~ any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and

- (L) 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; and
- (x) ~~(xviii)~~ 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) ~~(b)~~ To the extent that Queensland Rail's obligations under this Undertaking are or become inconsistent with Queensland Rail's obligations under any Law, this Undertaking does not apply to the extent of that inconsistency.
- (d) ~~(e)~~ 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) ~~(d)~~ 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

West Moreton System Reference Tariff

1 Term

The Reference Tariffs set out in this Schedule are applicable during the Term.

2 Reference Train Service

2.1 Description of Reference Train Service

The description of the Reference Train Service for the Reference Tariffs set out in this Schedule is as follows:

- (a) **(Commodity)** The Reference Train Service carries only bulk coal.⁴⁰¹¹
- (b) **(Geographic scope)** The Reference Train Service operates on the rail corridor directly connecting a specified Nominated Loading Facility in the West Moreton System and a specified Nominated Unloading Facility.⁴⁴¹²
- (c) **(Characteristics)** Each Reference Train Service:
 - (i) has a maximum Train length, including the locomotive(s), of 675 metres⁴²¹³;
 - (ii) 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 table⁴³¹⁴;
 - (iii) utilises only diesel traction;
 - (iv) complies with the maximum speeds permitted on the Nominated Infrastructure as specified by Queensland Rail;
 - (v) complies with the Interface Standards applicable to the Nominated Infrastructure;
 - (vi) 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;

⁴⁰¹¹ In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

⁴⁴¹² 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.

⁴²¹³ 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).

⁴³¹⁴ 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) operates in accordance with nominated sectional running times specified by Queensland Rail for that Reference Train Service;
 - (viii) has a Loading Time that does not exceed the relevant time specified in **clause 2.2(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](#);
 - (ix) has an Unloading Time that does not exceed the relevant time specified in **clause 2.2(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](#);
 - (x) operates ~~as~~[with](#) an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
 - (xi) 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 any Additional Capacity](#);
 - (xii) utilises bottom dump wagons with the “KWIK DROP” door operating mechanism suitable for use on the West Moreton System; and
 - (xiii) 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) ~~(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) ~~(e)~~ **(Conditions of Access)** The Reference Train Service will operate in accordance with the terms and conditions of a Standard Access Agreement applicable to coal carrying Train Services in the West Moreton System.
- (g) ~~(f)~~ **(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 ~~[360]~~[365](#) days per year; and

- (ii) specified in terms of Timetabled Service and will comply with the applicable corridor scheduling procedures.

2.2 Loading and unloading facilities

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

Nominated Loading Facility locations	Loading Time (hours)
Ebenezer	2
Jondaryan (New Acland)	2
Macalister (Wilkie Creek)	2.5

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

Nominated Unloading Facility locations	Unloading Time (hours)
Fisherman Islands coal loader	1.9
Swanbank	1

3 Reference Tariffs

3.1 Calculation of the Reference Tariffs

- (a) The applicable Reference Tariff for a Reference Train Service shall be calculated as follows:

- (i) for a Reference Train Service that uses the Nominated Loading Facility at Ebenezer:

$$\left(AT_1 \times \frac{gtk}{1000} \right) + (QCALevy \times nt)$$

- (ii) for a Reference Train Service that uses a Nominated Loading Facility at Jondaryan (New Acland) or Macalister (Wilkie Creek):

$$\left(AT_1 \times \frac{gtk}{1000} \right) + (AT_2 \times rtp) + (QCALevy \times nt)$$

where:

- AT₁** is the variable part of the Reference Tariff that is levied on a gross tonne kilometre basis specified as such under **clause 3.1(e)** for the relevant Reference Train Service;

AT₂ is the fixed part of the Reference Tariff that is levied on a reference Train Path basis specified as such under **clause 3.1(e)** for the relevant Reference Train Service,

provided that the above calculation is subject to the addition from time to time of any applicable Adjustment Charge (including, if necessary, on a pro rata basis with other Reference Train Services that have the same origin and destination and Access Holder and are run during same billing period, as the relevant Reference Train Service) and any applicable Take or Pay Charge.

- (b) For the purposes of the calculation under **clause 3.1(a)**, the amounts of AT₁, AT₂, the QCA Levy, any Adjustment Charge and any Take or Pay Charge are GST exclusive. An Access Charge calculated based on a Reference Tariff will have an amount for GST added to it.
- (c) For the purposes of this **schedule A**, 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)**, 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) The amount of the Reference Tariff inputs are as follows:
 - (i) for a Reference Train Service to or from the Nominated Loading Facility at Ebenezer:

Reference Tariff Input	\$
AT ₁	17.32 <u>17.94</u>
QCA Levy	0.00753 <u>0.0126</u>

- (ii) for a Reference Train Service to or from a Nominating Loading Facility at Jondaryan (New Acland) or Macalister (Wilkie Creek):

Reference Tariff Input	\$
AT ₁	8.67 <u>8.98</u>
AT ₂	4,082.624 <u>4,228.76</u>
QCA Levy	0.00753 <u>0.0126</u>

The values inserted in this document are the values of the reference tariff inputs under the 2008 Undertaking as at the time that this document was originally submitted to the QCA for approval. If the Approval Date

*occurs after the First Escalation Date, then the Reference Tariff inputs in this document will still be escalated as though this document had been approved by the QCA prior to the First Escalation Date and those inputs were escalated on the First Escalation Date in accordance with **clause 3.2.***

3.2 Escalation of Reference Tariffs

- (a) Each Reference Tariff input specified in **clause 3.1(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:

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

where:

- AT_n** means the value of the relevant Reference Tariff input to apply after escalation;
- AT_{n-1}** 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)**;
- CPI_n** means the CPI for the Quarter which commenced six months prior to the Escalation Date for which the variable AT_n is being determined; and
- CPI_{n-1}** means the CPI for the Quarter which commenced 18 months prior to the Escalation Date for which the variable AT_n is being determined.
- (b) Queensland Rail will publish the escalated inputs of the Reference Tariff 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 inputs of a Reference Tariff, Queensland Rail will correct the error so that the relevant inputs of the Reference Tariff are escalated in accordance with **this clause 3.2(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 2.1 of this schedule 3.](#)

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

4 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 4**.
- (b) 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,

[\(TOPTake or Pay Period\)](#) and invoiced for each [TOPTake or Pay Period](#) after the end of that [TOPTake or Pay Period](#).

- (c) The amount of the Take or Pay Charges for a [TOPTake or Pay Period](#) will be the amount which is 80% of the amount calculated for that [TOPTake or Pay Period](#) as follows:

$$\left(\left(AT_1 \times \frac{gtk}{1000} \right) + AT_2 \right) * NTNO$$

where:

- (i) AT_1 and AT_2 are the Reference Tariff inputs applicable on the last day of that [TOPTake or Pay Period](#);
- (ii) gtk is the average gtk for the relevant Train Services calculated using a nominal payload as determined by Queensland Rail [\(acting reasonably\)](#); and
- (iii) $NTNO$ means the number of relevant individual Train Services that were entitled to be operated for the [TOPTake 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 [TOPTake or Pay Period](#) shall not be less than zero.

- (d) When invoicing Take or Pay Charges, Queensland Rail will also include information on how the Take or Pay Charge was determined.

5 Variation of Reference Tariffs

5.1 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 System; or
 - (ii) will submit a variation of a Reference Tariff to the QCA, subject to **clause 5.1(c)** 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)**.
- (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)** 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 a 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)**, Queensland Rail must submit or resubmit the variation of a Reference Tariff within the time specified by the QCA.

5.2 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** for such a variation:

- (a) if Queensland Rail does not comply with a written notice given by the QCA under **clause 5.1(b)** or **5.4(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)**.

