

**[QRNN (resubmitted, no 1) Draft of Standard Rail Connection Agreement]**

**QR NETWORK PTY LTD  
ABN 78 132 181 116**

**and**

**[THE PARTY WHOSE NAME AND ADDRESS APPEARS IN ITEM 1 OF  
SCHEDULE 1]  
ABN XX XXX XXX XXX**

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**RAIL CONNECTION AGREEMENT —[LOCATION THAT APPEARS IN  
SCHEDULE 2]**  
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**THIS AGREEMENT** is made on [*insert date of agreement*]

**BETWEEN** **QR NETWORK PTY LIMITED** of Level 17, 175 Eagle Street, Brisbane, Queensland, 4000 (“**QR Network**”)

**AND** **THE PARTY WHOSE NAME AND ADDRESS APPEARS IN ITEM 1 OF SCHEDULE 1** (“**Owner**”)

## RECITALS

- A** The Owner [*‘owns’ or ‘will own’*] the Private Infrastructure.
- B** QR Network owns, and is the Accredited Rail Infrastructure Manager of, the Network.
- C** The Owner wishes to [*‘connect the Private Infrastructure’ or ‘continue having the Private Infrastructure connected’*] to the Network, and QR Network agrees to that connection via the Connecting Infrastructure on the terms and conditions set out in this Agreement.

## IT IS AGREED

### 1 INTERPRETATION

1.1 In this Agreement:

**Acceptable Credit Rating** means a minimum long term credit rating of not less than BBB+ from Standard & Poors or of not less than Baa2 from Moody's Investor Services.

**Accreditation** means accreditation in accordance with Part 5 of the TRSA (including a TIA accreditation (as defined under the TRSA)) for railway operations under sections 9(a) and (b) of the TRSA, and Accredited means to have Accreditation.

**Annual Service Charge** means for a given Maintenance Year, the sum of the amounts agreed for the reasonable and prudent maintenance, inspection, renewals, administration, and other works to be carried out in the Maintenance Year under the Asset Maintenance and Management Plan. Such amounts shall be derived from the costs of the planned and unplanned works for each Maintenance Year applying the MCI and shall include the costs of preparing and updating the Asset Maintenance and Management Plan.

**Asset Maintenance and Management Plan** means the plan set out in **Schedule 6**, as amended from time to time.,

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Authorities** means any:

- (a) government, government department or other governmental or semi-government body or authority including local government;
- (b) governmental, semi-governmental or judicial person; or
- (c) person (whether autonomous or not) who is charged with the administration of a Law.

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

**Claim** means any action, proceeding, claim, demand, damage, loss, cost, liability or expense, including the costs and expenses of defending or settling any action, proceeding, claim or demand.

**Commencement Date** means the date of execution of this Agreement.

**CLMP** means the Coal Loss Mitigation Provisions specified in **Schedule 8**, as amended from time to time.

**Commitment Date** means the date specified in Item 4 of **Schedule 1**.

**Connecting Infrastructure** means the rail transport infrastructure (including, without limitation, track, signalling and overhead traction electricity (if applicable)):

- (a) that is identified as Connecting Infrastructure on the plan detailed in **Schedule 2**; and
- (b) that:

- (A) is not identified on the plan detailed in **Schedule 2** as being Private Infrastructure, Connecting Infrastructure or part of the Network;
- (B) is managed, controlled or owned by QR Network; and
- (C) connects the Network to the Private Infrastructure,

as modified, upgraded or replaced from time to time.

**Consequential Loss** means:

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

but **Consequential Loss** does not include:

- (e) a loss (including a loss arising out of a Claim by a Third Party) in respect of:
  - (A) 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
  - (B) personal injury to or death of any person; or
  - (C) special loss or economic loss as those terms are used in the context of personal injury claims.

**Construction Agreement** means the agreement referred to in **clause 7.1(b)**.

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

**Design** means the design of the Connecting Infrastructure which is to be built by or on behalf of the Owner.

**Dispute** has the meaning given in **clause 20.1**.

**Dispute Notice** has the meaning given in **clause 20.1**.

**Emergency Response Plan** means the plan constituting the set of procedures developed by the Owner for dealing with an Incident which may impact on the Network or Connecting Infrastructure, including all actions to be taken to minimise or alleviate any threat or danger to any person or property:

- (a) as at the date of this Agreement being in the form set out in **Schedule 5**; and
- (b) as subsequently amended in accordance with **clause 12**.

**Environmental Harm** has the meaning given to that term in the *Environmental Protection Act 1994* (Qld).

**Expiry Date** means the date referred to in Item 2 of **Schedule 1**.

**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 which may, if paragraphs (a) and (b) of this definition are satisfied, include:

- (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, stoppage, go slow, labour disturbance or other such industrial action, whether or not the Parties are a party to industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) act of God;
- (f) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;

- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (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, earthquake, washaway, landslide, explosion or other catastrophe, epidemic and quarantine restriction; or
- (m) delay of a supplier due to any of the foregoing whether any such cause of delay exists before, at the time, or after the date of this Agreement.

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

**GST** means a tax in the nature of a supply or goods and services tax levied or imposed by the Commonwealth of Australia.

**GST Inclusive Reimbursement** is the amount calculated by the formula:

$$(A - C) \times (1 + B)$$

Where:

- A = the GST inclusive amount paid by QR Network for a Reimbursable Item
- B = the rate of GST (expressed as a decimal) applicable at the time the calculation is made
- C = any GST input tax credit that QR Network can claim in respect of that Reimbursable Item

**Incident** means any rollingstock derailment, rollingstock disablement or breakdown, accident, collision or any other unplanned occurrence which causes or could cause injury to any person, damage to property, or Environmental Harm or a disruption to or cancellation of any Train Service.

**Insolvency Event** means the happening of any of the following events in relation to the Owner:

- (a) it is unable to pay all of its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 business days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within one month;
- (d) the appointment of a liquidator, provisional liquidator, controller or receiver (as defined in the Corporations Act) in respect of it, or any of its assets, if that appointment is not revoked within 10 business days after it is made; or
- (e) it proposes to enter into, or enters into, any arrangement or composition with its creditors or any of them within the meaning of the Corporations Act.

**Interface Agreement** means an agreement between the Rail Infrastructure Manager of the Private Infrastructure and QR Network under section 59 of the TRSA and as defined in section 71 of the TRSA, entered into in accordance with **clause 12.9**.

**Interface Risk Assessment** means the assessment jointly undertaken by the Parties of the risks associated with the Owner's operations and the Private Infrastructure insofar as they interface with the Connecting Infrastructure, and the Network.

**Interface Risk Management Plan** means the plan jointly developed by the parties for managing the interface risks identified by the Interface Risk Assessment:

- (a) as at the date of this Agreement being in the form set out in **Schedule 5**; and
- (b) as subsequently amended in accordance with **clause 12**.

**Law** means any statute, ordinance, code, law, decree, order, circular, rule, direction or regulation by any Authorities whether now or at any time in the future.

**Maintenance Year** means each 12 month period (or part thereof) occurring during the term of this Agreement, with the first Maintenance Year commencing on and from the Commitment Date and ending on the next 30 June, and each subsequent Maintenance Year occurring from 1 July until the earlier of the next 30 June or expiry of this Agreement.

**Major Connection** means a connection between the Network and any one or more of the following:

- (a) another railway;
- (b) privately owned rail infrastructure servicing more than three Transfer Facilities; or
- (c) privately owned rail infrastructure servicing a maintenance or provisioning facility used by more than one user.

**MCI** means the Maintenance Cost Index for the relevant Maintenance Year, as approved by the Queensland Competition Authority under QR Network's Access Undertaking;

**Network** means that part of the network of rail transport infrastructure (as defined in the *Transport Infrastructure Act 1994* (Qld)) for which QR Network is the Accredited Rail Infrastructure Manager, as modified or upgraded from time to time, but excluding:

- (a) the Private Infrastructure, even if QR Network is the Rail Infrastructure Manager for the Private Infrastructure at any time; and
- (b) rail transport infrastructure for which QR Network is the Accredited Rail Infrastructure Manager but which is owned by a third party and connected under an agreement of similar nature to this Agreement.

**Party** means a party to this Agreement, and **Parties** means the parties to this Agreement.

**Private Infrastructure** means track and/or associated rail transport infrastructure owned by the Owner starting at the Connecting Infrastructure as shown on the Plan detailed in **Schedule 2**, and as modified or upgraded from time to time.

**Private Land** has the meaning given to that term in **clause 29.3**.

**QR Network Access Undertaking** means the access undertaking in respect of provision of access to the Network approved by the Queensland Competition Authority under the *Queensland Competition Authority Act 1997* (Qld) from time to time.

**QRN Party** means a Related Body Corporate of QR Network.

**Rail Infrastructure Manager** has the meaning given to that term in the TRSA.

**Reference Tariff** means an Access Charge (within the meaning of the QR Network Access Undertaking) approved by the Queensland Competition Authority as amended, varied or escalated in accordance with the QR Network Access Undertaking from time to time.

**Reimbursable Item** means an item of expense incurred by QR Network in respect of which QR Network is entitled under this Agreement to be reimbursed by the Owner for the cost of the item (subject to **clause 1.2(d)**).

