Access Agreement

Queensland Rail Limited ABN 71 132 181 090 (**Queensland Rail**)

[Insert name of Operator] (**Operator**)

[Insert name of Access Holder] (**Access Holder**)

[***Note: This agreement is a standard access agreement and is based on the following assumptions, that:***

- ***the grant of Access Rights only involves the allocation of Available Capacity;***
- ***no provisions relating to the provision of Additional Capacity in respect of an Extension are required; and***
- ***no conditions precedent are necessary.***

Without limiting the ability of the parties to negotiate terms, if any of these assumptions are not true, then the Parties will need to seek to negotiate amendments.

This standard access agreement contains various notes in respect of alternative clauses (for example, in relation to Dangerous Goods) and in respect of adjustments that are needed where the Reference Tariff does not apply to the setting of the Access Charges or this agreement is in relation to a Subsequent Operator. For example, if this agreement relates to a Subsequent Operator it will be amended to incorporate a new Schedule 1 and Schedule 2 to reflect the Train Services to be operated by that Subsequent Operator.]

Version: 1

Date approved: 1 July 2025

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Details

Date

Parties

Name	**Queensland Rail Limited** ABN 71 132 181 090
Short form name	**Queensland Rail**
Notice details	14 Railcentre 1, 305 Edward Street, Brisbane, Queensland

Name	**The person set out in item 1 of schedule 1**
Short form name	**Access holder**
Notice details	

Name	**The person set out in item 3 of schedule 1**
Short form name	**Operator**
Notice details	

Background

A Queensland Rail operates, and is the Railway Manager for, the Network.

B The Access Holder is seeking, and Queensland Rail has agreed to grant non-exclusive Access Rights to the Access Holder for the operation of Train Services over the Network by an Initial Operator (or Subsequent Operators).

C This agreement sets out the terms agreed by the Parties in accordance with which the Access Holder is granted non-exclusive access to the Network for the operation of Train Services by an Initial Operator (or Subsequent Operators).

Agreed terms

1. Term and renewal

1.1 Term

This agreement:

(a) commences on the Commencement Date; and

(b) terminates on the Termination Date unless otherwise terminated in accordance with its terms (except to the extent that any provisions of this agreement are expressed or implied to survive the expiry or termination of this agreement).

1.2 Right to renewal

(a) The Parties acknowledge that any rights which the Access Holder may have in relation to the renewal of this agreement will be as expressly provided in Schedule 7.

(b) Where the Access Holder seeks a renewal of this agreement, each Party acknowledges that:

(i) negotiations in respect of renewal must occur in good faith as required by and subject to the QCA Act and the Access Undertaking;

(ii) the negotiations and any renewal are subject to compliance with all applicable Laws including section 266 and 266A of the TIA as they apply to Queensland Rail.

(c) In this clause 1.2 a reference to a renewal is a reference to the execution of a new access agreement that has the effect of continuing all or some of the Train Services under this agreement for a further term.

1.3 Productivity and efficiency variations

(a) Subject to the terms of this agreement and without prejudice to each Party's rights in respect of this agreement:

(i) a Party, during the term of this agreement, may notify the other Parties of a proposed variation to this agreement to promote, or accommodate, a demonstrable efficiency or productivity improvement (**Productivity Proposal**); and

(ii) where a Party is notified of a Productivity Proposal, that Party must, in good faith:

(A) consider that Productivity Proposal having regard to any relevant factors including the costs, benefits and impacts of the Productivity Proposal on each of the Parties, on Train Services and on the operation and use of the Network, and whether the Productivity Proposal would result in a capacity increase for the Network, or efficiency improvements in one or more elements of the supply chain; and

(B) if requested by any Party, participate in discussions concerning the Productivity Proposal with a view to determining what (if any) amendments to this agreement the Parties are willing to agree.

(b) If, despite reasonable consideration, a Party declines to pursue all or part of a Productivity Proposal after complying with clause 1.3(a), that Party must provide written confirmation to the other Parties of its reasons for doing so.

(c) If the Parties in complying with clause 1.3(a) agree to make amendments to this agreement, the Parties must do all things reasonably necessary to give effect to those amendments in accordance with this agreement including under clause 27.4.

2. Access Rights

2.1 Grant of Access Rights

(a) Queensland Rail [[grants] or [confirms that it is has granted]][1] to the Access Holder the non-exclusive right to access the Network commencing on the Commitment Date for all of the Train Services until the End Date for each of those Train Services (unless this agreement terminates earlier in accordance with its provisions or any Law) subject to, and in accordance with, this agreement (**Access Rights**).

(b) The Access Rights create a non-exclusive contractual right and do not give the Access Holder any right, title or interest of any proprietary nature in the Network.

2.2 Exercise of Access Rights and Operator nomination

(a) The Parties acknowledge and agree that:

(i) the grant of the Access Rights does not entitle the Access Holder to operate Train Services itself on the Network (unless it is also an Accredited Rolling Stock Operator and is nominated to operate all or some of the Train Services in accordance with this agreement);

(ii) the Access Holder can only utilise the Access Rights by nominating an Accredited Rolling Stock Operator from time to time in accordance with this agreement; and

(iii) the Access Holder may nominate more than one Accredited Rolling Stock Operator.

3. Operational Rights

3.1 Grant of Operational Rights

On and from the Commitment Date for each Train Service until the End Date for that Train Service, Queensland Rail grants, and must provide, to the Operator the right to operate that Train Service in accordance with the Train Service Description on the terms and conditions of this agreement.