5.3 Requirements for Reference Tariff variation

- (a) A variation of a Reference Tariff submitted by Queensland Rail in accordance with **clause 5.1(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)**, include information on:
 - (A) the matters set out in **clause 3.2** of ~~the~~[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 System; and
 - (iv) if the variation is submitted under **clause 5.1(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).

5.4 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)** if the QCA is satisfied:
 - (i) for a variation submitted under **clause 5.1(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**):
 - (A) the Event has occurred;
 - (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:
 - (1) is consistent with the change in the cost resulting from or that will result from the Event; and
 - (2) reflects the impact of the relevant Event on the financial position of Queensland Rail (including the impact of incremental maintenance and incremental capital costs).
- (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)**.
- (d) Queensland Rail will comply with a notice given under **clause 5.4(c)(ii)**.
- (e) The QCA may approve a variation to a Reference Tariff that was:
 - (i) resubmitted under **clause 5.4(c)(ii)**; or
 - (ii) developed by the QCA under **clause 5.2**,if the QCA is satisfied that the variation of the Reference Tariff:
 - (iii) is consistent with the matters specified under **clause 5.4(a)** (provided that for the purposes of so applying **clause 5.4(a)** the relevant variation will be treated as though it was submitted by Queensland Rail under the relevant provision in **clause 5.1(a)**); and

- (iv) if **clause 5.4(e)(i)** applies, is consistent with the relevant notice given by the QCA under **clause 5.4(c)**.
- (f) If the QCA refuses to approve a variation to a Reference Tariff that was resubmitted under **clause 5.4(c)(ii)**, the QCA will give Queensland Rail a notice in writing stating the reasons for its refusal.

6 Adjustment Charges

6.1 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; or
 - (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 the amount (**Adjustment Amount**) which is the sum of:

- (iii) the aggregate of the differences, for each relevant 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 Tariffs or the variation of Reference Tariffs referred to in **clause 6.1(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)** in respect of the amount of each difference comprising the amount calculated in accordance with **clause 6.1(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 Amount (subject to the provisions of this Undertaking).
- (b) The interest referred to in **clause 6.1(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)**;
- (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)** were due and payable and ending on the date when the Adjustment Charge is to be due and payable.

6.2 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 (and subject to **clause 6.2(a)**); 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 to the QCA proposed Adjustment Charges.

6.3 Requirements for Adjustment Charge submission

- (a) Where Queensland Rail submits proposed Adjustment Charges to the QCA in accordance with **clause 6.2**, Queensland Rail's submission must, without limitation:
 - (i) identify, subject to **clause 6.3(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)**:
 - (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)** (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).

6.4 Decision to approve or refuse to approve variation

- (a) Where Queensland Rail submits proposed Adjustment Charges to the QCA in accordance with **clause 6.2**, 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; and
 - (iii) the billing period(s) in respect of which the Adjustment Charges will be applied,
- if the proposed Adjustment Charges (excluding any interest component) are reasonable to recover or reimburse, as applicable, any under or over recovery of Access Charges that relate to each Access Holder and, where **clause 6.1(b)(iii)(B)** applies, the QCA is satisfied that Queensland Rail has acted reasonably in selecting an appropriate equivalent rate in accordance with that provision.
- (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 ~~to~~ recovery or reimbursement, as applicable of 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)**.
- (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)**.
- (e) Queensland Rail must comply with an approval of the QCA given in accordance with **clause 6.4(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.

6.5 Review of Access Charges to provide for Adjustment Charges

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)** or **(d)** by the relevant Access Holder including that:

- (a) 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
- (b) 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.

7 Variations to Reference Train Service

- (a) A varied Access Charge shall be applicable to a Train Service that:
 - (i) varies from the Reference Train Service characteristics specified in **clauses 2.1(c) and 2.1(d)**; or
 - (ii) operates under terms and conditions with agreed variations from the requirements of **clauses 2.1(e) and (f)**, ~~but~~
 - ~~(iii) otherwise satisfies the nominated Reference Train Service description,~~

but otherwise satisfies the nominated Reference Train Service description, so that the varied Access Charge varies from the applicable Reference Tariff due to differences in cost or risk to Queensland Rail of providing Access for that Train Service compared to the Reference Train Service.
- (b) Where a Train Service differs from the Reference Train Service due to it not complying with **clause 2.1(c)(vii)**, then Queensland Rail will, unless otherwise agreed with the QCA, quote an Access Charge that varies from the Reference Tariff by applying the following principles:
 - (i) the number of reference Train Paths used by the proposed Train Service will be determined as follows:

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

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;

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; and

- (ii) the maximum number of Train Paths available for a Reference Train Service and for the proposed Train Service will be determined using a readily available simulation package.

Schedule B

~~Regulatory Asset Base~~ Network Management Principles

~~4 Maintenance of Regulatory Asset Base~~

~~4.1 Roll forward principles~~

~~On an annual basis, Queensland Rail will roll forward the asset values in its 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 2.1**; and~~
- ~~(e) the value of the assets in the Regulatory Asset Base will be adjusted in accordance with **clause 1.2**.~~

~~4.2 Adjusting the value of assets in the Regulatory Asset Base~~

- ~~(a) The value of assets contained in the 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 of additional sections of the Network incorporated into the West Moreton System west of Rosewood,~~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.~~

~~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 the Regulatory Asset Base if that capital expenditure:~~
 - (i) ~~is or has been accepted as:~~
 - (A) ~~prudent in scope in accordance with **clause 3**;~~
 - (B) ~~prudent in the standard of works in accordance with **clause 4**; and~~
 - (C) ~~prudent in cost in accordance with **clause 5**; and~~
 - (ii) ~~has been incurred and either the capital expenditure project has been commissioned or formally discontinued.~~
- (b) ~~The QCA must notify Queensland Rail in writing if it accepts capital expenditure into the Regulatory Asset Base.~~
- (c) ~~If the QCA is considering refusing to accept all or part of any capital expenditure into the 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, within 20 Business Days after being given that draft decision, 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 the 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 3 to 5** in relation to a capital expenditure project at any time, then this does not affect its right to seek any such acceptance under **clauses 3 to 5** 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 the Regulatory Asset Base.~~

2.2 Assessing prudence of capital expenditure

~~For the purposes of **clauses 3, 4 and 5**, the QCA must:~~

- (a) ~~in assessing whether capital expenditure is prudent:-~~
 - (i) ~~only consider information available, or reasonably available, to Queensland Rail at the time of making the investment decision; and~~
 - (ii) ~~as it considers necessary, take advice from independent advisors using appropriate benchmarks and experience, and consult with relevant stakeholders; and~~
- (b) ~~give Queensland Rail a notice of any determination that it makes under **clauses 3, 4 or 5** (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.~~

2.3 Asset Management Plan

- (a) ~~Queensland Rail will provide to the QCA an asset management plan describing the general standards Queensland Rail will apply in determining whether to incur capital expenditure by replacing assets the values of which are included in the Regulatory Asset Base rather than maintaining those assets.~~
- (b) ~~The Asset Management Plan only provides a guide as to the prudence of the scope of proposed Asset Replacement Expenditure and is not binding on either Queensland Rail or the QCA.~~
- (c) ~~Queensland Rail will provide any material amendments to the Asset Management Plan to the QCA.~~

3 Prudence of scope

3.1 Assessment of prudence of scope

- (a) ~~Assessing the prudence of scope of works for a capital expenditure project involves assessing whether the works are reasonably required.~~
- (b) ~~The QCA's acceptance of the prudence 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 prudence of scope

- (a) ~~Queensland Rail may request the QCA to, and the QCA will, accept the scope of a capital expenditure project as prudent if:~~
 - (i) ~~for Asset Replacement Expenditure, it is:~~