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Responsible Entity** means the person responsible for the design, construction and project management of the Connecting Infrastructure in accordance with **clause 7.1(a)**.

**Security Amount** means the amount specified in Item 3 of **Schedule 1** as adjusted from time to time in accordance with **clause 23.2**.

**Senior Site Executive** means the senior site executive appointed in accordance with the *Mineral Resources Act 1989* (Qld).

**Train** means any configuration of rollingstock operating as a unit on the Network, Connecting Infrastructure and/or Private Infrastructure.

**Train Service** means the running of a Train between specified origins and destinations.

**Train Services Plan** means the document in **Schedule 4**, as amended from time to time.

**Transfer Facilities** means any coal loading facilities which utilise the Private Infrastructure and any alterations, additions and replacements of such facilities made by the Owner from time to time;

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

1.2 Unless expressed to the contrary:

- (a) words importing the singular include the plural and vice versa;
- (b) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes its legal personal representatives, successors and permitted assigns;
  - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) "\$" or "dollars" is a reference to the lawful currency of Australia;
  - (v) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties; and
  - (vi) a clause of the QR Network Access Undertaking is a reference to the QR Network Access Undertaking in force at the date of this Agreement and, if that clause is subsequently altered or replaced, the reference will be taken to be to the altered or replacement clause of the QR Network Access Undertaking;
- (c) where any Party comprises more than one person, then all of those persons together as well as each of them individually must comply with that Party's obligations under this Agreement; and
- (d) where under this Agreement the Owner is required to reimburse a cost to QR Network, the parties agree that QR Network will not be entitled to reimbursement of any costs incurred as a result of a breach of contract or negligence by QR Network.

## 2 SCOPE

Unless otherwise agreed between the parties, this Agreement will not apply to any Major Connection.

## 3 TERM

This Agreement commences on the Commencement Date and expires on the Expiry Date, subject to earlier termination in accordance with **clause 21**.

## 4 CHARGES, INVOICING AND PAYMENT

4.1 The Owner must pay to QR Network the following costs, fees and charges at the times and in the manner specified:

- (a) the Annual Service Charge;
- (b) the reasonable and prudent costs of the design, construction and commissioning of modifications to, or upgrade or replacement of, the Connecting Infrastructure in accordance with **clauses 7.5 and 7.6**, excluding any costs incurred under **clause 4.1(a)**;
- (c) the reasonable and prudent costs of decommissioning and removing the Connecting Infrastructure upon the expiry, or earlier termination in accordance with **clause 21**, of this Agreement so as to remove the connection between the Network and the Private Infrastructure and restore the affected section of the Network to a condition consistent with the adjacent sections of the Network; and
- (d) the costs of providing any other services or obligations to the Owner under this Agreement.

as adjusted in accordance with **clause 4.2**.

## 4.2

- (a) The amounts payable by the Owner under **clause 4.1** represent consideration for QR Network meeting all obligations under this Agreement including maintenance and inspection charges for the Connecting Infrastructure and administration of the Agreement. Such amounts will be escalated and reviewed in accordance with this Agreement or as otherwise agreed in writing by the Parties.
- (b) The amounts payable by the Owner under **clause 4.1** will be adjusted:
  - (i) if, in the resolution of a dispute notified in accordance with **clause 4.4** or and audit under **clause 4.5** an error in the levy, allocation or calculation for the activities set out in the Asset Management and Maintenance Plan is identified;
  - (ii) to the extent that an action set out in the Asset Maintenance and Management Plan for the prior Maintenance Year was not carried out in the prior Maintenance Year and QR Network does not plan to complete the action within the first six months of the following Maintenance Year;
  - (iii) if an action which had already been deferred to the prior Maintenance Year as contemplated by **clause 4.2(b)(ii)** was not carried out in the prior Maintenance Year; or
  - (iv) if the Parties have agreed in writing to such an adjustment.
- (c) If any amount attributable to the operating and maintenance costs of the Connecting Infrastructure is included in the cost build up for Reference Tariffs or otherwise included in access charges for access rights utilised by Train Services entering and/or exiting the Network via the Connecting Infrastructure, the Annual Service Charge will be reduced by that amount (subject to never being reduced to a negative amount).

## 4.3 QR Network must issue an invoice to the Owner for:

- (a) the Annual Service Charge for a Maintenance Year, at least 30 business days before the commencement of that Maintenance Year;
- (b) other costs payable under **clause 4.1** or other clauses of this Agreement, following the incurring of any such costs by QR Network provided that such invoices cannot be issued more regularly than monthly.

The Owner must pay the amount invoiced by QR Network within 20 business days after the Owner's receipt of the invoice. The other costs payable by the Owner under this Agreement are payable within 10 business days of receipt by the Owner of an invoice from QR Network in respect of such costs.

4.4 If the Owner disputes an amount or amounts claimed by QR Network in an invoice issued to the Owner, the Owner will, within 10 business days of the invoice being issued, give notice of that dispute to QR Network setting out in detail the grounds for the dispute, and the dispute will be resolved in accordance with **clause 20** of this Agreement. The Owner will pay the undisputed portion of the amount claimed in the relevant invoice on or before the due date for payment. Within 10 business days after the resolution of the dispute, an appropriate adjustment will be made between the Parties as required.

- (a) If the Owner fails to pay in full any costs, fees or charges payable by the Owner under this Agreement on or before the due date for payment (including any disputed amount which is subsequently determined to be payable by the Owner to QR Network), the Owner will be liable to pay interest on the outstanding amount at a rate of two per cent (2%) above the Commonwealth Bank of Australia's 'Reference Rate' for borrowers with overdrafts of \$100,000 or more as published in the Australian Financial Review from time to time whilst such amounts remain outstanding or, if such 'Reference Rate' is not so published, at a rate reasonably specified by QR Network.
- (b) Interest payable under **clause 4.4(a)** will be calculated on daily balances on the amounts outstanding from the date for payment of the amount until such amount, together with interest thereon, has been paid in full. All interest accrued but unpaid at the end of each day (or such longer period as specified by QR Network) will itself bear interest.

4.5 The Owner may at any time (and from time to time) require that an audit is undertaken of the costs, fees and charges referred to in **clause 4.1** for the purpose of verifying that the costs, fees and charges invoiced to the Owner have been properly allocated to the Owner. If the Owner requires such an audit is undertaken:

- (a) the audit must be carried out by a person agreed by the Parties (or failing agreement nominated by the President for the time being of CPA Australia Limited) who is appropriately skilled and qualified to carry out the audit, is impartial and has undertaken to be bound by reasonable duties of confidence, if so required by either the Owner or QR Network;
- (b) the Owner must bear the costs of the audit;
- (c) QR Network must make available such information as is reasonably required by the auditor; and
- (d) promptly following completion of the audit, the results of the audit (which must include findings as to whether the Owner has been invoiced the correct amounts and, if not, the financial adjustment required to rectify that error) will be made available to QR Network and the Owner.

## **5 GST**

### 5.1

- (a) Unless otherwise stated, all amounts payable or other consideration to be provided under this Agreement are exclusive of GST.
- (b) If QR Network is required to pay GST on any amount payable or other consideration to be provided under this Agreement then, subject to **clause 5.1(e)**, the Owner must pay to QR Network the amount of that GST on the same date as the payment giving rise to the GST.
- (c) If the supply of a Reimbursable Item under this Agreement is subject to GST, the Owner must pay QR Network in respect of that Reimbursable Item the GST Inclusive Reimbursement.
- (d) All invoices prepared pursuant to this Agreement will take the form of a tax invoice.
- (e) If a dispute between QR Network and the Owner arises out of or in connection with this **clause 5.1**, then either Party will give to the other Party a notice of dispute in writing adequately identifying and providing details of the dispute. If the dispute has not been resolved within 10 business days after service of a notice of dispute, the dispute must be referred for determination by an expert in accordance with **clause 20.4**.

## **6 ACCESS TO OPERATE ROLLINGSTOCK ON PRIVATE INFRASTRUCTURE, NETWORK AND CONNECTING INFRASTRUCTURE**

6.1 This Agreement does not constitute an agreement between the Parties for:

- (a) access by QR Network or any third party to operate rollingstock on the Private Infrastructure; or
- (b) access by the Owner or any third party to operate rollingstock on the Network or the Connecting Infrastructure.

6.2 Arrangements for access to operate rollingstock on the Private Infrastructure, the Network and/or the Connecting Infrastructure will be the subject of a separate agreement or agreements between the relevant entities.

## **7 CONNECTING INFRASTRUCTURE**

### 7.1

- (a) Within 10 business days of receiving notice in writing that the Owner wishes to proceed with the



Connecting Infrastructure, QR Network will, by notice in writing to the Owner, advise that:

- (i) QR Network will design, construct, project manage and commission the Connecting Infrastructure; or
- (ii) QR Network will:
  - A. engage the Owner to design, construct and project manage the Connecting Infrastructure on behalf of QR Network; and
  - B. commission the Connecting Infrastructure.

If a notice is not given in accordance with this **clause 7.1(a)**, QR Network will be taken to have given a notice under **clause 7.1(a)(i)**.