3.2 Nature and scope of Operational Rights

(a) The right to operate granted under clause 3.1 is a non-exclusive contractual right and does not give the Operator any right, title or interest of any proprietary nature in the Network.

(b) The Operator must:

(i) only operate on, or use any part of, the Network that is specifically included in this agreement; and

(ii) not use the Network for:

(A) carrying out any provisioning, inspection, testing or maintenance of Rolling Stock;

(B) any marshalling, shunting or other relocation of Rolling Stock;

(C) storage of Rolling Stock; or

(D) any purpose other than the operation of Train Services,

unless otherwise expressly:

(iii) permitted or required to do so under this agreement;

[1] Wording dependent on whether this agreement is an initial Agreement or a Subsequent Agreement.

(iv) directed to do so by Queensland Rail in accordance with this agreement; or

(v) expressly permitted under another agreement with Queensland Rail.

3.3 Nomination of Initial Operator

The Access Holder nominates the Initial Operator to utilise the Access Rights.

3.4 Nomination of Subsequent Operators

(a) Subject to clause 3.4(c), the Access Holder may, from time to time, provided that it is not in material breach of any of its obligations under this agreement, nominate one or more Accredited Rolling Stock Operators (**Subsequent Operator**) to utilise all or part of the Access Rights upon giving at least 20 Business Days prior written notice to Queensland Rail. The notice must:

(i) specify:

(A) the name, ABN, address and contact details of the Subsequent Operator;

(B) the Access Rights which the Access Holder wishes to allocate to that Subsequent Operator for that Operator to use in providing some or all of the Train Services for the Access Holder;

(C) the first day and the last day of the period for which the Access Rights are to be allocated to that Subsequent Operator; and

(ii) be accompanied by:

(A) a Subsequent Agreement, executed by the relevant Subsequent Operator, which reflects, in Schedule 1 to that agreement, particulars applicable to the relevant Subsequent Operator, and which reflects in Schedule 2 to that agreement, the Access Rights which the Access Holder wishes to allocate to that Subsequent Operator and includes any further changes required pursuant to clause 4.2[2]; or

(B) where the Subsequent Operator is a party to an Existing Agreement, a statement and evidence identifying that Rolling Stock Operator's execution of the Existing Agreement in respect of utilisation of Access Rights and evidence of that Rolling Stock Operator's agreement to the relevant nomination.

(b) Access Rights allocated by the Access Holder to be used from time to time by the Initial Operator and any Subsequent Operators may not exceed, in aggregate, the Access Holder's Access Rights under this agreement.

(c) Despite any other provision in this agreement, Queensland Rail is not obliged to accept, or act on any nomination by the Access Holder under clause 3.4(a) if Queensland Rail (acting reasonably) determines that the Subsequent Operator, either:

(i) is in material breach of any of its obligations under an existing access agreement with Queensland Rail; or

(ii) is not Accredited.

(d) Queensland Rail must:

(i) promptly assess any nomination against the matters listed in clause 3.4(c);

[2] For the avoidance of doubt, the Access Holder and Queensland Rail are not required to renegotiate the terms of a Subsequent Agreement. The terms, unless otherwise agreed by the Access Holder and Queensland Rail will be identical to the terms of this agreement except as is necessary to reflect the Train Services to be operated by that Subsequent Operator and to reflect that Subsequent Operator's operations.

(ii) within ten Business Days of receiving a nomination under clause 3.4(a), notify the Access Holder and the Subsequent Operator whether it accepts or rejects the nomination; and

(iii) if it rejects the nomination, provide reasons for the rejection in writing to the Access Holder and the Subsequent Operator and thereafter use reasonable endeavours to facilitate the resolution of any matter the subject of its reasons for the rejection; or

(iv) if it accepts the nomination, promptly do all things reasonably required to give effect to the nomination and minimise any delay to Train Services to the extent practicable including agreeing to amendments in this agreement and any Subsequent Operator's Subsequent Agreement (if applicable) to the extent required and including compliance with clause 4.2(a) (where applicable); and

(v) after accepting the nomination and, if required, complying with clause 4.2(a), exchange executed counterparts of a Subsequent Agreement with the Subsequent Operator and the Access Holder.

4. Relationship with Operator

4.1 Changes to Operator nominations

(a) Subject to clause 4.1(b), the Access Holder may, from time to time, upon giving at least ten Business Days prior written notice to Queensland Rail and the Operator:

(i) vary any nomination previously given by the Access Holder under this agreement so as to vary either or both of the following:

(A) the Access Rights which the Access Holder has allocated to the Operator; or

(B) the period for which the Access Rights are to be allocated to the Operator (provided that the period does not extend beyond the End Date for the relevant Train Service); or

(ii) withdraw any nomination previously given by the Access Holder under clause 3.3, 3.4(a) or this clause 4.1(a).

(b) Despite any other provision of this agreement, Queensland Rail is not obliged to accept, or act on, any variation which increases the allocation of Access Rights (including an increase in the period for which Access Rights are to be allocated) under clause 4.1(a), if Queensland Rail (acting reasonably) determines that the Operator, either:

(i) is in material breach of any of its obligations under an existing access agreement with Queensland Rail; or

(ii) is not Accredited.

(c) Queensland Rail must notify the Access Holder and the Operator if it accepts or rejects the variation (providing its reasons).

(d) If Queensland Rail accepts a variation made in accordance with clause 4.1(a):

(i) this agreement is varied in accordance with the variation and, despite any other provision in this agreement, each Party agrees, and is deemed, to be bound by the varied agreement on and from the date the Access Holder receives the notice referred to in clause 4.1(b); or

(ii) Queensland Rail must comply with clause 4.2 (if applicable).