- ~~(A) consistent with the asset age and composition of the assets in that part of the West Moreton System that is west of Rosewood; and~~
 - ~~(B) in accordance with the Asset Management Plan; or~~
 - ~~(ii) 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.~~
- ~~(b) If **clause 3.2(a)** does not apply or acceptance is not sought or obtained under **clause 3.2(a)**, Queensland Rail, an Access Seeker, an Access Holder or a Customer may request the QCA's acceptance of the scope of a capital expenditure project as prudent in accordance with **clause 3.2(c)**.~~
- ~~(c) If a request is made under **clause 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(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(c)(i)** does not apply, reasonable grounds exist for proceeding.~~~~
- ~~(d) The factors that the QCA will have regard to for the purposes of **clause 3.2(c)** 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, the need for replacement capital expenditure projects and consistency with the Asset Management Plan;~~
 - ~~(iv) Queensland Rail's legislative requirements, including relating to workplace health and safety and environmental requirements;~~
 - ~~(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 the 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(c)**, 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 Regulatory Asset Base at its escalated value; and~~
 - (B) ~~if only part of the Excluded Capital Expenditure is included in the Regulatory Asset Base, **clause 3.3(b)(i)** will continue to apply to the remainder.~~

4 Prudence of standard of works

4.1 Assessment of prudence of standard of works

- (a) ~~Assessing the prudence 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 prudence 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 prudence of standard of works

- ~~(a) Queensland Rail may request the QCA's acceptance of the standard of works of a capital expenditure project as prudent in accordance with this **clause 4**.~~
- ~~(b) If a request is made under **clause 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)**, 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)** are:~~
 - ~~(i) the requirements of 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 AGN 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 5.2**, 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)**, Queensland Rail may request the QCA's acceptance of the costs of that capital expenditure project as prudent in accordance with this **clause 5.2**.
- (b) If a request is made under **clause 5.2(a)**, the QCA will accept as prudent:
 - (i) the value of a contract if:
 - (A) the QCA is satisfied that contract provisions regarding contract variations and escalation accord with good commercial practice; and
 - (B) the auditor engaged in accordance with **clause 6.2** certifies that 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)**, 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 6.2** 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)**; 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 6**.~~

5.3 General process for acceptance of prudence of costs

- ~~(a) If **clause 5.2** does not apply or acceptance is not sought or obtained under **clause 5.2**, Queensland Rail may request the QCA's acceptance of the costs of a capital expenditure project as prudent in accordance with this **clause 5.3**.~~
- ~~(b) If a request is made under **clause 5.3(a)**, the QCA will accept the scope 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)** 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)** 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)**, the extent to which Queensland Rail has achieved compliance with that procurement strategy;~~
 - ~~(iv) the Asset Management Plan; and~~
 - ~~(v) 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 3**, 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)**, 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)**; and~~
 - ~~(B) whether the procurement strategy tends to assist in achieving the requirements for prudence of costs set out in **clause 5.3**); 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) 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) accommodation of 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;~~
 - ~~(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 6.2** 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

~~As part of the implementation of a procurement strategy approved by the QCA under **clause 6.1**, Queensland Rail will engage an independent external auditor (at Queensland Rail's cost unless otherwise approved by the QCA) 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:~~

- ~~(a) Queensland Rail will appoint the auditor, after obtaining the QCA's approval of the auditor (including the terms of engagement);~~
- ~~(b) 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;~~
- ~~(c) the auditor must agree the processes for conducting an audit with Queensland Rail (which will consist of a proposed work program, including audit costs, for the execution of the audit);~~
- ~~(d) Queensland Rail will, within a reasonable time, provide any relevant information the auditor reasonably requires for the purpose of conducting the audit;~~
- ~~(e) 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(f)** below;~~

- ~~(f) the auditor will compile an audit report:
 - ~~(i) 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~~
 - ~~(ii) if the auditor identifies that Queensland Rail has not complied in all material respects with the approved procurement strategy:
 - ~~(A) details on the relevant non-compliance;~~
 - ~~(B) any reasons stated by Queensland Rail for the relevant non-compliance; and~~
 - ~~(C) whether the non-compliance was reasonable in the circumstances;~~~~~~
- ~~(g) the auditor will provide to Queensland Rail and the QCA:
 - ~~(i) progress reports on the audit process every six months; and~~
 - ~~(ii) a copy of the audit report upon completion of the audit (which the QCA may publish if it considers it appropriate); and~~~~
- ~~(h) 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.~~

~~7 Capital Expenditure Carryover Account~~

- ~~(a) Queensland Rail will maintain a register in which it will annually record all Approved Capital Expenditure (including identifying the relevant capital expenditure by project).~~
- ~~(b) If, at the end of each Year, the Approved Capital Expenditure differs from the Capital Indicator, 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, if the Approved Capital Expenditure exceeds the Capital Indicator; or~~
 - ~~(ii) an over recovery of revenue, if the Approved Capital Expenditure is less than the 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 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 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 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 Reference Tariffs.~~

- ~~(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 Reference Tariffs to apply in the next undertaking with the intention of clearing the Capital Expenditure Carryover Account over the term of that next undertaking. In the event there is no next undertaking, 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.~~

1 ~~Schedule C~~

~~Network Management~~ Train Planning Principles

~~4~~ ~~Scheduling Principles~~

1.1 Master Train Plan Principles

- ~~(a) The MTP will indicate the Capacity:~~
- (a) (i) The 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.~~
 - ~~(ii) necessary to satisfy all of Queensland Rail's passenger Train Services; and~~
 - ~~(iii) allocated for Planned Possessions,~~

~~in a form that:~~
- (b) Access Holders' Train Service Entitlements and Queensland Rail's passenger Train Services will be allocated particular Train Paths.
- (c) ~~(iv) The MTP will be in a form that~~ sets out the time/distance (location) relationship of the Train Services and other activities ~~in relation to~~ the Network; and is readily convertible to a DTP.
- ~~(v) is readily convertible to a DTP.~~
- ~~(b) Train Service Entitlements applicable to Timetabled Services and Queensland Rail's passenger Train Services will be allocated particular Train Paths.~~
- (d) Queensland Rail will notify all parties whose activities are affected by any modifications to the MTP at least 30 days prior to the commencement of the modification.
- (e) An Access Holder must give Queensland Rail sufficient notice of any requested changes to the 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 1.1(d).
- (f) 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.

Modifying the MTP

(g) ~~(c)~~ The MTP may be modified, ~~as specified in clauses 1.1(d) to (g) by Queensland Rail, without consultation,~~ where:

(i) ~~an Access Holder notifies Queensland Rail of its request; any of the following apply:~~

(A) ~~to make an Access Holder requests~~ a long-term change to the times at which its Train Service/s, ~~as scheduled in the MTP,~~ operate, provided that change is within the scope of its Train Service Entitlement, ~~and does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met; or;~~

(B) ~~an Access Holder requests~~ to run an Ad Hoc Train Service, ~~provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;~~

~~and, in Queensland Rail's opinion, the Access Holder has given Queensland Rail sufficient notice to enable Queensland Rail to modify the MTP and comply with clause 1.1(g);~~

(C) ~~(ii)~~ Queensland Rail creates a new or additional passenger Train Service, or modifies the times at which its passenger Train Services are scheduled in the MTP ~~provided that this would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;~~

~~(iii) a Planned Possession is cancelled;~~

~~(iv) Queensland Rail notifies all affected Access Holders and, if applicable, Infrastructure Service Providers that:~~

(D) ~~(A)~~ a new or additional Train Service Entitlement has been created (through the signing of an Access Agreement, or an amendment to an Access Agreement); ~~or~~

~~(B) a new or additional Queensland Rail passenger Train Service has been created,~~

(E) Queensland Rail wishes to change the time at which a Train Service operates provided that change is within the scope of the relevant Access Holder's Train Service Entitlement;

(F) Queensland Rail alters (including reduces or resumes) all or part of an Access Holder's Train Service Entitlement in accordance with that Access Holder's Access Agreement,

provided that the ~~new or additional Train Service Entitlement or Queensland Rail passenger Train Service~~ modification does not

result in any other Access Holder's scheduled Train ~~Service/s not being met, or a Planned Possession~~Services not being met;

(ii) a Planned Possession is cancelled; or

(iii) in Queensland Rail's opinion no Access Holders are adversely affected by the modification.