- (b) The Responsible Entity will design, construct and project manage the Connecting Infrastructure, and QR Network will commission the Connecting Infrastructure, at the Owner's expense, in accordance with clauses 8.3(a)(i)-(iii) of the QR Network Access Undertaking and the terms of the separate construction agreement between the Parties (**Construction Agreement**).
- (c) Subject to the provisions of the Construction Agreement:
  - (i) QR Network must give the Owner a reasonable period within which to provide comments to QR Network on any design or construction matters, or project management issues which the Owner considers will result in non-prudent or unreasonable costs or delays being incurred;
  - (ii) any dispute in relation to the negotiation of the Construction Agreement which relates to a matter which the QR Network Access Undertaking provides for the parties to have a right to resolve via the dispute provisions in the QR Network Access Undertaking, will be resolved in accordance with the QR Network Access Undertaking;
  - (iii) the Responsible Entity must give the other Party written notice of completion of the construction of the Connecting Infrastructure;
  - (iv) Upon completion of the construction of the Connecting Infrastructure, QR Network will provide to the Owner an estimate of the further time required for commissioning and other activities that QR Network will need to undertake before the Connecting Infrastructure will be available for utilisation by Train Services.
  - (v) if the Owner is the Responsible Entity, and if necessary to enable the Owner to plan, design and otherwise carry out the construction of the Connecting Infrastructure, QR Network must, following a written request from the Owner and at the Owner's expense, promptly provide all assistance reasonably requested by the Owner, at the Owner's Cost, so that the Connecting Infrastructure satisfies the minimum technical, engineering and safety standards required to connect the Private Infrastructure to the Network, including:
    - A. the provision of technical and engineering information in relation to the Network, including all information relating to the design specifications, infrastructure and safety standards and scope of the rail infrastructure to which the Private Infrastructure will connect;
    - B. providing details of any planned upgrades to the section of the Network which the Private Infrastructure is proposed to connect, which would reasonably have an impact on the operation of Train Services using the Connecting Infrastructure including any planned or anticipated upgrades or augmentation of the Network;
    - C. reasonable access to employees, agents or officers of QR Network who have knowledge of the Network, in particular of the matters identified in this **clause 7.1(c)(v)**.
  - (vi) If the Owner requests information under **clause 7.1(c)(v)**, QR Network may as a precondition require that the Owner enter into a Confidentiality Deed in relation to the information requested under such reasonable and prudent terms as QR Network may in its absolute discretion see fit.

7.2 For the avoidance of doubt, QR Network:

- (a) shall own the Connecting Infrastructure; and
- (b) shall not remove, relocate or part with possession of the Connecting Infrastructure except as expressly permitted in this Agreement.

7.3 QR Network will inspect the Connecting Infrastructure in accordance with the Asset Maintenance and Management Plan to assess the state of repair of the Connecting Infrastructure.

7.4 QR Network will maintain and repair the Connecting Infrastructure to the standard required to maintain the connection between the Network and the Private Infrastructure in accordance with the Asset Maintenance and Management Plan.

7.5 At any time QR Network may require modifications or upgrades to, or replacement of, the Connecting Infrastructure, but only to the extent that such modifications, upgrades or replacement are reasonably required so that the Connecting Infrastructure:

- (a) does not have an adverse impact on safety;
- (b) meets the technical specifications reasonably required by QR Network for connection to the Network;
- (c) is of a standard appropriate to the nature of the traffic and the service standards of the adjoining parts of the Network applicable from time to time; and
- (d) does not, by virtue of its existence, reduce Capacity or Supply Chain Capacity (as those terms are defined in the QR Network Access Undertaking),

and provided that the Connecting Infrastructure is not required to be of a standard or to be of any condition which exceeds the standards and condition of the parts of the Network which are to be used by Train Services which QR Network anticipates will enter and/or exit the Network via the Connecting Infrastructure from time to time.

7.6 QR Network will give to the Owner, in writing, reasonable details of any modifications, upgrades or replacement that it requires to be made to the Connecting Infrastructure under **clause 7.5**, and thereafter provide the Owner with a reasonable opportunity to consult with QR Network about the proposed modifications, upgrades or replacements. If after consulting with the Owner QR Network considers that it is required to carry out, or cause to be carried out, those modifications, upgrades or replacement it will give the Owner a written notice (including full details) and carry out or cause to be carried out that work at the Owner's cost (subject to the Owner's right to dispute). The Owner may dispute the amount or the Owner's share of the costs payable in respect of any modifications, upgrade or replacement, but not the scope of work and/or who QR Network chooses to carry out the work.

7.7 The Parties acknowledge that the construction and commissioning of modifications or upgrades to, or replacement of, the Network or Connecting Infrastructure, and the maintenance or repair of the Network or Connecting Infrastructure, may cause disruption to Train Services which cannot reasonably be avoided. Except in the case of emergencies, QR Network will:

- (a) give the Owner reasonable prior written notice of any such works and any reasonably expected disruptions; and
- (b) minimise any expected disruptions insofar as it is reasonably practicable to do so.

7.8 QR Network will, upon reasonable notice to the Owner and the Rail Infrastructure Manager of the Private Infrastructure (to the extent it is not the Owner or QR Network), be entitled to enter and remain upon the Private Infrastructure, with such workmen and machinery as may be necessary, to the extent reasonably necessary to exercise its rights, and fulfil its obligations in relation to maintenance and repair of the Connecting Infrastructure, under this Agreement. QR Network must, and must procure that any persons it authorises to access the Connecting Infrastructure, comply with the requirements of **clause 29** in relation to access to Private Land.

## **8 MAINTENANCE OF AND MODIFICATION OR UPGRADE TO PRIVATE INFRASTRUCTURE**

- 8.1 QR Network may require modifications or upgrades to be made to the Private Infrastructure to the extent that such modifications or upgrades are reasonably required to rectify non-compliance with the standard described at **clause 8.4**.
- 8.2 Any modifications or upgrades to the Private Infrastructure required by QR Network will be carried out by or on behalf of the Owner at the Owner's cost, and will in all respects comply with the minimum technical, engineering and safety standards that would be expected of a competent Accredited Rail Infrastructure Manager, as determined by an independent appropriately qualified person acceptable to both Parties (or failing agreement by the President for the time being of Engineers Australia, Queensland Division).
- 8.3 The Owner will carry out, or cause to be carried out, the construction and commissioning of any modifications or upgrades to the Private Infrastructure in such a way as to minimise the disruption to Train Services insofar as it is reasonably practicable to do so.
- 8.4 The Owner will, at its cost, at all times ensure that the Private Infrastructure is designed, constructed, operated and maintained and any future modifications are designed and constructed to a standard which:
- (a) satisfies the minimum technical, engineering and safety standards that would be expected of a competent Accredited Rail Infrastructure Manager in accordance with all applicable laws and standards;
  - (b) enables the Train Services specified in the Train Services Plan to fully depart the Network and run onto the Private Infrastructure, or to fully depart the Private Infrastructure and run onto the Network, at the speed for which the relevant sections of the Network operate from time to time, and without causing any obstruction to the Network;
  - (c) maintains the integrity of all electrical, signalling and telecommunications interfaces between the Private Infrastructure and the connecting sections of the Network (including the Connecting Infrastructure);
  - (d) maintains the integrity of any weighbridge or overload detector on the Private Infrastructure; and
  - (e) does not have an adverse impact on the safety or operation of the Connecting Infrastructure or the Network.
- 8.5 The Owner must ensure that all Trains that depart the Private Infrastructure and enter the Network comply with CLMP.
- 8.6 If the Owner reaches an arrangement with QR Network for QR Network to carry out the design construction and/or maintenance of the Private Infrastructure, that arrangement will be the subject of a separate written agreement between the Parties.
- 8.7 The Owner will, provide to QR Network all information collected by any weighbridge or overload detector which is located on the Private Infrastructure before departing the Transfer Facilities, or at such other intervals and in such manner as specified in writing by QR Network from time to time.
- 8.8 The Owner will, in relation to the Private Infrastructure, provide to QR Network, in a form reasonably requested by QR Network from time to time, all electrical, signalling and telecommunications information required by QR Network to manage and operate the Network (including the Connecting Infrastructure and all Trains entering or running on the Network).

8.9 QR Network may, and the Owner must permit QR Network to, have reasonable access to inspect (from time to time) the connecting sections of the Private Infrastructure and any construction or maintenance of those connecting sections of the Private Infrastructure, in relation to the Owner's compliance with this **clause 8**. QR Network will:

- (a) give the Owner reasonable notice of any such inspection, except in an emergency when QR Network must give as much notice as is practicable in the circumstances; and
- (b) at all times comply with the requirements of **clause 29** in relation to access to Private Land, including in the event of an emergency.

8.10 The Owner will be responsible for all electrical safety obligations for the Private Infrastructure.

## **9 SAFETY TRAINING**

The Owner will cause all employees, agents and independent contractors of the Owner who are, or may be, required to work on, or in the immediate vicinity of, the Network or Connecting Infrastructure to attend trackside safety training and other applicable safety training prior to commencing such work. QR Network will provide such training as and when reasonably required by the Owner, at the cost of the Owner, upon reasonable notice by the Owner to QR Network.

## **10 ACCREDITATION REQUIREMENTS**

10.1 The Owner must be Accredited, or procure another person or entity to be Accredited, as the Rail Infrastructure Manager for the Private Infrastructure prior to the Commitment Date.