(e) The Access Holder is deemed to have withdrawn its nomination of the Operator if this agreement is terminated or expires.

4.2 Nominations with different Train Service Descriptions

If at any time:

(a) the Access Holder intends to:

(i) nominate a Subsequent Operator in accordance with clause 3.4(a); or

(ii) vary a nomination previously given by the Access Holder in accordance with clause 4.1(a);

and

(b) the Train Services of the Subsequent Operator will have a Train Service Description different from that contemplated in Schedule 2; or

(c) the Access Holder otherwise wishes to vary the Train Services from the Train Service Description contemplated in Schedule 2,

then:

(d) prior to nominating the Subsequent Operator or varying any nomination, Queensland Rail and the Access Holder must negotiate and endeavour to agree any amendments to any relevant agreements (including any amendments to the Access Rights and the Access Charges and providing replacement schedules (as relevant)) that may be necessary to reflect the Train Service Description of the Train Services to be operated by an Operator for that part of the Access Rights to be allocated to that Operator;

(e) Queensland Rail and the Access Holder (each acting reasonably and using reasonable endeavours to minimise any disruptions to Train Movements) must agree the date on which those amendments take effect;

(f) this agreement is varied in accordance with those amendments and, despite any other provision in this agreement, each Party agrees, and is deemed, to be bound by the varied agreement on and from the date referred to in clause 4.2(e); and

(g) no amendment to the Access Rights that results in the Access Holder being granted increased rights to access the Network has any effect unless and until the Access Holder and Queensland Rail have complied with the Access Undertaking (including with respect to the allocation of those increased Access Rights).

4.3 Reduction of rights resulting in an Over-Allocation

If at any time:

(a) the Access Rights of:

(i) the Access Holder are reduced, relinquished or transferred under this agreement; or

(ii) the Nominated Monthly Train Services in respect of a Train Service Description are reduced or varied under this agreement; and

(b) as a result of such reduction, relinquishment or transfer of Access Rights or reduction or variation of Nominated Monthly Train Services in respect of a Train Service Description, the Access Rights allocated by the Access Holder to the Operator under clause 3.3, 3.4 or 4.1 for a Train Service Description exceed, in aggregate, the Access Holder's Access Rights for that Train Service Description following the reduction, relinquishment or transfer (such excess being the **Over-Allocation**),

then, unless the Access Holder varies the nominations in accordance with clause 4.1(a) within ten Business Days of such reduction, relinquishment or transfer to eliminate the Over-Allocation, the Access Holder will be deemed to have varied the nominations in accordance with clause 4.1(a) as follows:

(c) if the Access Holder has nominated only the Initial Operator for that Train Service Description, reducing the Access Rights for that Train Service Description which the

Access Holder has allocated to the Initial Operator under this agreement by the Over-Allocation; or

(d) if the Access Holder has nominated the Initial Operator and one or more Subsequent Operators in respect of an affected Train Service Description, reducing the Access Rights for that Train Service Description which the Access Holder has allocated to each the Initial Operator and each Subsequent Operator under each relevant agreement by a share of the Over-Allocation that is as closely as possible proportionate to the Train Services allocated to the Initial Operator and each Subsequent Operator for the affected Train Service Description as a share of the total Train Services allocated to the Initial Operator and Subsequent Operators for that Train Service Description,

and such reduction will take effect on the date the reduction, variation, relinquishment or transfer takes effect, with Queensland Rail providing written notice of the reduction to the Initial Operator and Subsequent Operators, if affected by same, as soon as practicable.

4.4 Information

(a) Nothing in clause 24 prevents or otherwise restricts the Parties from disclosing to one another information in relation to or in connection with this agreement.

(b) If requested by a Party, then the Party who received the request must promptly provide to the requesting Party any information in relation to the exercise of rights or performance of obligations under this agreement.

(c) Without limitation to clause 4.4(b), where either Queensland Rail, the Operator or the Access Holder gives a Notice (including an invoice) under this agreement to another Party, then that Party must also give a copy of that Notice (including an invoice) to each other Party.

4.5 Participation in Disputes

(a) Despite clause 19, where:

(i) a Dispute Notice is given to the Access Holder under clause 19.1(b); and

(ii) the Dispute is solely between the Operator and Queensland Rail and does not require the Access Holder's participation to resolve the Dispute,

the Access Holder may elect not to participate in the dispute resolution process under clause 19 by giving notice to that effect to the other Parties.

(b) Where the Access Holder gives a notice under clause 4.5(a), clause 19 will apply as though a reference to the Parties does not include the Access Holder in relation to that Dispute.

(c) Despite clause 19, where:

(i) a Dispute Notice is given to the Operator under clause 19.1(b); and

(ii) the Dispute is solely between the Access Holder and Queensland Rail and does not require the Operator's participation to resolve the Dispute, the Operator is not entitled to participate in the dispute resolution process.

4.6 Representations and warranties

(a) In addition to any other express or implied representations and warranties in this agreement, the Access Holder and Queensland Rail represent, warrant and undertake to each other that:

(i) it is a corporation validly existing under the laws applicable to it;

(ii) it has the power to enter into and perform all of its obligations under this agreement and has obtained all necessary consents and approvals to enable it to do so;

(iii) its obligations under this agreement are enforceable in accordance with the relevant terms and are fully binding on it;

(iv) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this agreement;

(v) there is:

(A) no litigation, arbitration or administrative proceeding taking place, pending, commenced or, to its knowledge, threatened against it; and

(B) no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it,

which would or could have a material adverse effect on its ability to perform its obligations under this agreement; and

(vi) it will, as soon as practicable, notify the other Party of the occurrence of, or pending or threatened occurrence of, any event that may cause or constitute a material breach of any of the acknowledgments, representations, warranties or covenants of the that Party under this agreement and any event that could have a material adverse effect on its ability to perform its obligations under this agreement; and

(vii) all information provided by each Party to the other Party, whether pursuant to this agreement or otherwise, in relation to or in connection with the Train Services, the Party's rights or obligations under this agreement or the negotiation of this agreement, is correct and complete in all material respects and is not, whether by omission or otherwise, misleading or deceptive.