(h) ~~(v) The MTP may be modified by~~ Queensland Rail ~~notifies all affected Access Holders and, if applicable, Infrastructure Service Providers that~~ where Queensland Rail wishes to make a long-term change to the times at which one or more scheduled Train ~~Service/s~~Services operate, provided that ~~change:~~

~~(A) where it affects an Access Holder's Train Services:-~~

~~(1) is within the scope of that Access Holder's Train Service Entitlement; or~~

~~(2) if it is not, has been agreed to by that Access Holder (such agreement not to be unreasonably withheld); and~~

(i) ~~(B) the modification~~ is intended to accommodate:

~~(A) (1) the creation of a new or, additional, or modified~~ Train Service Entitlement (through the signing of an Access Agreement, or an amendment to an Access Agreement) ~~or Queensland Rail passenger Train Service, where that new or additional Train Service Entitlement or Queensland Rail passenger Train Service cannot, in Queensland Rail's opinion, otherwise be reasonably accommodated in the MTP; or cannot, in Queensland Rail's opinion, otherwise be reasonably accommodated in the MTP;~~

~~(B) a new, additional or modified Queensland Rail passenger Train Service, where that service cannot, in Queensland Rail's opinion, otherwise be reasonably accommodated in the MTP; or~~

~~(C) (2) any other Operational Constraint affecting the MTP; and~~

(ii) where the modification would result in an Access Holder's scheduled Train Services not being met, Queensland Rail:

(A) has consulted with that Access Holder; and

(B) 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).

- (i) ~~(vi) Queensland Rail notifies all affected Access Holders and, if applicable, Infrastructure Service Providers, of~~ The MTP may be modified by Queensland Rail, where Queensland Rail wishes to make a long-term change to the times at which one or more scheduled Train ~~Service/s~~ Services operate due to ~~the creation of a~~ new ~~Planned Possessions or the modification of any existing~~ or modified ~~Planned Possession or for the purpose of carrying out major period-~~ maintenance¹⁴ ~~provided that, where the change is not within the scope of an affected~~ modification would result in an ~~Access Holders'~~ Holder's ~~scheduled~~ Train Service Entitlements ~~Services not being met,~~ Queensland Rail has used reasonable endeavours to mitigate the adverse impacts on that Access Holder; ~~;~~
- ~~(vii) an Access Holder's Access Agreement allows Queensland Rail to alter the Access Holder's Train Service Entitlement;~~
- ~~(viii) in Queensland Rail's opinion, no Access Holders or Infrastructure Service Providers are adversely affected by the modification; or~~
- (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 used reasonable endeavours to mitigate the adverse impacts on that Access Holder.
- (i) ~~(ix) The MTP may be modified by~~ Queensland Rail, where Queensland Rail and all affected Access Holders ~~and, if the proposed modification affects a Planned Possession, all relevant Infrastructure Service Providers~~ agree to the modification. provided that where Queensland Rail seeks such a modification it:
- ~~(d) To the extent that any of clauses 1.1(c)(i) to (iv), (vii) or (viii) apply, Queensland Rail may make modifications to the MTP without consulting.~~
- ~~(e) To the extent that either clause 1.1(c)(v) or (vi) apply, Queensland Rail may make modifications to the MTP after consulting with any Access Holders whose Train Service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.~~
- ~~(f) To the extent that clause 1.1(c)(ix) applies, Queensland Rail will:-~~
- (i) ~~invite~~ invites affected ~~Infrastructure Service Providers and all Access Holders whose Train Services are affected by the~~

¹⁴ Major periodic maintenance means activities that maintain, repair or renovate the Network to retain it in a functional condition (including activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleepering).

- ~~proposed modification to the MTP~~ to consider the ~~relevant~~ modification in an appropriate forum¹⁵; and
- (ii) ~~give~~gives each of those parties a copy of the proposed modification five Business Days prior to the scheduled consideration of the modification.
- (g) ~~Queensland Rail will notify any modifications to the MTP to all parties whose activities are affected by the modification at least 20 Business Days prior to the commencement of the modification.~~
- (h) ~~Except as otherwise provided in an Access Agreement, the cancellation of a Train Service in accordance with this clause 1.1 does not excuse either Queensland Rail or an Access Holder from any relevant obligations under that Access Agreement.~~
- (k) For clarity, Queensland Rail may modify the MTP under any one of clauses 1.1(g) to (j) 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.

1.2 Daily Train Plan Principles

- (a) ~~A-DTP:-~~
- (a) ~~(i)~~ The DTP will indicate all scheduled Train Services and Planned Possessions in a form that indicates the time/distance (location) relationship of all activities; ~~and~~
- (b) ~~(ii)~~ The 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.
- ~~for a particular day of operation for a specified part of the Network.~~
- (c) ~~(b)~~ At least one Business Day prior to the ~~actual~~ day of operation, Queensland Rail will schedule the DTP and provide all relevant Access Holders and Infrastructure Service Providers with a copy of that DTP.
- (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.

¹⁵ This could include a face-to-face meeting, a telephone conference or any other forum that provides the affected parties with ~~an~~the best opportunity to participate.

Scheduling the DTP in variation from the MTP

- (e) ~~(c) Subject to clause 1.2(g), the~~The DTP may be scheduled in variation to the MTP, ~~as specified in clauses 1.2(e) to (f) by Queensland Rail,~~ without consultation, where, at least two Business Days prior to the ~~actual~~ day of operation, and prior to the DTP being scheduled:
- (i) ~~an Access Holder notifies Queensland Rail of its request: any of the following apply:~~
 - (A) ~~to make an Access Holder requests~~ a short-term change to the times at which any of its Train Service/s ~~Services~~, as scheduled in the MTP, operate, ~~provided that change does not result in any other Access Holder's scheduled Train Service/s not being met or a Planned Possession not being met; or;~~
 - (B) ~~an Access Holder requests~~ to run an Ad Hoc Train Service, ~~provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met; or~~
 - (C) ~~(ii)~~ Queensland Rail modifies the times at which any of its passenger Train Services, as scheduled in the MTP, operate, ~~provided that this would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;~~
provided that the variation does not result in any other Access Holder's scheduled Train Services not being met; or
 - (ii) ~~(iii)~~ a Planned Possession is cancelled;
- (f) ~~(iv) Queensland Rail notifies all affected Access Holders and, if applicable, Infrastructure Service Providers that it~~The DTP may be scheduled in variation from the 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 Service/s ~~Services~~ operate, provided the change is intended to accommodate: ~~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:

- (A) has consulted with that Access Holder; and
- (B) ~~provided that where the change to scheduled Train Service/s results in any~~ to the extent that the modification is not within the scope of that Access Holder's Train Service Entitlement ~~not being met, such change is only made with the agreement of,~~ has agreed the modifications with that Access Holder (such agreement not to be unreasonably withheld);~~;~~
- (g) ~~(v) Queensland Rail requests~~ The DTP may be scheduled in variation from the 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; ~~or 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) ~~(vi) Queensland Rail,~~ The DTP may be scheduled in variation from the 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 ~~and, if the proposed variation from the MTP affects a Planned Possession, all relevant Infrastructure Service Providers~~ agree to the modification; provided that where Queensland Rail seeks such a modification Queensland Rail:
- (d) ~~To the extent that any of clauses 1.2(c)(i) to (iii) apply, Queensland Rail may schedule the DTP in variation from the MTP under without consulting.~~
- (e) ~~To the extent that either clause 1.2(c)(iv) or (v) applies, Queensland Rail may schedule the DTP in variation from the MTP after consulting with any Access Holders whose Train Service/s are affected by the proposed modification, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession.~~
- (f) ~~To the extent that clause 1.2(c)(vi) applies, Queensland Rail will:~~
- (i) ~~invite~~ invites affected ~~Infrastructure Service Providers and all~~ Access Holders ~~whose scheduled Train Services are affected by the proposed variation~~ to consider the ~~modification~~ variation in an appropriate forum;¹⁶ ~~at~~ at least 36 hours prior to the ~~actual~~ day of operation; and
- (ii) ~~give~~ gives each of those parties a copy of the proposed variation at least 12 hours prior to the scheduled consideration of the variation.