10.2 The Owner must:

- (a) maintain its Accreditation and comply with all conditions of its Accreditation prior to the Commitment Date and thereafter until the Expiry Date; or
- (b) if the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation and complies with all conditions of its Accreditation prior to the Commitment Date and thereafter until the Expiry Date; and
- (c) notify QR Network immediately if at any time during the term of this Agreement the Rail Infrastructure Manager for the Private Infrastructure ceases to be Accredited in respect of the Private Infrastructure.

10.3 QR Network must:

- (a) be Accredited as the Rail Infrastructure Manager for the Connecting Infrastructure and the Network prior to the Commitment Date and thereafter until the Expiry Date; and
- (b) notify the Owner immediately if, at any time during the term of this Agreement, it has ceased to be Accredited in respect of the Connecting Infrastructure or the Network.

## **11 EXCHANGE OF SAFETY INFORMATION**

11.1 This **clause 11** applies where the Owner is the Rail Infrastructure Manager for the Private Infrastructure or has contracted an entity other than QR Network to do so.

- 11.2 If the Owner intends to act as, or contract an entity other than QR Network to act as, the Rail Infrastructure Manager for the Private Infrastructure, the Owner must notify QR Network of that intention no less:
- (a) where such an entity will be the Rail Infrastructure Manager for the Private Infrastructure on the Commitment Date, 180 days prior to the Commitment Date; or
  - (b) where such an entity will become the Rail Infrastructure Manager for the Private Infrastructure subsequently to the Commitment Date, 180 days prior to the date on which they are scheduled to become the Rail Infrastructure Manager.
- 11.3 The Parties must collaborate with each other for the purpose of the development, management and continuous improvement of all safety matters relating to the interface between the Private Infrastructure and the Network, including:
- (a) implementing and maintaining measures for managing interface and safety risks;
  - (b) evaluating, testing and, if necessary, revising of those measures;
  - (c) identifying accountabilities, authorities and reporting requirements of each party, including safety requirements; and
  - (d) monitoring compliance of the obligations of the Parties.
- 11.4
- (a) As required by the Owner or QR Network (Requesting Party), the other entity (Providing Party) must provide the Requesting Party (and all other personnel nominated by the Requesting Party) with the latest published versions of all documents relating to the following interface matters that may occur, or have an impact, on the interface between the Private Infrastructure and the Network:
    - (i) procedures for managing notifiable occurrences or reportable incidents;
    - (ii) interface risk management plans;
    - (iii) where QR Network is the Providing Party, changes to rail infrastructure standards of that section of the Network the Private Infrastructure connects to;
    - (iv) where QR Network is the Providing Party, Network operating requirements and operating procedures that are relevant to the operation of the Connecting Infrastructure;
    - (v) emergency response plans;
    - (vi) rollingstock standards;
    - (vii) train operating protocols;
    - (viii) planning and management of possessions; and
    - (ix) communications protocols.

- (b) This **clause 11** does not require the provision of any information to the extent that the QR Network is obligated to provide the information to the Owner or Operator under another agreement.
- (c) Each Party must participate in the development of interface risk management planning activities reasonably required by the other Party.

11.5 Any costs incurred by QR Network in complying with this **clause 11** shall be recoverable from the Owner.

## 12 INTERFACE RISK ASSESSMENT AND EMERGENCY RESPONSE PLAN

- 12.1 If at any time during the term of this Agreement either Party has reasonable grounds to believe that the then current Interface Risk Management Plan is no longer effective in managing the interface risks, the Parties will meet to jointly review the Interface Risk Management Plan (including conducting a revised Interface Risk Assessment to the extent considered necessary) to ensure all interface risks, including any risks which have arisen subsequently to the Interface Risk Management Plan being agreed, are effectively managed.
- 12.2 If the Parties are unable to agree on any aspects of the Interface Risk Assessment or the Interface Risk Management Plan, either Party may give a Dispute Notice to the other Party and the Dispute will be referred to an expert for resolution in accordance with **clause 20.4**. The Parties agree that the expert for the purposes of this **clause 12.2** and **clause 20.4(a)** will be the Queensland Rail Safety Regulator. If the Queensland Rail Safety Regulator refuses or is unable (for any reason whatsoever) to determine the Dispute, the expert will be appointed by the President for the time being of Engineers Australia, Queensland Division.
- 12.3 If, after a review pursuant to **clause 12.1** or **12.2**, the Parties agree or an expert determines that the Interface Risk Management Plan requires amendment to effectively manage the interface risks, the plan will be so amended and the amended plan will be taken to be the Interface Risk Management Plan.
- 12.4 The Owner must prior to the Commitment Date prepare, and thereafter during the term of this Agreement maintain, an Emergency Response Plan reasonably satisfactory to QR Network, relating to Incidents that impact on, or impact operations on, the Connecting Infrastructure and/or the Network. The Owner will incorporate any findings arising from the joint review conducted pursuant to **clause 12.1** or an investigation pursuant to **clause 12.8** into the Emergency Response Plan or Interface Risk Management Plan (as applicable) as soon as possible.
- 12.5 The Owner must at all times comply with the Emergency Response Plan and the Interface Risk Management Plan, and must ensure that its officers, employees, agents and independent contractors (including any Rail Infrastructure Manager for the Private Infrastructure that is not QR Network) also comply.
- 12.6 The Owner must not cause or permit any obstructions on the Connecting Infrastructure or the Network except where otherwise agreed with QR Network.
- 12.7 If an Incident arises on the Private Infrastructure and impacts on the Connecting Infrastructure or the Network, QR Network will be responsible for the overall coordination and management of the response to the Incident (including notifying all relevant emergency services) and the Owner must cooperate (and must procure that the Rail Infrastructure Manager for the Private Infrastructure if it is not QR Network cooperates) with and assist QR Network in responding to the Incident, including action in respect of recovery of rollingstock and repairs to the Connecting Infrastructure or the Network and, where necessary, permit QR Network to enter and remain upon the Private Infrastructure (subject to compliance with **clause 29.3(a)**), with such workmen and machinery as may be necessary, to enable prompt recommencement of Train movements.
- 12.8 Where an Incident arising on the Private Infrastructure impacts on the Connecting Infrastructure or the Network:
- (a) an investigation into the Incident will be commenced as soon as practicable unless otherwise agreed;

- (b) such investigation will be conducted in the manner and by the persons prescribed by QR Network from time to time
- (c) each Party must cooperate and ensure their respective staff cooperate fully with any investigation, and will ensure that any such investigation has ready, full and free access to all relevant files, documents, employees (including the taking of statements), equipment, copies of train graphs, voice recordings, data log recordings, maintenance records and any other information which may be relevant to any investigation. All such information will be treated as confidential; and
- (d) each Party will consult with the other in relation to the implementation of any recommendations arising from an investigation.

12.9 If the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, then the Owner must procure that:

- (a) prior to the Commitment Date; and
- (b) prior to the appointment of any new Rail Infrastructure Manager for the Private Infrastructure, the existing or new (as applicable) Rail Infrastructure Manager for the Private Infrastructure enters into an Interface Agreement.

12.10 To the extent that the Rail Infrastructure Manager for the Private Infrastructure has not entered an Interface Agreement in accordance with **clause 12.9**, QR Network may suspend, until such an Interface Agreement is entered, some or all of the Owner's rights under this Agreement and the running of Train Services across the Connecting Infrastructure by giving written notice to the Owner of the extent of rights being suspended.

### 13 TRAIN CONTROL

13.1 QR Network is responsible for the scheduling and control of all Train movements entering and exiting the Private Infrastructure.

13.2 QR Network may, in its absolute discretion, not schedule Trains to and from the Private Infrastructure if:

- (a) QR Network is notified by the Owner of any of the circumstances under **clause 14.1**;
- (b) the Owner is in breach of any of its obligations under **clause 8.4** or **clause 8.5**; or
- (c) the Rail Infrastructure Manager for the Private Infrastructure has not entered into an Interface Agreement with QR Network, or such agreement is suspended or terminated; or
- (d) the Rail Infrastructure Manager for the Private Infrastructure ceases to be Accredited in respect of the Private Infrastructure.

13.3 Subject to its rights under **clause 13.2**, any Access Agreement in respect of Train Services utilising the Connecting Infrastructure and its obligations under the network management principles in the QR Network Access Undertaking, QR Network must use its reasonable endeavours to schedule Train movements to and from the Private Infrastructure in accordance with Schedule G of the QR Network Access Undertaking.

13.4 The Owner must, or must procure that any contracted Rail Infrastructure Manager for the Private Infrastructure that is not QR Network must, co-operate with QR Network to seek to achieve the scheduling outcomes described in **clause 13.3** and comply with directions of QR Network's train controllers regarding entry to and exit from the Connecting Infrastructure.