(b) The representations and warranties set out in clause 4.6(a) are taken to be given and made on the Commencement Date and on each day during the Term.

5. Accreditation

(a) The Operator and Queensland Rail must, on and from the Commitment Date for Train Services and until the End Date for those Train Services, hold the necessary Accreditation in accordance with this agreement.

(b) The Operator must at least 20 Business Days prior to the Commitment Date, satisfy Queensland Rail (acting reasonably) of its compliance with clause 5(a).

(c) Queensland Rail and the Operator will provide to the other Party, and continue to provide to the other Party, a copy of the relevant Accreditation, including:

(i) all relevant notices from any Authority affecting or likely to affect the Accreditation;

(ii) the relevant details of any renewal, suspension, variation, restriction or termination of that Accreditation; and

(iii) all relevant conditions or restrictions imposed on the accreditation by the Rail Safety Regulator.

(d) The Operator must not operate Rolling Stock on the Network unless the Operator holds the Accreditation necessary to do so and then must do so in accordance with that Accreditation and this agreement.

6. Payment obligations

6.1 Access Charges

(a) The Access Holder must pay to Queensland Rail the Access Charges at the times and in the manner set out in this agreement and any other charges or amounts payable in accordance with this agreement.

(b) The Access Charges include amounts payable in relation to:

(i) the reservation of capacity in the Network for the Train Services; and

(ii) the utilisation of the Access Rights for the Train Services.

(c) After:

(i) the last day of each calendar month during the Term; and

(ii) where this agreement has expired or terminated, that expiration or termination,

Queensland Rail will provide to the Access Holder an invoice for the Access Charges and any other charges or amounts payable by the Access Holder under this agreement (if any such amounts are payable) for that month or on or after the expiry or termination of this agreement (as applicable).

(d) For clarity, Queensland Rail will review and amend Schedule 3 (including to vary or escalate Access Charge Inputs) from time to time in accordance with this agreement.

6.2 Obligation to make payments

(a) Unless this agreement provides otherwise, the due date for the payment of an amount payable by a Party under this agreement is that date which is ten Business Days from the date the invoice is received.

(b) After a Party receives an invoice from another Party for an amount payable in accordance with this agreement, the paying Party must, on or prior to the due date for the payment of that amount, either:

(i) pay the other Party an amount equal to the amount payable as shown on the invoice; or

(ii) if the paying Party disputes on a bona fide basis all or part of the amount payable as shown on the invoice:

(A) pay by the due date the amount not in dispute and 50% of the amount in dispute; and

(B) give notice in writing to the other Party that it disputes the amount payable as shown on the invoice and a detailed statement as to the reasons for disputing the amount payable.

6.3 Method of payment

A Party must pay any amounts payable to another Party in accordance with this agreement in Australian currency by:

(a) direct deposit into an account nominated by the invoicing Party for that purpose; or

(b) such other method as the invoicing Party may reasonably require from time to time.

6.4 Disputing payments

(a) If a Party has paid the amounts and given a notice in accordance with clause 6.2(b)(ii) then, unless the Parties resolve the dispute in accordance with clause 19.2, the dispute must be referred for determination by an Expert under clause 19.3.

(b) Upon resolution of any dispute between the Parties about the calculation of an amount payable as shown on an invoice, if the amount payable as agreed by the Parties or

determined by an Expert or a court is more or less than the amount that was paid, then the difference must be paid or refunded by the relevant Party to the other Party within five Business Days after the resolution of the dispute together with interest on that amount calculated in accordance with clause 6.5 (provided that for the purpose of calculating that interest, the due date for payment is deemed to be the date when the amount in dispute would have been due and payable but for the dispute).

6.5 Interest on overdue payments

(a) If any amount which a Party is required to pay to another Party under this agreement is not paid on or before the due date for payment, interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.

(b) Interest will be calculated at the Interest Rate and must be paid monthly. Any interest accrued but unpaid at the end of each month will be capitalised and will thereafter itself bear interest.

6.6 Adjustments

(a) If any change, escalation or variation in the Access Charges is backdated, or otherwise relates, to a date on or before the date on which particular Train Services were operated in accordance with this agreement, then the Access Charges paid or payable in respect of those Train Services must be adjusted by Queensland Rail and the Access Holder to pass through that change, escalation or variation.

(b) After taking account of the adjustment referred to under clause 6.6(a):

(i) if there has been an under-recovery of Access Charges by Queensland Rail, then the Access Holder must pay the amount of that under-recovery to Queensland Rail; and

(ii) if there has been an over-recovery of Access Charges by Queensland Rail, then Queensland Rail must refund the amount of that over-recovery to the Access Holder.

(c) For clarity, if Queensland Rail has issued an invoice for Train Services but the Access Holder has not yet paid that invoice, then Queensland Rail may issue a replacement or additional invoice for the purposes of giving effect to clauses 6.6(a) and 6.6(b).

(d) Any adjustment of an Access Charge in accordance with this clause 6.6 will include interest calculated in accordance with clause 6.5 as though the adjustment was due and payable on the date when the original invoice for the Access Charge to which the adjustment relates was due and payable.