¹⁶ 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.

- ~~(g) Other than as detailed in **clause 1.2(h)**, once the DTP is scheduled:~~
- ~~(i) For clarity, Queensland Rail may schedule the DTP in variation from the MTP under any one of **clauses 1.2(e) to (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 the DTP once scheduled

- ~~(j) Queensland Rail may make modifications to the scheduled DTP on a case by case basis without the need for consultation:~~
- ~~(i) any changes to the DTP will be reflected as deviations from the DTP, not variations to the scheduled DTP; and where:~~
- ~~(ii) deviations to the DTP will only occur in accordance with **clause 1.2(k)**.~~
- ~~(h) Variations to a scheduled DTP may only be made where:~~
- ~~(A) (i) before the day of operation, Queensland Rail receives a request from an Access Holder to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession, Emergency Possession or Urgent Possession not being met; ; or~~
- ~~(B) (ii) before a Train Service commences operation, the Access Holder notifies Queensland Rail that it wishes to make requests a change to the time at which its Train Service will operate, provided and that change is within the scope of the Access Holder's Train Service Entitlement, and does not result in any other Access Holder's scheduled Train Service/s not being met or a Planned Possession, Emergency Possession or Urgent Possession not being met; or~~
- ~~provided that the modification does not result in any other Access Holder's scheduled Train Services not being met; or~~
- ~~(ii) (iii) where, before the commencement of a relevant Train Service, Queensland Rail notifies an the Access Holder that an Emergency Possession is required.~~

2 Train Control Principles

Objective

- ~~(a) (i) Queensland Rail may make variations to a scheduled DTP in accordance with **clause 1.2(h)** on a case by case basis without the need for consultation. The prime objective of Train Control is to facilitate the~~

safe running of Train Services, and the commencement and completion of Possessions, as scheduled in the DTP.

- (b) Queensland Rail will manage the Network based on entry/exit times as specified in the DTP 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) ~~(j) Except as otherwise provided in~~ A deviation from the DTP by Queensland Rail and/or an Access Agreement, the cancellation of a Train Service or Train Services Holder on the day of running in accordance with this **clause 1.22** does not necessarily excuse either ~~Queensland Rail or an Access Holder~~ party from any relevant obligations ~~under an Access Agreement~~ relating to the conduct in question.
- (k) ~~Without limitation to clause 1.2(h), deviations from the DTP may occur on the day of operation only in accordance with clause 2.~~

2

Train Control principles

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 the DTP.

2.1 Provision of Train Control information

- (e) Queensland Rail will provide an Access Holder with:
- (i) ~~(a)~~ real time Train Control information that indicates ~~the~~ actual ~~operation~~running of that Access Holder's Train Services against the relevant DTP;
 - (ii) ~~(b)~~ subject to reasonable terms and conditions, access to Train Control diagrams that indicate actual ~~operation~~running of that Access Holder's Train Services against the relevant DTP; and
 - (iii) ~~(c)~~ subject to reasonable terms and conditions, information about the type of Train Services¹⁷ ~~operated by other Access Holders in accordance with the relevant DTP~~ operated on the same network (including, for example, coal, freight, passenger and livestock Train Services) to assist Access Holders to determine whether the Train Controller is applying the principles in this Schedule in a consistent manner between Access Holders.

2.2 Deviations from the DTP on the day of operation

Traffic Management Decision Making Matrix

- (f) Where the ~~actual~~ operation of a Train Service differs from the DTP, the Train Controller will apply the ~~principles in clause 2.4 to determine the relative operating priority of Train Services for the purpose~~ Traffic Management Decision Making Matrix in clause 2(h), for the purposes of giving a Train Control ~~direction~~Direction.

2.3 On Time, Ahead and Late Train Services

- (g) ~~For the purposes of clause 2.4, whether a Train Service is~~ In the context of the Traffic Management Decision Making Matrix the meaning of "On Time", "Ahead" or "Late" is a reference to the performance of that Train Service against the times scheduled for it in the DTP at any relevant point in time and "Late" are determined by the scheduling of paths in the DTP. For example, if a Train Service is ~~running behind a scheduled time applicable to it in the DTP, then it "Late~~ travelling in accordance with the DTP path allocated to it, it is running "On Time".

¹⁷ ~~For instance, freight Train Services, passenger Train Services or coal Train Services.~~

2.4 Train Control principles

(h) The Traffic Management Decision Making Matrix is as follows:

		<u>Train Service A - Current Status</u>	
		<u>Train Service Running "On Time" or "Ahead"</u>	<u>Train Service Running "Late"</u>
<u>Train Service B - Current Status</u>	<u>Train Service Running "On Time" or "Ahead"</u>	<u>Rule 2</u>	<u>Rule 1</u>
	<u>Train Service Running "Late"</u>	<u>Rule 1</u>	<u>Rule 3</u>

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 2(i)**.

Rule 2. Both Train Services must meet their "On Time" objective.

Rule 3. Give priority to the Train Service that (in the Train 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 2(i)**.

Principles for managing deviations from the DTP

(i) ~~The Train Controller will apply the following principles in the order of precedence set out below (with Principle 1 being the highest and Principle 3 being the lowest in the order of precedence) to determine the relative priority as between relevant Train Services for the purpose of giving a Train Control direction.~~ It is necessary for Train 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. Train Controllers will apply the following principles in managing deviations from the DTP:

Principle 1:

- (i) ~~The operation of~~ a Train Service ~~has~~may be given priority over ~~the operation of~~ other Train Services if ~~the operation of that Train Service~~it is necessary to do so:
- (A) ~~(a)~~ due to, or to avoid, an accident, emergency or incident relating to any part of the Network;
- (B) ~~(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; ~~or~~
- (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) ~~(c)~~ to ensure the safe operation of any part of the Network; ;

Principle 2:

~~Train Services will be given priority in the following order of precedence, from highest priority to lowest priority (regardless whether the relevant Train Service is running “Ahead”, “Late”, or “On Time”):~~

- ~~(a) passenger Train Services;~~
- ~~(b) livestock Train Services;~~
- ~~(c) any other Train Services;~~

~~except to the extent that a Priority Agreement¹⁸ applies to those Train Services, in which case the Train Services will be given priority in accordance with that Priority Agreement.~~

Principle 3:

~~Where any relevant Train Services are not prioritised after the application of Principles 1 and 2, the Train Controller will prioritise those Train Services in accordance with the following Traffic Management Decision Making Matrix.~~

¹⁸ A Priority Agreement means a written agreement between two or more Access Holders setting out the relative priorities between those Access Holders' respective Train Services that has been given to the Train Controller prior to the making of a determination as to the relative priority of relevant Train Services. For clarity, a Priority Agreement is only relevant to determine the relative priority of Train Services for Access Holders who are a party to that Priority Agreement.