## **14 NOTIFICATION OF MATTERS AFFECTING THE PRIVATE INFRASTRUCTURE, CONNECTING INFRASTRUCTURE, OR NETWORK**

- 14.1 The Owner (or its contracted Rail Infrastructure Manager for the Private Infrastructure) will verbally advise the QR Network contact specified in Item 6 of **Schedule 1** immediately upon becoming aware of any circumstances which:
- (a) make it unsafe to schedule Trains onto the Private Infrastructure, or have affected, or could potentially affect, the security or safety of the Private Infrastructure or persons or property on or near the Private Infrastructure;
  - (b) have affected, or could potentially affect, the ability of any Train Service to conform with its scheduled time;
  - (c) could cause, or has caused, an Incident or a Claim involving Train Services or an obstruction on the Network, Connecting Infrastructure or Private Infrastructure (including overloading on any Train Service);
  - (d) a Train Service entering or exiting the Private Infrastructure does not comply with the Train Services Plan;
  - (e) if coal is loaded and shipped from the Private Infrastructure onto the Network, constitutes, or could constitute, a breach of the CLMP; or
  - (f) constitute, or could constitute, a breach of the Owner's Emergency Response Plan.
- 14.2 Such verbal notification must be confirmed in writing by the Owner (or its contracted Rail Infrastructure Manager for the Private Infrastructure) as soon as practicable thereafter, where the circumstance notified is relevant to QR Network's management and operation of the Network or Connecting Infrastructure.
- 14.3 If coal is loaded and shipped from a Transfer Facility utilising the Private Infrastructure onto the Network, the Owner must comply with the reporting obligations in the CLMP.

## **15 NO REQUIREMENT TO TAKE ACTION JEOPARDISING ACCREDITATION**

Nothing in this Agreement will be interpreted as requiring QR Network or the Accredited Rail Infrastructure Manager for the Private Infrastructure (whether or not the Owner) to, in the performance of their respective roles as Accredited Rail Infrastructure Managers for the Network, Connecting Infrastructure and Private Infrastructure, take any action which would be likely to result in the suspension or revocation of their Accreditation.

## **16 TRAIN SERVICES PLAN AND ANNUAL MAINTENANCE AND MANAGEMENT PLAN**

- 16.1 The Train Services Plan and Annual Maintenance and Management Plan will be jointly determined by QR Network and the Owner to match the design and use of the Connecting Infrastructure over time and may be amended:
- (a) with the agreement of the Parties; or
  - (b) in accordance with this **clause 16**.
- 16.2 The Train Services Plan must specify the number, type, cargo, length and other characteristics of Trains running to and from the Private Infrastructure over the life of the Connecting Infrastructure.



- 16.3 The Annual Maintenance and Management Plan must specify the reasonable and prudent maintenance, inspection, renewals, administration and other works required to be carried out (and the respective non-escalated budgeted costs) for each Maintenance Year over the life of the Connecting Infrastructure, to enable it to support the Train Services Plan, Train Services entering and exiting the Private Infrastructure or Train Services utilising the Network.
- 16.4 If at any time the Owner wishes to vary the number, type, cargo, tonnages or other characteristics of Trains running to and from the Private Infrastructure such that the details contained in the most recent Train Services Plan are now incorrect, the Owner will deliver to QR Network, 60 business days prior to the planned change, a proposed Train Services Plan for future train services.
- 16.5 Upon receipt of an updated Train Services Plan, QR Network will, acting reasonably and prudently and in consultation with the Owner, within 40 business days review the proposed Train Services Plan and the Annual Maintenance and Management Plan and to the extent necessary to ensure compliance with the terms of this Agreement, develop an amended Train Service Plan and amended Annual Maintenance and Management Plan.
- 16.6 The Owner may, within 10 business days after receipt of QR Network's advice in writing, dispute the changes to the Train Services Plan and/or Annual Maintenance and Management Plan. Such a dispute will be resolved in accordance with **clause 20** of this Agreement.

## 17 **FORCE MAJEURE EVENT**

- 17.1 If by reason of a Force Majeure Event either Party is delayed in or prevented from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to make any payment) then the obligations of that Party will be suspended during that time and to the extent that performance of such obligations is prevented or hindered by the Force Majeure Event.
- 17.2 A Party which is by reason of a Force Majeure Event unable to perform any obligation under this Agreement must:
- (a) notify the other Party as soon as reasonably practicable of the occurrence of the Force Majeure Event and its proposed course of action to remedy or abate the Force Majeure Event;
  - (b) use all reasonable diligence to remedy or abate the Force Majeure Event (provided that no Party will be obliged to settle any strike, lockout or other labour dispute on terms not reasonably acceptable to it); and
  - (c) resume performance, or partial performance, as soon as reasonably practicable.

## 18 **OWNER INSURANCE**

- 18.1 The Owner must, at its expense, take out and subsequently maintain current at all times during the Term, or procure the Rail Infrastructure Manager for the Private Infrastructure to take out and subsequently maintain current at all times during the Term, insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in **Schedule 3**.
- 18.2 Prior to the Commitment Date and then as soon as reasonably practicable after a written request is made by QR Network to the Owner, the Owner must provide to QR Network a certificate of currency effected pursuant to this **clause 18** and when requested in writing a copy of such policy.
- 18.3 The Owner must in respect of any Claims by it or any other insured for which it is responsible, pay all excesses/deductibles provided for in any insurances effected in accordance with this Clause.
- 18.4 The Owner will not do, or suffer to be done, anything whereby any policy of insurance required to be maintained by the Owner will be or become void or voidable.

18.5 Within three months of every third anniversary of the Commencement Date QR Network will review the adequacy of the sum insured specified in **Schedule 3**. If, in QR Network's sole discretion but acting reasonably, QR Network is of the view that the sum insured is not adequate, then QR Network will by notice advise the Owner of that amount which it requires to be the new sum insured, and the Owner will adjust accordingly all policies held pursuant to this Clause.

## 19 QR NETWORK INSURANCE

19.1 QR Network must, at its expense, take out and subsequently maintain current at all times during the Term, insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in **Schedule 3**.

19.2 Prior to the Commitment Date and then as soon as reasonably practicable after a written request is made by the Owner to QR Network, QR Network must provide to the Owner certificate of currency effected pursuant to this **clause 19** and when requested in writing a copy of such policy.

19.3 QR Network must in respect of any Claims by it or any other insured for which it is responsible, pay all excesses/deductibles provided for in any insurances effected in accordance with this Clause.

19.4 QR Network will not do, or suffer to be done, anything whereby any policy of insurance required to be maintained by QR will be or become void or voidable.

## 20 DISPUTES

20.1 If any claim, dispute, disagreement or question (**Dispute**) arises between the Parties under this Agreement, then either Party may give to the other Party a notice in writing (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with:

- (a) in the manner set out in this **clause 20**; or
- (b) where the dispute relates to a matter which the QR Network Access Undertaking provides for the parties to have a right to resolve via the dispute provisions in the QR Network Access Undertaking, in the manner set out in the QR Network Access Undertaking.

20.2 Within 5 business days of the date of the Dispute Notice any Dispute (other than those to be dealt with under the QR Network Access Undertaking pursuant to **clause 20.1(b)**) will be referred to the Chief Executive Officer of QR Network (or his nominee) and the Chief Executive Officer (or equivalent) of the Owner (or his nominee) for resolution. Failing such resolution within 10 business days, the relevant Dispute may be referred by either Party to an expert in accordance with this **clause 20**.

20.3 The Parties will seek to agree on the expert to be appointed, and failing agreement within 10 business days of referral of the Dispute to an expert, the expert will be appointed by:

- (a) in the case of what the Parties agree are financial matters, the President for the time being of CPA Australia Limited;
- (b) in the case of what the Parties agree are nonfinancial matters, the President for the time being of Engineers Australia, Queensland Division; and
- (c) in the case of what the Parties agree are combined financial and non-financial matters, where the Parties cannot agree on the appropriate categorisation of a matter or where the Parties agree that it is appropriate, by the President for the time being of the Queensland Law Society Incorporated.

20.4 Where a Party refers a Dispute to an expert for resolution, the following provisions will apply:

- (a) The Parties will agree on the expert to be appointed, and failing agreement within 10 business days of referral of the Dispute to an expert, the expert will be appointed in accordance with **clause 20.3**.
- (b) The expert will have appropriate qualifications and practical experience having regard to the nature of the Dispute, have no interest or duty which conflicts or may conflict with his function as expert, and will not be an employee of the Owner or QR Network or a Related Body Corporate of either Party;
- (c) The expert will have regard to the provisions of this Agreement and will:
  - (i) have the power to inform himself independently as to the facts and if necessary technical and/or financial matters to which the Dispute relates;
  - (ii) consult with such other professional qualified persons as he in his absolute discretion thinks fit; and
  - (iii) consider oral and/or written submissions from the Parties as to the subject matter of the Dispute, but not be bound by the rules of evidence;
- (d) The Parties will upon request by the expert, provide or make available to the expert:
  - (i) all information in their possession or control; and
  - (ii) all assistance,  
that the expert may reasonably require;
- (e) The expert will be required to provide both Parties with a copy of his determination within a reasonable time after his appointment;
- (f) The expert appointed will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties. In any dispute dealt with pursuant to this **clause 20**, any financial records of QR Network required to assist the determination of the dispute must be supplied to the expert only and will not be available to the Customers. The expert's determination must not include details of QR Network's financial records but may contain conclusions based on the expert's assessment of QR Network's financial records;
- (g) Any person nominated as an expert hereunder will be deemed to be and will act as an expert and not an arbitrator, and the law relating to arbitration will not apply to him or his determination or the procedures by which he may reach his determination;
- (h) In the absence of manifest error the determination of the expert will be final and binding upon the Parties; and
- (i) The costs of the expert and any advisors will be borne by the Parties in such proportion as determined by the expert.