(e) This clause 6.6 does not apply in relation to an Adjustment Charge (as defined in the Access Undertaking) which is incorporated in any Access Charge in accordance with Schedule 3 and the Access Undertaking.

6.7 Performance Level Reporting Regime

(a) Queensland Rail will provide monthly reports to each other Party documenting Queensland Rail's performance in relation to the relevant performance levels as set out in Schedule 5 (**Performance Indicators)**.

(b) Disputes regarding Queensland Rail's documentation of its Performance Indicators will be determined in accordance with clause 19.

(c) The Parties must, if requested by another Party, meet as soon as practicable after the Commencement Date to negotiate in good faith to endeavour to agree additional performance levels (other than the Performance Indicators set out in clause 6.7(a)) (**Agreed Performance Levels**) and the associated reporting regime **(Performance Level Reporting Regime**) within 12 months (or such longer period as the Parties may agree (acting reasonably)) after the Commencement Date.

(d) The Parties' Agreed Performance Levels may involve financially based incentives and sanctions and, unless otherwise agreed, will be applicable for the Term.

(e) A failure to reach agreement in relation to an Agreed Performance Levels is a Dispute for the purposes of clause 19, and must be referred for determination by an Expert in accordance with clause 19.3 of this agreement (subject to any other dispute resolution process otherwise agreed by the Parties to the Dispute (in each Party's absolute discretion)).

(f) The Agreed Performance Levels will be binding on the Parties on and from the date agreed by the Parties or determined by an Expert, and the Parties must monitor, record and assess the performance of their respective obligations under this agreement against the Agreed Performance Levels in accordance with the Performance Level Reporting Regime.

7. Network management

7.1 Maintenance

(a) Queensland Rail is responsible for the management of the Network and shall retain control over all activities on the Network.

(b) Queensland Rail must carry out Maintenance Work on the Network such that subject to any agreed criteria and the Network Management Principles:

(i) the Network is consistent with the Rolling Stock Interface Standards; and

(ii) the Operator can operate Train Services in accordance with this agreement.

(c) Nothing in this agreement obliges Queensland Rail to fund or construct any Extension required to provide the Access Rights held under the agreement.

(d) Queensland Rail reserves the right to authorise third parties to carry out Third Party Works on, under or over the land on which the Network is located. In the event that Queensland Rail has a contractual relationship with the third party, Queensland Rail must ensure that the third party undertakes the work in a manner that meets the requirements listed in clause 7.1(b).

7.2 Network Control

(a) Queensland Rail will provide, and has exclusive responsibility for, Network Control in respect of the Network.

(b) Queensland Rail may exercise Network Control by issuing Network Control Directions to the Operator and the Operator's Associates.

(c) In exercising Network Control, Queensland Rail may, subject to the Network Management Principles:

(i) delay, alter, add, cancel, re-route or re-schedule a Train Service; and

(ii) alter the Scheduled Times for Train Services in the Train Schedule.

(d) The Operator must:

(i) comply with Network Control Directions;

(ii) ensure that:

(A) Train drivers are contactable by the Network Control Officer to receive Network Control Directions using communications systems which comply with the Operating Requirements Manual; and

(B) all of the Operator's Trains are equipped with means of communication to permit the Operator's Associates to comply with this agreement;

(iii) notify the Network Control Officer as soon as the Operator becomes aware that it is not possible for the Operator (or the Operator's Associates) to comply with a Network Control Direction or the Operator (or the Operator's Associates) has not complied with a Network Control Direction; and

(iv) notify the Network Control Officer as soon as the Operator becomes aware of any changes or delays in Train Services or any circumstances which have affected or may affect Network Control including the ability of any Train Service to conform to its Scheduled Times.

7.3 Compliance

(a) Queensland Rail must observe and comply with:

(i) all applicable Laws and Authorisations including Queensland Rail's Accreditation, to the extent that the Laws and Authorisations relate to Queensland Rail's performance of its obligations or exercise of its rights under this agreement;

(ii) the lawful requirements of relevant Authorities, to the extent that those requirements relate to Queensland Rail's performance of its obligations or exercise of its rights under this agreement;

(iii) this agreement;

(iv) the IRMP including any safety and environment standards identified in the IRMP as applicable to Queensland Rail;

(v) the Network Management Principles;

(vi) the Operating Requirements Manual; and

(vii) the Access Undertaking, to the extent that the Access Undertaking relates to Queensland Rail's performance of its obligations or exercise of its rights under this agreement,

(b) Queensland Rail must provide that as far as practicable:

(i) the Network Management Principles; and

(ii) the Operating Requirements Manual,

will be applied consistently for all Rolling Stock Operators on the Network,

and, where observance or compliance with the matters in paragraphs 7.3(a)(i) to 7.3(a)(vii) cannot occur because of an inconsistency between those matters, then:

(iii) for the purpose of observance and compliance, those matters must be prioritised in the above order (with a matter earlier in the list having a higher priority for observance and compliance to a matter later in the list); and

(iv) Queensland Rail's obligation under this clause 7.3 is to observe and comply with those matters in that order of priority,

to the extent of the inconsistency.

(c) Without limitation to this clause 7, Queensland Rail must at all times act in accordance with Prudent Practices.

(d) Queensland Rail must notify the Access Holder and the Operator of any material failure, or likely material failure, by Queensland Rail to comply with this agreement as soon as practicable after Queensland Rail becomes aware of that material failure or likely material failure.