Traffic Management Decision Making Matrix

		Train Service A – Current Status			
		Train Service A	Healthy Train Service running “On Time” or “Late”	Healthy Train Service running “Ahead”	Unhealthy Train Service running “Late”
	Train Service B	Objective	On Time Exit	On Time Exit	1. Lose no more time; 2. make up time; or 3. make up time and hold the gain
Train Service B – Current Status	Healthy Train Service Running “On Time” or “Late”	On Time Exit	A or B As scheduled	A or B Subject to Rule 2	B Subject to Rule 1
	Healthy Train Service Running “Ahead”	On Time Exit	A or B Subject to Rule 2	A or B Subject to Rule 2	B Subject to Rule 1
	Unhealthy Train Service Running “Late”	1. Lose no more time; 2. make up time; or 3. make up time and hold the gain,	A Subject to Rule 1	A Subject to Rule 1	A or B Subject to Rule 3

The Train Controller will apply the following rules, subject to the **Principles 1 and 2**:

Rule 1. An Unhealthy Train Service may be given priority provided that the Healthy Train Service will still meet its “On Time Exit” objective, or as permitted by Rules 4, 5 and 6.

Rule 2. Either of two Train Services may be given priority provided both Train Services meet their “On Time Exit” objective.

Rule 3. An Unhealthy Train Service will be given priority over another Unhealthy Train Service where, in the Train Controller’s opinion, its performance indicates that

~~it will lose less time, make up more time or hold a greater gain, than the other Unhealthy Train Service, or as permitted by Rules 5 and 6.~~

~~Rule 4. Where a Healthy Train Service is running “Late” (due to a Below Rail Delay), the Train Controller may give priority to that Healthy Train Service if doing so, in the Train Controller’s opinion:~~

~~(a) is consistent with the critical objectives of that Train Service; and~~

~~(ii) subject to clause 2(i)(i), passenger Train Services may be given priority over other Train Services if the Train Controller believes that this is necessary to seek to:~~

~~(A) bring a “Late” passenger Train Service back to being “On Time”; or~~

~~(B) avoid an “On Time” or “Ahead” passenger Train Service from becoming a “Late” passenger Train Service;~~

~~(iii) subject to clause 2(i)(i), livestock Train Services may be given priority over other Train Services if the Train 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 2(i)(i) to (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) (b) will result in less aggregated consequential delays to other Train Services than otherwise would be the case, subject to clauses 2(i)(i) to (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 Train 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.~~

~~Rule 5. Where both Train Services are operated by the same Access Holder, the Train Controller may ask the Access Holder how it would prefer the Train Services to be directed and, provided that taking the Access Holder’s preferred course of action does not adversely affect the Train Services of any other Access Holder, the Train Controller will take the Access Holder’s preferred course of action.~~

~~Rule 6. Where the Train Services are operated by different Access Holders, the Train Controller may ask the Access Holders how they would prefer the Train Services to be directed and, provided that:~~

Schedule C

Access Agreement Principles

1 Term

The Access Agreement will:

- (a) apply for a defined period (subject to any earlier termination and any relevant survival of provisions); and
- (b) not include an option for the Access Holder to renew the Access Rights.

2 Grant of Access Rights

- (a) Queensland Rail will grant to the Access Holder a non-exclusive right to operate Train Services on the Network during the term of the Access Agreement in accordance with a specified Train Service Entitlement.
- (b) An Access Holder's Train Services must only commence after all provisions of the Access Agreement required to be completed or complied with prior to the commencement of Train Services have been completed or complied with.

3 Accreditation

The Access Holder must or must procure that its Nominated Railway Operator:

- (a) be accredited in accordance with Part 5 of the TRSA in respect of the operation of the relevant Train Services;
- (b) maintain that accreditation during the term of the Access Agreement;
- (c) ensure Queensland Rail is provided with the material details of that accreditation; and
- (d) comply with that accreditation and not operate Rolling Stock unless it holds that accreditation.

4 Access Charges

- (a) The Access Agreement must set out the Access Charges agreed between the parties and payable in accordance with reasonable payment terms.
- (b) The Access Agreement may provide:
 - (i) that late payments accrue interest at a specified rate;

- (ii) a reasonable mechanism for dealing with disputes about payment;
- (iii) for the review of Access Charges;
- (iv) an adjustment mechanism where any change in the Access Charges is backdated; and
- (v) that all amounts payable under it are exclusive of GST.

5 Network management

5.1 Management and control of Network

- (a) Queensland Rail is responsible for the management and control of the Network (including Train Control).
- (b) Queensland Rail will maintain the Network such that the Access Holder can operate the relevant Train Services in accordance with the terms of the Access Agreement.
- (c) Queensland Rail may at any time, without the Access Holder's consent, impose operational constraints (such as speed or load restrictions).
- (d) Queensland Rail may at any time, without the Access Holder's consent, perform Rail Infrastructure Operations.

5.2 Train Control

- (a) Queensland Rail will perform scheduling and Train Control in accordance with the terms of the Access Agreement.
- (b) The Access Holder must comply with all of Queensland Rail's Train Control Directions and the Network Management Principles.
- (c) Queensland Rail must comply with all applicable Laws, safeworking procedures and safety standards and all other train operation requirements in the Access Agreement and is not liable to the Access Holder if doing so is otherwise inconsistent with the Access Agreement.
- (d) The Access Holder must:
 - (i) ensure all Trains are equipped with appropriate communication systems; and
 - (ii) provide and maintain all software and hardware, to Queensland Rail's satisfaction, to ensure an effective interface between Queensland Rail's and the Access Holder's information (including communication) systems.

- (e) Queensland Rail will be entitled to treat other Train Services preferentially to the Access Holder's Train Services for the purpose of seeking to:
 - (i) bring a passenger Train Service back to its scheduled running time;
 - (ii) minimise any delay experienced by a passenger Train Service;
or
 - (iii) avoid a passenger Train Service from becoming delayed.

6 Train operations

6.1 Operation of Train Services and Rolling Stock

- (a) The Access Holder must only operate Train Services in accordance with the Access Agreement unless the Access Holder has obtained Queensland Rail's prior written consent.
- (b) The Access Holder is responsible for the operation of Rolling Stock on the Network (including for ensuring the safe operation of Rolling Stock).
- (c) The Access Holder must comply with all applicable Laws, safeworking procedures and safety standards and all other train operation requirements in the Access Agreement.
- (d) The Access Holder must operate Train Services in accordance with the relevant scheduled times and Train schedule unless the Access Holder is permitted under the Access Agreement to do otherwise (including the Network Management Principles) or the parties agree otherwise.
- (e) If the Access Holder is not able to operate a Train Service in accordance with its scheduled time, then:
 - (i) the Access Holder must as soon as practicable notify Queensland Rail that it is not able to operate that Train Service and the reason for its inability; and
 - (ii) Queensland Rail will use reasonable endeavours to provide an alternative schedule time for the relevant Train Service (but is not obliged to do so if this would alter the scheduled time for other Trains or would result in Queensland Rail incurring additional costs or expenses).
- (f) Queensland Rail may collect information in respect of the Access Holder's Rolling Stock which is fitted with an operative digital tag and may provide the Access Holder with access to that information (at the Access Holder's cost). If Queensland Rail collects any such information and provides it to the Access Holder, then Queensland Rail has no responsibility, and is not liable, for the accuracy, completeness or veracity of that information.

- (g) The Access Holder must ensure the operation of the Rolling Stock (including loading, unloading and cleaning):
 - (i) does not affect the safe operation of the Rolling Stock or the Network or the operations or activities of Queensland Rail or other Rail Transport Operators; and
 - (ii) is such that all things on or in the Rolling Stock remain on or in the Rolling Stock (including secured in position) during transit.