## 21 TERMINATION AND SUSPENSION

21.1 Without prejudice to any other rights of QR Network and subject to **clause 21.2**, QR Network may terminate this Agreement by notice to the Owner, upon the occurrence of any one or more of the following events or circumstances:

- (a) the Owner:

- (i) abandons, terminates or permanently ceases operation of a part of the Private Infrastructure that prevents Train Services from wholly entering and exiting the Network in a manner that does not disrupt or impede the operation of the Network; or
  - (ii) there are no entities holding access rights or seeking access rights to the Network in respect of Train Services utilising (or proposed to utilise) the Connecting Infrastructure to enter and/or exit the Network and the Owner fails to satisfy QR Network, within 20 business days after notice from QR Network, that there is likely to be any continuing use of the connection of the Private Infrastructure to the Network;
- (b) the Owner fails to pay when due any amount payable under this Agreement, and such default continues for 20 business days after notice from QR Network demanding payment of the outstanding amount;
  - (c) the Owner is in default of its obligation to establish or to maintain a security as required under **clause 23**, and such default continues for 20 business days after notice from QR Network of such default;
  - (d) the Owner is in default of its obligation to maintain insurance in accordance with **clause 18** of this Agreement, and such default continues for 20 business days after notice from QR Network to the Owner of the default;
  - (e) an Insolvency Event occurs in relation to the Owner;
  - (f) the Owner, and if the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, the Rail Infrastructure Manager for the Private Infrastructure, fails, in any material respect, to comply with the Emergency Response Plan, the Interface Risk Management Plan or the Interface Agreement (as applicable) or any relevant laws, and that default is not remedied within 20 business days after notice from QR Network to the Owner of the default;
  - (g) the Owner fails to comply with:
    - (i) **clause 10** (Accreditation Requirements), including, if the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, where the Owner fails to ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation or complies with all conditions of its Accreditation; or
    - (ii) **clause 8.4** (Construction and Maintenance Standards),  
and such default continues for 20 business days after notice from QR Network to the Owner of the default;
  - (h) QR Network permanently closes the section of the Network to which the Connecting Infrastructure connects;
  - (i) the Owner conducts activities which cause or contribute to Environmental Harm on the Connecting Infrastructure or the Network and does not remedy the Environmental Harm (to the extent caused or contributed to by the Owner) within 20 business days after notice from QR Network to remedy the Environmental Harm;
  - (j) the Owner is in default of the due performance of any other material obligation under this Agreement and the Owner has not remedied the default within 10 business days after notice from QR Network specifying the nature of such default and requiring such default to be remedied; or
  - (k) the termination of any agreement to which QR Network and the Owner are parties to the extent they have agreed that termination of that agreement should result in termination of this Agreement.

- 21.2 QR Network may not terminate this Agreement under **clause 21.1** to the extent that the right to terminate is the subject of a bona fide dispute between the Parties pursuant to **clause 20** or the QR Network Access Undertaking that has not been resolved in favour of QR Network having the right to terminate this Agreement.
- 21.3 Without prejudice to any other rights of the Owner, the Owner may terminate this Agreement by notice to QR Network if QR Network is in default of the due performance of any material obligation under this Agreement and QR Network has not remedied the default within 20 business days after notice from the Owner specifying the nature of such default and requiring such default to be remedied.
- 21.4 At any time after the expiry or earlier termination of this Agreement for any reason whatsoever, QR Network may, in its absolute discretion, remove the Connecting Infrastructure.
- 21.5 Upon termination of this Agreement QR Network and the Owner will be released from all further obligations or liabilities under this Agreement except in respect of any antecedent breach of this Agreement on their respective parts or obligations intended to survive termination (including, without limitation, the Owner's obligations under **clause 4.1(c)**). Any liability in respect of such antecedent breach will be limited in the manner provided in this Agreement.
- 21.6 Subject to **clause 21.7**, upon the occurrence of an event or circumstance which would entitle QR Network to terminate this Agreement under **clause 21.1** either immediately or upon the expiration of a remedy period, QR Network may immediately, and prior to the expiration of any applicable remedy period under **clause 21.1**, suspend some or all of the Owner's rights under this Agreement, including the running of Trains across the Connecting Infrastructure, by giving a notice in writing to the Owner. QR Network must include in the notice:
- (a) details of the proposed or likely period of suspension;
  - (b) the reasons for the suspension; and
  - (c) the actions the Owner must take to have the suspension lifted; and
  - (d) the particular rights which have been suspended.
- 21.7 Without limiting **clause 21.6**, any suspension under the CLMP will operate to suspend this Agreement until the cessation of the suspension under the CLMP.
- 21.8 Except in relation to safety and environmental matters, or a failure to comply with CLMP, any suspension occurring under **clause 21.6** will cease to the extent that the right to terminate which provided the grounds for suspension becomes the subject of a bona fide dispute between the Parties pursuant to **clause 20** or the QR Network Access Undertaking unless and until such dispute is resolved in favour of QR Network having the right to suspend the Owner's rights under this Agreement.
- 21.9 If the Connecting Infrastructure or the Network is damaged or destroyed by a Force Majeure Event and, in QR Network's reasonable opinion, the cost of repairing such damage or replacing the Connecting Infrastructure or the Network is not economic and the Owner is not willing to pay such rectification costs, QR Network may by written notice advise the Owner of its intention to not repair or replace the relevant part of the Connecting Infrastructure or the Network and thereupon terminate this Agreement unless the Owner elects to pay, and does in fact pay, the cost of repairing or replacing the relevant part of the Connecting Infrastructure or the Network.
- 21.10 If the Private Infrastructure is damaged or destroyed by a Force Majeure Event and, in the Owner's reasonable opinion, the cost of repairing such damage or replacing the Private Infrastructure is not economic, the Owner may by written notice advise QR Network of its intention to not repair or replace the Private Infrastructure and thereupon terminate this Agreement.

## 22 ASSIGNMENT

22.1 The Owner will not assign or transfer or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of QR Network, which will not be unreasonably withheld where the assignee is:

- (a) financially sound having regard to the obligations which are to be assumed; and
- (b) otherwise capable of performing the obligations of the Owner under this Agreement.

22.2 QR Network may assign or transfer or otherwise dispose of the whole or any part of its rights or obligations under this Agreement without the prior consent of the Owner, provided that QR Network procures the assignee to covenant with the Owner by deed to be bound by and perform the obligations of QR Network under this Agreement to the extent of the rights and obligations assigned, transferred or disposed of.

22.3 Except where the Owner is a publicly listed company, any change in the shareholding of the Owner effectively altering the control of the Owner will be regarded as a proposed assignment of this Agreement. The Owner will not:

- (a) register, record or enter in its books any transfer of any share or shares in the capital of the Owner;
- (b) deal with any beneficial interest in any such share or shares;
- (c) issue any new share or shares; or
- (d) take or attempt to take action,

having the effect:

- (e) of altering the control of the Owner; or
- (f) that the shareholders of the Owner at the date of this Agreement together beneficially hold or control less than 51% of the voting rights or share capital in the Owner,

until the requirements of this Clause have been complied with.

## 23 SECURITY

23.1 If on, or at any time after, the Commencement Date the Owner does not have an Acceptable Credit Rating, then QR Network may (taking into consideration expected future payment obligations under this Agreement and the financial performance of the Owner) require the Owner to deliver to QR Network security in the amount of up to the Security Amount for the due and proper performance by the Owner of its obligations under this Agreement in the form of:

- (a) a parent company guarantee from a holding company (as defined in the Corporations Act) of the Owner that has an Acceptable Credit Rating in a form reasonably acceptable to QR Network;
- (b) a bank guarantee from a trading bank holding a current Australian banking licence and with an Acceptable Credit Rating and in the form set out in **Schedule 5** or such other form as is reasonably acceptable to QR Network; or
- (c) any other security reasonably acceptable to QR Network,

and QR Network shall not unreasonably withhold or delay its acceptance of any security delivered under this **clause 23.1**.

23.2

- (a) Following commencement of the second and each subsequent Maintenance Year, QR Network may vary the Security Amount to reflect the current cost of decommissioning and removing the Connecting Infrastructure.
- (b) If QR Network purports to vary the Security Amount in accordance with **clause 23.2(a)**, and the Owner disputes whether that varied Security Amount properly reflects the current cost of decommissioning and removing the Connecting Infrastructure, the dispute resolution clause in **clause 20** will apply. In such cases, there will be no variation to the Security Amount until the dispute between the parties has been properly resolved.

23.3 If QR Network calls up any amount from the security provided by or on behalf of the Owner, the Owner will deliver to QR Network, within 10 business days of QR Network making such call up, further security in favour of QR Network, in a form permitted by this **clause 23**, undertaking to pay QR Network on demand an amount equal to the amount called up. Such further security will form part of the security provided by the Owner under this Agreement from the date on which the Owner provides such further security.

23.4 QR Network must, subject to the rights of recourse to the security under this **clause 23**, account to the Owner for the security within six (6) months after the expiration or termination of this Agreement.