8. Train operations

8.1 Operation of Train Services

The Operator must only operate Train Services in accordance with this agreement (including the Train Service Description and any Network Control Directions) if the Operator has obtained the prior written approval of Queensland Rail (not to be unreasonably withheld) (for example, an authority to travel) including any terms and conditions of that approval in addition to or varying this agreement in respect of those Train Services (including in respect of the Access Charges applicable) and complies with that approval and those terms and conditions in operating the Train Services.

8.2 Additional Train Services

If the Access Holder notifies Queensland Rail that it wishes to have the Operator (who the Access Holder must identify when notifying Queensland Rail) operate an Additional Train Service, and the Operator has notified Queensland Rail that it is able and willing to operate the Additional Train Service then:

(a) Queensland Rail must use reasonable endeavours to schedule the Additional Train Service in accordance with the Network Management Principles; and

(b) on and from the Additional Train Service being scheduled in the relevant Daily Train Plan, the Additional Train Service will be treated as though it was a Train Service for the purpose of this agreement including in relation to the payment of Access Charges.

8.3 Ad Hoc Train Services

(a) If the Access Holder notifies Queensland Rail that it wishes to operate an Ad Hoc Train Service, then Queensland Rail may, but is not obliged to, schedule the Ad Hoc Train Service in the Daily Train Plan.

(b) If Queensland Rail schedules the Ad Hoc Train Service in the Daily Train Plan then, on and from the Ad Hoc Train Service being scheduled in the relevant Daily Train Plan, the Ad Hoc Train Service will be treated as though it was a Train Service for the purpose of this agreement except that Ad Hoc Train Services will not be counted as Train Services for the purpose of calculation of Take or Pay Charges or for calculating the number of contracted Train Services for the purposes of identifying whether an Endorsed Variation Event has occurred.

(c) If Queensland Rail schedules an Ad Hoc Train Service in the Daily Train Plan then, despite any other provision in this agreement the Operator must, in operating the Ad Hoc Train Service, comply with the Train Service Description subject to any derogations permitted by Queensland Rail.

8.4 Compliance

(a) The Operator must observe and comply with:

(i) all applicable Laws and Authorisations including the Operator's Accreditation and the Operator's Emergency Management Plan, to the extent that the Laws and Authorisations relate to the Operator's performance of its obligations or exercise of its rights under this agreement;

(ii) the lawful requirements of relevant Authorities, to the extent that those requirements relate to the Operator's performance of its obligations or exercise of its rights under this agreement;

(iii) this agreement;

(iv) the IRMP including any safety and environment standards identified in the IRMP as applicable to the Operator;

(v) the Network Management Principles;

(vi) the Operating Requirements Manual;

(vii) all Network Control Directions;

(viii) the relevant requirements of:

(A) any Authorisation; and

(B) any other consent, approval, lease, licence or other authority,

held by or applying to Queensland Rail, or to which Queensland Rail is a Party, from time to time in relation to the Network, other relevant facilities (if any) or land to which the Operator is provided access by Queensland Rail in accordance with this agreement (provided Queensland Rail has notified the Operator of those relevant requirements); and

(ix) the Access Undertaking, to the extent that the Access Undertaking relates to the Operator's performance of its obligations or exercise of its rights under this agreement,

and, where observance or compliance with the matters in paragraphs 8.4(a)(i) to 8.4(a)(ix) cannot occur because of an inconsistency between those matters, then:

(x) for the purpose of observance and compliance, those matters must be prioritised in the above order (with a matter earlier in the list having a higher priority for observance and compliance to a matter later in the list); and

(xi) the Operator's obligation under this clause 8.4(a) is to observe and comply with those matters in that order of priority,

to the extent of the inconsistency.

(b) Without limitation to clause 8.4(a), the Operator must:

(i) not access or be upon the Network (or the land on which the Network is located) for any purpose other than to exercise its rights and to comply with its obligations in accordance with this agreement;

(ii) at all times act in accordance with Prudent Practices;

(iii) do everything necessary in accordance with Prudent Practices to avoid causing or contributing to any nuisance, annoyance or disturbance to Queensland Rail or the occupiers or users of the Network, or land adjacent to the Network;

(iv) in accordance with Prudent Practices, not do or omit to do anything that would cause or contribute to the Network (or the land on which the Network is located) not being clean, presentable, well maintained and in good repair, appearance and condition;

(v) not cause or allow any rubbish, debris, or freight, in accordance with Prudent Practices, to be deposited or released on or about the Network (or the land on which the Network is located) except as expressly required by the Operating Requirements Manual or any Network Control Directions;

(vi) obtain and maintain all necessary Authorisations required for the Operator to exercise the Operator's rights or comply with the Operator's obligations under this agreement;

(vii) not interfere with, hinder or prejudice:

(A) Queensland Rail's conduct of its operations;

(B) Queensland Rail's or any other Network Participant's use of the Network; or

(C) the functions and obligations of Queensland Rail as a Railway Manager (including under Queensland Rail's Accreditation);

(viii) not in breach of this agreement or through negligent act or omission:

(A) cause, permit or contribute to any act or omission that may result in Queensland Rail:

(I) failing to comply with any Law; or

(II) incurring (for clarity, directly or indirectly) any costs or expenses in complying with any Law that Queensland Rail would not otherwise have incurred; or

(B) fail to promptly comply with a direction given by Queensland Rail for the purpose of Queensland Rail's compliance with any Law relating to the Network, Queensland Rail's Rail Infrastructure Operations or this agreement (including the Train Services).