6.2 Authorisation of Rolling Stock and Train Configurations

- (a) The Access Holder must obtain certification for the Access Holder's Rolling Stock and Train Configurations from an **appropriately qualified** person approved by Queensland Rail. Queensland Rail has a right to view a certificate of compliance and associated test results from an Access Holder in order to satisfy itself that the Rolling Stock and Train Configurations are as agreed by the two parties in the relevant IRMP.
- (b) If the Access Holder wishes to modify any of the Rolling Stock or Train Configurations, then the Access Holder must not use that Rolling Stock or Train Configuration unless and until:
 - (i) the IRMP has been reviewed;
 - (ii) the Access Holder has complied with **clause 6.2(a)**; and
 - (iii) the parties have agreed any amendments to the Access Agreement (including varying the methodology, rates or other inputs for calculating Access Charges) as reasonably necessary,

in relation to that Rolling Stock or Train Configuration (as applicable).

6.3 Operating requirements

- (a) Queensland Rail will provide the Access Holder with the practices, standards, systems, protocols, requirements, rules, policies and other information in relation to or in connection with Train Control and the access to and use of the Network by Access Holders (including interface management and coordination requirements, safeworking procedures, safety standards, emergency and investigation procedures, requirements for the management of Incidents and environmental requirements) as published from time to time by Queensland Rail (**Operating Requirements**).
- (b) Queensland Rail may amend the Operating Requirements from time to time, but must consult with the Access Holder before doing so if Queensland Rail considers that the amendments may materially adversely affect the Access Holder.

6.4 **Entering and exiting the Network**

The Access Holder is solely responsible for and bears the cost and risk of obtaining any rights to access or use Private Infrastructure and the Access Holder is not relieved of any obligation under the Access Agreement if the Access Holder cannot obtain any such rights.

6.5 **Notification of damage or disrepair**

The Access Holder must notify Queensland Rail of any damage or disrepair or failure in operation or function of any part of the Network of which the Access Holder becomes aware.

7 **Interface risk management**

- (a) The parties must comply with the relevant IRMP and each party must notify the other party of any non-compliance that it becomes aware of (including details of how it has rectified or intends to rectify that non-compliance).
- (b) The Access Agreement must provide a process for the regular review of the relevant IRMP by the parties.
- (c) If the parties do not agree any matter in relation to such a review, that disagreement may be referred to dispute resolution under the Access Agreement.

8 **Environmental and emergency management plan requirements**

8.1 **Dangerous goods**

The Access Holder must not carry, or permit to be carried, Dangerous Goods except as expressly provided in the Access Agreement.

8.2 **Environmental damage**

The Access Agreement must include a process that:

- (a) allows Queensland Rail to notify the Access Holder:
 - (i) of environmental harm as defined in the *Environmental Protection Act 1994 (Qld)* (or anything that is likely to result in environmental harm); and
 - (ii) any requirement that Queensland Rail or any relevant Authority considers necessary to prevent, mitigate or remedy that environmental harm; and
- (b) obliges the Access Holder to comply with those requirements and otherwise take whatever action or intervention is required to prevent, mitigate or remedy that environmental harm.

8.3 Emergency management plan

- (a) The Access Holder must develop an emergency management plan that details the procedures for the management of incidents on the Network involving the activities of the Access Holder (including all relevant matters outlined in the Operating Requirements). The emergency management plan must be compatible with the Access Agreement and Queensland Rail's emergency procedures and consistent with the prudent practices of an operator of Trains in Australia.
- (b) The Access Holder must obtain a notice from Queensland Rail that it has no objection to the emergency management plan. The Access Agreement must set out a process for obtaining such a notice.

8.4 Obstructions and notifications

- (a) The Access Holder must not cause or contribute to, or permit to continue, any obstruction¹⁷ of the Network.
- (b) The Access Agreement must include notification requirements to Queensland Rail's satisfaction in relation to environmental harm, incidents on the Network involving the activities of the Access Holder, Dangerous Goods, obstructions, non-compliance with any safeworking procedures and any similar matter (and including any action or intervention taken or being taken by the Access Holder).
- (c) Queensland Rail may do anything that it considers necessary:
 - (i) to remove, rectify, mitigate or otherwise deal with any obstruction; or
 - (ii) to recommence Train movements where there is or was an obstruction,

including to move, or remove from the Network, any of the Access Holder's Rolling Stock that is causing or contributing to an obstruction or preventing or hindering Train movements.

9 Inspection and audit rights

- (a) The Access Agreement will specify the reasonable terms and conditions on which Queensland Rail can carry out inspections and audits of the Access Holder's compliance with the Access Agreement and the loading of wagons used in a Train Service.
- (b) Queensland Rail may require the Access Holder, and the Access Holder must comply with Queensland Rail's requirements, to do anything reasonably necessary for Queensland Rail to conduct the inspection or

¹⁷ An obstruction is any circumstance (including debris or other things on the Network), which has the potential to cause a disruption to or cancellation by Queensland Rail of Train Services or Train movements and includes any Network incident (that is, any Rolling Stock derailment or disablement or any breakdown, accident, collision or any other unplanned occurrence on the Network which causes or could cause death or injury to any person, damage to property or environmental harm or a disruption to or cancellation by Queensland Rail of any Train movement) but does not include an Operational Constraint imposed by Queensland Rail.

audit including to divert or delay a Train Service or to make any part of a Train available for inspection or weighing.

10 Risk and indemnities

- (a) The Access Holder assumes all risks and liabilities relating to the Access Holder's rights under the Access Agreement and Train Services (including any wear, tear or damage to Rolling Stock relating to operation on the Network).
- (b) The Access Holder must indemnify Queensland Rail against all claims which may be brought against or made upon Queensland Rail and all losses:
 - (i) caused, or contributed to, by any default, act or omission by the Access Holder, the Access Holder's directors, officers, employees, contractors, agents, consultants or Customers;
 - (ii) relating to damage to or loss of any property or any personal injury or death relating to the Train Services, the Rolling Stock or train movements (that is, the operation of a Train on the Network) except to the extent caused, or contributed to, by Queensland Rail's negligence;
 - (iii) in connection with or in relation to any obstruction¹⁸, to the extent caused, or contributed to, by the Access Holder;
 - (iv) relating to claims by a Customer;
 - (v) relating to third party claims in relation to any data collected about Train Services and distributed by Queensland Rail (on a bona fide basis) in accordance with the Access Agreement.
- (c) The Access Agreement must include specific provisions regarding the Access Holder's indemnity relating to the carrying of Dangerous Goods, if applicable.
- (d) The Access Holder is responsible for the conduct of the Access Holder's directors, officers, employees, contractors, agents and similar persons (including a delegate or subcontractor) in exercising any of the Access Holder's rights or complying with any of the Access Holder's obligations and that conduct is taken to be the Access Holder's conduct.
- (e) The Access Holder is responsible for the conduct of each passenger on the Access Holder's Train Services and that conduct is taken to be the Access Holder's conduct.

11 Limitation of Liability

- (a) The liabilities of the parties for default shall be limited or excluded as agreed in the Access Agreement.

¹⁸ See footnote 17.

- (b) Subject to **clause 11(c)** and except as otherwise provided in the Access Agreement, neither party has any liability for Consequential Loss in any circumstances.
- (c) Consequential Loss is excluded from the indemnity in **clause 10** except for any loss arising out of any claim by a third party including a Customer.
- (d) No exclusion or limitation of liability or restriction on the making of a claim in the Access Agreement will apply in respect of a claim by one party against the other for monies due and payable in accordance with the Access Agreement.
- (e) Without limitation to the matters for which Queensland Rail's liability may be excluded, Queensland Rail's liability in relation to:

 - (i) any loss of any thing carried by a Train Service;
 - (ii) delays in Train movements;
 - (iii) any matter for which the Access Holder bears or assumes risk or liability (including the Access Holder's representations or warranties);
 - (iv) any act or omission by Queensland Rail referred to in **clause 8.4(b)** or **8.4(c)**;
 - (v) any exercise of a right, or compliance with an obligation by Queensland Rail in accordance with the Access Agreement; or
 - (vi) any data collected in connection with the Train Services.

is excluded and if it cannot be excluded is limited to \$1.00.
- (f) The Access Agreement will specify the circumstances in which the Access Holder has a claim against Queensland Rail for the non-provision of Access or the cancellation of a Train Service caused by breach of the Access Agreement or negligence by Queensland Rail.
- (g) Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim and must exceed \$500,000 for any one event or cause of action or series of related events or causes of action.