## 24 LIABILITY

24.1 Despite any other provision in this Agreement, neither Party will in any circumstances be liable to the other for any Consequential Loss arising from, under or in connection with this Agreement.

24.2 Neither Party will have or make any Claim against the other in respect of a failure to perform its obligations under this Agreement, except as provided for in this Agreement.

24.3 Neither Party will make any Claim against the other in respect of the neglect or default of that other Party under this Agreement unless notice of the Claim has been given to the other Party within six months of the later of the Claim arising or becoming reasonably apparent to the relevant Party.

24.4 To the extent permitted by law, all and any liability of QR Network (and of its employees, contractors and agents) in relation to or arising out of the entry into, performance or non-performance of this Agreement is hereby excluded or, if it cannot be excluded, is agreed at being limited to \$1.00, in addition to any proceeds recoverable under policies of insurance effected by the QR Network in accordance with **clause 19**. This exclusion or limitation of liability applies whether the liability arises in contract, in tort (including negligence), under any statute, under the common law, in equity or otherwise, but does not include any liability under the indemnity in **clause 25.2** or for intentional or reckless breach of this Agreement.

24.5 Nothing in this Agreement creates or constitutes any contract between QR Network and any haulage operator contracted by the Owner or otherwise responsible for the operation of the Train Services utilising the Connecting Infrastructure.

24.6 If an Operator engages in any act or omission involving the use of, or otherwise in connection with, the Private Infrastructure, the act or omission of the Operator will be deemed to be an act or omission of the Owner for the purpose of **clause 25**, except to the extent that:

- (a) the Operator is liable to indemnify QR Network with respect to the act or omission; or
- (b) the liability of the Operator to QR Network with respect to the act or omission is limited by any other agreement between the Operator and QR Network.

## 25 INDEMNITIES

25.1 The Owner indemnifies QR Network from and against all Loss (excluding Consequential Loss) which may be brought against or made upon QR Network or which QR Network may pay, sustain or be put to by reason of or in connection with any acts, errors or omissions of the Owner (or its officers, employees, agents or contractors) relating to the Private Infrastructure in respect of:

- (a) any loss of life or injury to any person whatever;
- (b) claims by third parties for any damage to any property whatever;
- (c) penalties for breach of Law; or
- (d) wilful misconduct and fraud,

except to the extent such Loss arises as a result of any negligent act, error or omission or a breach of this Agreement by QR Network (or its officers, employees, agents or contractors).

25.2 QR Network indemnifies the Owner from and against all Loss (excluding Consequential Loss) which may be brought against or made upon the Owner or which the Owner may pay, sustain or be put to by reason of or in connection with any acts, errors or omissions of QR Network or its officers, employees, agents or contractors relating to the Connecting Infrastructure in respect of:

- (a) any loss of life or injury to any person whatever;
- (b) claims by third parties for any damage to any property whatever;
- (c) penalties for breach of Law; or
- (d) wilful misconduct and fraud,

except to the extent such Loss arises as a result of any negligent act, error or omission or breach of this Contract by the Owner (or its officers, employees, agents or contractors).

## 26 NOTICES

26.1 Any notice, invoice, or other communication under this document will be given in writing and may be given by an authorised representative of the sender.

26.2 Any communication may be given by:

- (a) being personally served on a Party;
- (b) being left at the Party's current address for service;
- (c) being sent to the Party's current address for service by pre-paid ordinary mail;
- (d) being sent by facsimile to the Party's current number for service;



- (e) being sent by email to the Party's current email address for service; or
- (f) if at any time agreed by the Parties, being sent by another agreed electronic form.

## 26.3

- (a) The addresses and numbers for service are initially:  
**QR Network Pty Ltd:**  
 Address: Level 14, 305 Edward Street, Brisbane QLD 4000  
 Facsimile: 07 3235 3637  
 Email: access.services@qrnational.com.au  
 Attention: Chief Executive Officer, QR Network Pty Ltd

**The Owner:**

- Address: as set out in Item 1 of **Schedule 1**
- Facsimile: as set out in Item 1 of **Schedule 1**
- Email: as set out in Item 1 of **Schedule 1**
- Attention: as set out in Item 1 of **Schedule 1**

- (b) A Party may from time to time change its address or number for service by notice to the other Party.

## 26.4 A communication is deemed given if:

- (a) personally delivered, upon delivery;
- (b) posted to an address in Australia, three (3) business days after posting;
- (c) sent by facsimile, on the next Business Day after being sent, if the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number;
- (d) sent by email on the next Business Day after the sender receives confirmation by read receipt that the message has been transmitted; and
- (e) the addressee received by it after 5.00 pm or on a day which is not a business day, on the next business day.

**27 CONFIDENTIALITY**

## 27.1 Each Party will keep the terms of this Agreement confidential, and will not disclose the terms of this Agreement to any third party except:

- (a) to the extent required by law, under an order or direction of any Authority or by the rules of any stock exchange on which a Party or its Related Bodies Corporate are listed;
- (b) to its officers, employees and agents, legal and other professional advisers, Related Bodies Corporate, and officers, employees, agents, legal and other professional advisers of such Related Bodies Corporate;

- (c) to an existing or proposed Rail Infrastructure Manager for the Private Infrastructure and their legal and other professional advisers;
- (d) to a bona fide potential financier of a Party or its Related Bodies Corporate and their legal and other professional advisers;
- (e) to a bona fide potential purchaser of a Party (directly or indirectly), the Network or the Private Infrastructure and their legal and other professional advisers;
- (f) to an expert or the Queensland Competition Authority in a dispute resolution process in connection with this Agreement or under the QR Network Access Undertaking;
- (g) in legal proceedings in connection with enforcement of this Agreement;
- (h) to the extent the terms of this Agreement are in the public domain through means other than a breach of this **clause 27.1**; or
- (i) with the prior written consent of the other Party, such consent not to be unreasonably withheld, provided that a recipient pursuant to **clause 27.1(c), (d) or (e)** must first undertake to keep the terms of this Agreement confidential.

27.2 The Owner will keep confidential any intellectual property, trade secrets, operating procedures and financial or other information disclosed by QR Network as required under this Agreement (including, without limitation, any information provided in accordance with **clauses 7, 11, 12 and 16**) and will not:

- (a) use such information for any purpose other than the purpose for which it was provided; or
- (b) disclose such information to any third party except in accordance with this Agreement or with QR Network's written consent.

27.3 If a Party does not comply with **clause 27.1** or **clause 27.2** and the other Party suffers any detriment as a result of or in connection with that non-compliance, the Party which suffers detriment shall be entitled to bring a Claim against the non-complying Party for breach of confidence.

## 28 COMPLIANCE WITH LAWS

Each party must comply with all relevant laws relating to the subject matter of this Agreement including, without limitation, laws relating to the environment.

## 29 ACCESS TO LAND

29.1 To the extent that some part of the Private Infrastructure has been, or will be, constructed upon land owned or controlled by QR Network and the operation of the Private Infrastructure otherwise reasonably requires access to such land, unless access is already governed by another agreement between QR Network and the Owner or a Related Party, QR Network will provide access to the relevant land, at the Owner's expense, on terms and conditions to be separately agreed between the Parties.

29.2 QR Network, in any agreement under **clause 29.1**, will provide access to land on the conditions which will include, without limitation, that:

- (a) the Owner, the Railway Infrastructure Manager for the Private Infrastructure, and their respective employees, officers, agents and contractors shall comply with all reasonable and prudent site and safety rules applicable to the land, comply with all QR Network rail corridor access processes, be

accompanied by an Accredited Track Protection Officer, and comply with any reasonable and prudent direction given by any QR Network representative and any other reasonable conditions specified by QR Network;

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

29.3 To the extent that some part of the Connecting Infrastructure has been, or will be, constructed upon land owned or controlled by the Owner or a Related Party (**Private Land**), and the operation of the Connecting Infrastructure otherwise reasonably requires access to such land, unless access is already governed by another agreement between QR Network and the Owner or a Related Party the Owner will provide reasonable access to the relevant land for QR Network to the extent that access to the relevant land is reasonably required for the ongoing operation or maintenance of the Connecting Infrastructure, provided that:

- (a) QR Network must, and must procure that its representatives and contractors who access the Private Land, comply with all reasonable and prudent site and safety rules applicable to the Private Land, any reasonable and prudent direction given by any nominated Senior Site Executive for the Private Land and any other reasonable conditions specified by the Owner or Related Party; and
- (b) the land is owned by the Owner or a Related Party or has, through a lease, licence or other arrangement with the owners of the land, the authority to authorise access to that land.

29.4 If a Party (the **First Party**) does not have authority to authorise the other Party (the **Second Party**) to access land as provided by **clause 29.1** or **clause 29.3**, the Second Party will provide the following in relation to access to that land within 10 business days of receiving from the First Party a written request to access the relevant land:

- (a) details of the person (including the person's name, address and contact details) from whom the Second Party would need to obtain approval to gain access to the relevant land, where this information is reasonably available to the First Party;
- (b) advice as to the nature and extent of the rights, if any, that the First Party holds in relation to the relevant land; and
- (c) a notice to be provided to the relevant person stating that the First Party has no objection to the Second Party negotiating for access to that land.