(ix) ensure that its Rolling Stock operate safely, and otherwise be responsible for the operation of its Rolling Stock, on the Network (including ensuring that its Rolling Stock are accompanied at all times while on the Network by a member of the Operator's Associates who has authority to manage, and to keep secure, that Rolling Stock and anything on, or being transported by, that Rolling Stock); and

(x) without limitation to clause 8.4(b)(ix), ensure that the operation of its Rolling Stock (including the loading, unloading and cleaning of its Rolling Stock) is undertaken in a manner that:

(A) does not affect:

(I) the safe operation of the Rolling Stock or the Network; or

(II) the operations or activities of Queensland Rail or other Network Participants; and

(B) in accordance with Prudent Practices, ensures that all things on or in the Operator's Rolling Stock remain on or in the Operator's Rolling Stock (and, if applicable, are secured in position) during transit.

(c) Where the Operator fails to comply with clause 8.4(b)(v), Queensland Rail may remove and dispose of the relevant rubbish, debris, or freight and the Operator must pay Queensland Rail's reasonable costs and expenses incurred by Queensland Rail in doing so and those reasonable costs and expenses will be a debt due and owing by the Operator to Queensland Rail.

(d) The Operator must notify Queensland Rail of any material failure, or likely material failure, by the Operator to comply with this agreement as soon as practicable after the Operator becomes aware of that material failure or likely material failure.

8.5 Compliance before commencing to operate a Train Service

(a) Without limiting any other provisions of this agreement, the Operator must only commence operating Train Services under this agreement if in respect of those Train Services:

(i) all Security as required in accordance with clause 17 has been provided;

(ii) an Operating Plan has been prepared by the Operator and a copy provided to Queensland Rail;

(iii) an EIRMR has been prepared by the Operator and a copy provided to Queensland Rail so that any environmental risks and associated controls identified in the EIRMR can be addressed as part of the IRMP process under clause 9;

(iv) an IRMP has been agreed, determined or reviewed in relation to those Train Services in accordance with clause 9 (except to the extent that clauses 9.1 to 9.2 do not apply in accordance with clause 9.3(c));

(v) the Operator has done all things necessary in relation to the Operator's Emergency Management Plan to comply with clause 10.1;

(vi) all Insurances in accordance with clause 16 have been effected and evidence of those Insurances has been provided to Queensland Rail in accordance with clause 16.7(a);

(vii) the Operator holds the Accreditation necessary for it to operate the Train Services and has provided to Queensland Rail all things relating to that Accreditation in accordance with clause 5(c);

(viii) the Operator has observed, complied with or implemented, all aspects of the Operator's Emergency Management Plan, the Operator's Accreditation and the IRMP that are required to be complied with prior to Train Services commencing;

(ix) the Operator has satisfied the requirements in clause 8.10 which relate to the authorisation of Rolling Stock and Train Configurations; and

(x) the Operator has done all things that are necessary, and which can reasonably be done prior to operating the Train Services, to ensure the Operator's compliance with this agreement including the IRMP.

(b) Queensland Rail must use reasonable endeavours to cooperate with the Operator to facilitate the Operator's compliance with clause 8.5(a).

(c) If the Operator has not complied with clause 8.5(a) for the relevant Train Services:

(i) by the Compliance Date and Queensland Rail does not reasonably expect that the Operator can do so before the Commitment Date for those Train Services; or

(ii) by the Commitment Date for those Train Services,

then:

(iii) provided that Queensland Rail has complied with clause 8.5(b), Queensland Rail may notify the Operator and Access Holder requiring the Operator to comply with clause 8.5(a) in respect of those Train Services by a date which is 20 Business Days after the date of that notice; and

(iv) where the Operator does not comply with clause 8.5(a) by that date (Failure), Queensland Rail may, by notice to the Operator and the Access Holder:

(A) reduce the Operator's right to operate under this agreement in relation to the relevant Train Services relating to the Failure, but that reduction will not affect any other right to operate (if any) under this agreement relating to other Train Services which are not affected by that Failure (if any); and

(B) a reduction referred to under clause 8.5(c)(iv)(A) will not affect any Access Rights held by the Access Holder.

(v) Without limiting the Access Holder's rights under clause 3.4 and 4.1, the Access Holder will have the right, under clauses 3.4 and 4.1, to nominate a new Operator to utilise the Access Rights which were previously allocated to the non-compliant Operator.

8.6 Compliance with Scheduled Time

The Operator must only operate Train Services in accordance with the applicable Scheduled Times and the relevant Train Schedule unless:

(a) the Operator is expressly permitted or required to do otherwise in accordance with this agreement, the Operating Requirements Manual, the Network Management Principles or a Network Control Direction; or

(b) the Parties agree otherwise.

8.7 Alterations to Train Services

(a) If the Operator is not able to operate a Train Service in accordance with its Scheduled Time, then:

(i) the Operator must, as soon as practicable prior to the time when that Train Service was scheduled for operation, notify Queensland Rail and the Access Holder that it is not able to operate that Train Service and specify the reason(s) for its inability; and

(ii) if the Operator has complied with clause 8.7(a)(i), then Queensland Rail will use reasonable endeavours to provide an Alternative Schedule Time for the relevant Train Service unless this would:

(A) alter the Scheduled Times for other Train Movements; or

(B) result in Queensland Rail incurring additional costs or expenses.

(b) If Queensland Rail provides an Alternative Schedule Time for a Train Service in accordance with clause 8.7(a)(ii), the Operator must notify Queensland Rail and the Access Holder promptly whether the Operator accepts that Alternative Schedule Time. If the Operator accepts that Alternative Schedule Time, then the Operator must operate the Train Service in accordance with that Alternative Schedule Time. For clarity, clause 8.7(a)(ii) does not apply to that Alternative Schedule Time.