12 Default, suspension and termination

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

13 Insurance

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

14 Security

- (a) The Access Holder must provide a security deposit to Queensland Rail in the form of cash or a bank guarantee or other form satisfactory to Queensland Rail (and on terms acceptable to Queensland Rail) to secure the performance of its obligations under the Access Agreement.
- (b) Queensland Rail may review the amount of the security deposit to increase or decrease it as factors relevant to Queensland Rail's risk exposure change.

15 Adjustments

- (a) A mechanism will be provided to allow adjustments to the Access Agreement (including, if applicable, by adjusting the relevant Access Charges) where a material change occurs that has a net adverse financial effect on Queensland Rail in relation to it performing its obligations or exercising its rights so that:
 - (i) the net financial effect of the material change on Queensland Rail is removed; and
 - (ii) Queensland Rail is placed in the position it would have been in if the material change had not occurred.
- (b) A material change will include changes in taxes, credits, laws, standards and funding (for example from Transport Service Payments).
- (c) If the parties are not able to agree any adjustments to the Access Agreement, then the matter will be referred to an independent expert for determination as a dispute.
- (d) The Access Agreement may include rate review provisions as referred to in **clause 3.5** of this Undertaking.

16 Disputes

- (a) Any dispute between the parties is firstly to be escalated through each party's internal management structure and ultimately to each party's chief executive officer (or the nominee of the chief executive officer). If the dispute is not resolved, then the parties may agree to refer the dispute for resolution by an expert (and must do so if the Access Agreement requires such a referral).
- (b) The dispute resolution provisions must recognise the ability of the Rail Safety Regulator under the TRSA to resolve disputes and must provide that a referral to the Rail Safety Regulator overrides the dispute resolution provisions in the Access Agreement to the extent of any inconsistency with the dispute resolution process in the Access Agreement.
- (c) Queensland Rail will be able to determine disputes in relation to amendments to an IRMP, the safety of persons or property, the

environment or the land on which the Network is located (including the use of the Network) if the dispute is not resolved under the Access Agreement by agreement between the parties or by an expert or resolved by the Rail Safety Regulator.

- (d) If a dispute is not resolved by agreement or referral to an expert, then the dispute may be determined by a court.

17 Force Majeure Event

- (a) The obligations of a party (other than an obligation to pay monies due) will be suspended where a Force Majeure Event prevents or hinders that party from performing its obligations under the Access Agreement.
- (b) If part of the Network is damaged or destroyed by a Force Majeure Event, Queensland Rail may elect not to proceed with repairs or replacement unless the parties agree as to the funding of the cost of that work.
- (c) The Access Agreement may be terminated if a delay caused by a Force Majeure Event continues for a prolonged period.

18 Reduction and relinquishment of Access Rights

18.1 Reduction of Access Rights

An Access Agreement must include provisions that:

- (a) entitle Queensland Rail to reduce the Access Holder's Access Rights where the Access Holder has under-utilised the Access Rights; and
- (b) set out objective criteria for the purpose of assessing whether the Access Rights are consistently underutilised.

18.2 Relinquishment

An Access Agreement must include provisions which provide:

- (a) that the relevant Access Holder may relinquish all or part of its Access Rights (whether or not for the purpose of allowing a specified Access Seeker to be granted Access Rights by Queensland Rail that use all or part of the Capacity that will become Available Capacity as a result of the relinquishment (**Relinquished Capacity**)); and
- (b) that any such relinquishment is subject to the Access Holder paying to Queensland Rail a fee:
- (i) equivalent to the present value (calculated at a discount rate equal to the WACC) of the aggregate of the Take or Pay Charges that would have been payable on and from the date on which the relinquishment will take effect until the end of the term if the relevant Access Rights were not relinquished and the Access Holder did not use those Access Rights; and

(ii) if, prior to the date on which the relinquishment will take effect, Queensland Rail has granted Access Rights (with effect on or after that date) to an Access Seeker using the Relinquished Capacity (**New Access Holder**), adjusted to offset the aggregate of the Take or Pay Charges payable by the New Access Holder for all or part of the same period as that for which the Take or Pay Charges are calculated under **paragraph (i) above** (calculated assuming the New Access Holder does not use the relevant Access Rights) but only to the extent that those Take or Pay Charges are directly attributable to the Relinquished Capacity.

provided that in no circumstances will that fee be less than zero; and

(c) if applicable, Queensland Rail will facilitate the Access Holder relinquishing Access Rights for the purpose of allowing an Access Seeker nominated by the Access Holder to be granted Access Rights by Queensland Rail, subject to Queensland Rail's requirements in relation to doing so being satisfied.

19 Assignment

- (a) Queensland Rail may assign, novate, transfer or otherwise deal with (**Assign**) its rights and obligations under the Access Agreement without the prior consent of the Access Holder. Queensland Rail must give notice to the Access Holder advising the effective date of the Assignment.
- (b) On the Assignee executing and delivering to the Access Holder a deed covenanting to be bound by and to perform Queensland Rail's obligations under the Access Agreement, Queensland Rail will be released and discharged from further liability under the Access Agreement in respect of obligations that the Assignee has undertaken to perform.
- (c) The Access Holder may Assign the whole of its rights and obligations under the Access Agreement with the prior consent of Queensland Rail provided that the Assignee enters into a deed of covenant with Queensland Rail (on terms satisfactory to Queensland Rail) to be bound by and to perform the Access Holder's obligations under the Access Agreement.
- (d) The Access Holder may only mortgage, charge, encumber or otherwise grant any security (**Charge**) over its rights and obligations under the Access Agreement in favour of a person (**Chargee**) if the Access Holder, Chargee and Queensland Rail have entered into a deed of covenant (on terms satisfactory to Queensland Rail) where the Chargee must only exercise rights under the Charge as though the Chargee was the Access Holder.

20 Representation and warranties

The Access Agreement may set out representations and warranties given by the Access Holder in favour in Queensland Rail including, for example, that the Access Holder has satisfied itself as to both the standard and suitability of the Network for the Train Services and the ability of the Access Holder's Rolling Stock to safely interface with, and to operate on, the Network.

21 Confidentiality

The Access Agreement may include a confidentiality provision if required by either party.

22 Land tenure

- (a) ~~the Access Holders and Queensland Rail agree a course of action in writing (**Agreed Action**); and~~ The Access Agreement must include provisions that detail the Access Holder's obligations in relation to complying with the requirements of Queensland Rail's land tenure and to not contribute to Queensland Rail breaching its land tenure obligations.
- (b) ~~taking the Agreed Action does not adversely affect the Train Services of any other Access Holders;~~ if there is any inconsistency between the Access Agreement and a land tenure then the land tenure prevails to the extent of the inconsistency.

~~the Train Controller will take the Agreed Action. Queensland Rail will retain a copy of the Agreed Action for the Term.~~

~~For the purposes of this Traffic Management Decision Making Matrix:~~

~~**Healthy Train Service** means a Train Service that is not an Unhealthy Train Service.~~

~~**Unhealthy Train Service** means a Train Service scheduled in the DTP that is, at the relevant time, "Late" and that delay is an Above Rail Delay or an Unallocated Delay.~~

- (c) Queensland Rail is not liable to the Access Holder in relation to any amendment, replacement, surrender, termination, expiry or determination of any land tenure.

Schedule D-

~~Access Agreement Principles~~

[to be inserted]

~~Schedule E~~

Standard Access Agreement

~~[to be inserted]~~