29.5 QR Network may, subject to **clause 29.6**, enter any Private Land without the consent of the Owner if immediate entry is necessary to prevent, minimise or alleviate any threat or danger to any person or property that has resulted, or is expected to result, from an Incident.

29.6 If QR Network enters land in accordance with **clause 29.5** it must:

- (a) before entering the land, give the Owner as much notice as is practicable in the circumstances; and
- (b) within 48 hours of entering the land, provide details to the Owner outlining the nature of access, the reasons for entering the land and details of the emergency, any actions carried out on the land to address the risks posed by the emergency and, if applicable, when QR Network will withdraw from the land.

**30 MISCELLANEOUS**

## 30.1

- (a) The Owner will, as between the Parties, be liable for and duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under it.
- (b) Each Party will bear its own external legal and other costs and expenses relating directly or indirectly to the negotiation, preparation and execution of this Agreement.

## 30.2

- (a) A single or partial exercise or waiver of a right relating to this Agreement, or a failure or delay in exercise a right, will not prevent any other exercise of that right or the exercise of any other right.
- (b) No waiver of any provision of this Agreement will be effective unless the same will be in writing and then such waiver will be effective only in the specific instance and for the purpose for which it is given.

30.3 Each Party will promptly execute all documents and do all things that any other Party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

30.4 This Agreement is governed by and is to be construed in accordance with the laws in force in Queensland. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

30.5 This Agreement embodies the entire understanding and agreement between the Parties as to the subject matter of this Agreement and, to the extent that this Agreement is inconsistent with any prior agreement between the Parties, this Agreement will prevail over, and will replace, the inconsistent terms of the prior agreement.

30.6 All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and will be of no force or effect whatever and no Party will be liable to any other Party in respect of those matters.

30.7 Each provision of this Agreement will be deemed to be separate and separable from the others of them.

## Schedule 1

### Reference Schedule

- Item 1                      Owner Details:
- Name:
- Address:
- ABN:
- Facsimile:
- Telephone :
- Email:
- (clause 26.3)**
- Item 2                      Expiry Date
- The date which is the earlier of:
- (a) The date Train Services cease under the Train Services Plan; or
- (b) the date on which QR Network's leasehold interest in respect of the land on which the Connecting Infrastructure is, or is to be, located, expires or otherwise ceases.
- Item 3                      Security Amount
- [\$[the estimated reasonable and prudent costs of decommissioning and removing the Connecting Infrastructure (including a reasonable and prudent contribution for QR Network's internal costs related to such decommissioning and removal) upon the expiry of this Agreement so as to remove the connection between the Network and the Private Infrastructure and restore the affected section of the Network to a condition consistent with the adjacent sections of the Network]*
- Item 4                      Commitment Date
- [The later of the commencement of Train Services under the Train Services Plan and 10 business days after QR Network gives notice to the Owner that the Connecting Infrastructure is fit for purpose.]
- Item 5                      QR Network Train Control contact
- Name:
- Address:
- Facsimile:
- Telephone:
- Email:
- (clause 14.1)**

**Schedule 2**

**Plan showing Connecting Infrastructure, Private Infrastructure and the Network**

*[This plan must identify the boundaries between the QR Network Land, Private Land, Connecting Infrastructure, Private Infrastructure and the Network, so that it is clear where each ends and begins, and should include a description and/or address of the location of the Private Infrastructure and Connecting Infrastructure.]*

### Schedule 3

#### Insurance

##### Owner Insurance

###### a) Public liability insurance

- i) to cover the legal liability of the insured arising out of or in connection with the connecting of the Private Infrastructure to the Connecting Infrastructure whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than ONE HUNDRED MILLION DOLLARS (\$100,000,000) on any one occurrence;
- ii) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date; and
- iii) to cover the Operator's rail operations and associated activities (including Train Services) so far as they impact upon the Connecting Infrastructure and the Relevant Network.

b) **Employees** - Insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of employees of the Owner.

c) **Motor Vehicle (non-Act) insurance** to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance the Agreement by the Owner or the Owner's staff and must include third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000).

d) **Motor Vehicle insurance** to cover the statutory liability in respect the Owner's personal injury arising out of or in connection with the use by the Owner or the Owner's staff of all vehicles in the performance of the Agreement.

e) Insurances effected pursuant to (a) and (d) above must:

- i) include a principal's indemnity endorsement specifically noting QR Network as an interested party in respect of its interest arising out of or under this Agreement;
- ii) include a cross liability clause;
- iii) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
- iv) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

##### QR Network Insurance

###### a) Public liability insurance

- i) to cover the legal liability of the insured arising out of or in connection with the connecting of the Private Infrastructure to the Connecting Infrastructure whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than ONE HUNDRED MILLION DOLLARS (\$100,000,000) on any one occurrence;

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- ii) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date; and
  - iii) to cover QR Network's rail operations and associated activities so far as they impact upon the Connecting Infrastructure and the Relevant Network.
- b) **Employees** - Insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of employees of QR Network.
- c) **Motor Vehicle (non-Act) insurance to cover the legal liability of the insured arising out of or in connection** with the use of all vehicles in the performance the Agreement by QR Network or QR Network's staff and must include third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000).
- d) **Motor Vehicle insurance** to cover the statutory liability in respect the QR Network's personal injury arising out of or in connection with the use by QR Network or QR Network's staff of all vehicles in the performance of the Agreement.
- e) Insurances effected pursuant to (a) and (d) above must:
  - i) include a principal's indemnity endorsement specifically noting the Owner as an interested party in respect of its interest arising out of or under this Agreement;
    - ii) include a cross liability clause;
    - iii) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
    - iv) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.



## **Schedule 4**

### **Train Services Plan**

*[Train Services Plan required, to ensure that the Trains Services entering and exiting the mainline meets the tonnage requirements over the life of the infrastructure, and to match the planned works and expenditure sets out in the Asset Maintenance and Management Plan agreed between the parties.]*

**Schedule 5**

**Emergency Response Plan and Interface Risk Management Plan**

*[Initial Emergency Response Plan and Interface Risk Management Plan developed jointly between the parties before executing this agreement to be inserted]*

**Schedule 6**

**Asset Maintenance and Management Plan for Connecting Infrastructure**

*[Initial Asset Maintenance and Management Plan, showing planned and unplanned works and costs by Maintenance Year over the life of the Connecting Infrastructure, and based on the Train Services Plan developed jointly between the parties before executing this agreement to be inserted]*

## Schedule 7

### Pro forma bank guarantee

[On bank letterhead]

To: QR Network Pty Ltd ACN 132 181 116 (**QR Network**)

At the request of [insert Owner details] (ACN [TBC]) (**the Owner**) and in consideration of QR Network accepting this undertaking in respect of the agreement dated on or about the date of this undertaking in respect of rail infrastructure connecting rail owned or controlled by the Owner and rail infrastructure for which QR Network is the accredited rail infrastructure manager (within the meaning of that term in the *Transport (Rail Safety) Act 2010* (Qld) (**the Agreement**)) [insert details of bank (ABN)] (**the Guarantor**) unconditionally undertakes to pay on written demand any sum or sums which may from time to time be demanded by QR Network under and in accordance with the Agreement to a maximum aggregate sum of \$[security amount to reflect Item 3 of Schedule 1].

QR Network may not transfer, assign or novate its rights, benefits or obligations under this undertaking except to such persons, and to the extent that, QR Network transfers, assigns or novates its rights, benefits or obligations under the Agreement to those people in accordance with the Agreement.

The undertaking is to continue until:

- (a) notification has been received from QR Network that the sum is no longer required by QR Network;
  - (b) this undertaking is returned to the Guarantor by QR Network; or
  - (c) payment by the Guarantor to QR Network of the whole of the sum,
- whichever occurs first.

Notwithstanding the preceding paragraph, this undertaking will cease to be effective on [insert].

Should the Guarantor be notified in writing purporting to be signed by or on behalf of QR Network that QR Network desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Guarantor will make payment or payments to QR Network of that part or those parts without reference to the Owner or the Agreement and notwithstanding any notice given by the Owner not to pay same.

This undertaking is governed by the laws of Queensland.

Signed, Sealed and Dated this                      day of                      [insert year].

**[Bank Details]**

**Schedule 8**

**Coal Loss Mitigation Provisions**

*[CLMP to be incorporated if applicable at the relevant time]*

# Signing page

Executed as an agreement

---

Signed for  
**QR Network Pty Limited**  
by its representative:

*sign  
here* ▶

\_\_\_\_\_  
Representative

*print  
name*

\_\_\_\_\_

*sign  
here* ▶

\_\_\_\_\_  
Witness

*print  
name*

\_\_\_\_\_

---

Signed for  
**The Party whose name and address appears  
in Item 1 of Schedule 1**  
in accordance with section 127(1) of the *Corporations  
Act 2001 (Cth)* by authority of its directors:

*sign  
here*  
▶

\_\_\_\_\_  
Director

*print  
name*

\_\_\_\_\_

*sign here* ▶

\_\_\_\_\_  
Director/Company Secretary

*print name*

\_\_\_\_\_

*sign  
here*  
▶

\_\_\_\_\_  
Witness

*print  
name*

\_\_\_\_\_

*sign here* ▶

\_\_\_\_\_  
Witness

*print name*

\_\_\_\_\_