(c) If the Operator is not able to operate a Train Service in accordance with its Scheduled Time or an Alternative Schedule Time made available in accordance with clause 8.7(a)(ii) (or has not immediately notified Queensland Rail accepting such an Alternative Schedule Time), Queensland Rail may authorise the operation of another Train Movement at that Scheduled Time.

8.8 Operator to supply information

(a) The Operator must provide and maintain all software, hardware and associated communication links necessary to ensure, to Queensland Rail's satisfaction (acting reasonably), an effective interface between the Operator's and Queensland Rail's information systems as nominated by Queensland Rail. The interface with Queensland Rail's information systems will be subject to any requirements and controls specified by Queensland Rail (in its reasonable discretion) including to protect the integrity and confidentiality of those information systems and the information contained in them.

(b) Prior to substantially varying or amending the interface standards referred to in clause 8.8(a) Queensland Rail will, in good faith, consult with the Operator in relation to any proposed amendments and Queensland Rail will use reasonable endeavours to minimise any cost and disruption to the Operator which may result from any proposed amendments.

(c) The Operator must provide information to Queensland Rail as required in accordance with the Operating Requirements Manual (including any details in relation to Train Services or contact and other details for interface coordination).

8.9 Queensland Rail must supply Data

(a) The Parties acknowledge that Queensland Rail may from time to time collect data in respect of the Operator's Rolling Stock (**Data**).

(b) Queensland Rail must, if reasonably requested by an Operator, provide the Operator with access to the Data. The Operator will be responsible for all costs related to the transfer, conversion, modification and storage of any Data made available to the Operator by Queensland Rail.

(c) Despite any other provision in this agreement, if the Operator receives any data from Queensland Rail that is not in respect of the Operator's Rolling Stock, then the Operator must:

(i) immediately notify Queensland Rail, providing details of the relevant data;

(ii) not use the data for any purpose;

(iii) not disclose the data to any person; and

(iv) comply with all directions given by Queensland Rail in relation to that data including the deletion, redirection or return of that data.

(d) All material supplied or made available by one Party (the **Supplier**) to the other Party remains the intellectual property of the Supplier and cannot be reproduced or used for any purpose other than the purpose for which it was supplied without the prior written approval of the Supplier.

8.10 Authorisation of Rolling Stock and Train Configurations

(a) The Operator must only operate a Train Service using Rolling Stock or a Train Configuration in respect of which the Operator has:

(i) provided to Queensland Rail:

(A) a certificate by a suitably qualified person, approved by Queensland Rail and appointed by and at the cost of the Operator, that the Operator's Rolling Stock and Train Configurations comply with the Interface Standards agreed in the IRMP (other than exceptions or unverified/unknown characteristics listed on that certificate); and

(B) relevant documentation (including reports on trials and/or commissioning tests and load tables) if required to demonstrate to the reasonable satisfaction of Queensland Rail that the Operator's Rolling Stock and Train Configurations comply with the Interface Standards agreed in the IRMP (other than exceptions or unverified/unknown characteristics listed on the certificate),

(**Certification**); and

(ii) obtained a notice from Queensland Rail (whose notice and satisfaction will not be unreasonably withheld or delayed) indicating that Queensland Rail is satisfied with that Certification for the purposes of those Train Services.

If the Operator obtains a notice referred to in paragraph 8.10(a)(ii) that is subject to conditions (including conditions relating to the period for which that notice will apply), then the Operator must comply with those conditions and must only operate a Train Service in accordance with those conditions and while that notice applies.

(b) During the Term, if the Operator wishes to modify any of the Rolling Stock or Train Configurations used for Train Services or add new or additional Rolling Stock or Train Configurations, then the Operator must not use any such Rolling Stock or Train Configurations for those Train Services unless and until:

(i) the IRMP has been reviewed in accordance with clause 9.2 in relation to the modified Rolling Stock or Train Configurations;

(ii) the Operator has complied with clause 8.10(a) in relation to the modified Rolling Stock or Train Configurations, as applicable; and

(iii) where such modification is not otherwise covered by clause 4.2, the Parties (each acting reasonably) have agreed any amendments to this agreement (including varying the methodology, rates or other inputs for calculating Access Charges and any necessary changes to the IRMP) reasonably necessary to reflect the authorisation and use of the modified Rolling Stock or Train Configurations on the Network.

8.11 Entering and exiting the Network

(a) The Access Holder and the Operator are responsible for, and bear the cost and risk of, obtaining and maintaining any rights to access or use Private Infrastructure that are

necessary in order to enter or exit the Network or otherwise operate the Train Services in accordance with this agreement.

(b) Despite any other provision in this agreement, the Access Holder and the Operator are not relieved of their respective obligations under this agreement (and must continue to comply with all of their respective obligations under this agreement) even if the Access Holder or the Operator cannot or does not obtain or maintain any such rights.

8.12 Notification of damage or disrepair

(a) The Operator must notify Queensland Rail as soon as practicable of any damage to, disrepair of or failure in the operation or function of any part of the Network of which the Operator becomes aware.

(b) Queensland Rail must notify the Operator as soon as practicable of any damage to, disrepair of or failure in the operation or function of any part of the Network relevant to the Operator of which Queensland Rail becomes aware.

8.13 Replacement of Operating Requirements Manual

Nothing in this agreement restricts or limits Queensland Rail's right to amend or replace the Operating Requirements Manual through the submission of a draft access undertaking or a draft amending access undertaking to the QCA in accordance with the QCA Act.

9. Interface risk management

9.1 Compliance with IRMP

(a) The Operator and Queensland Rail must observe and comply with their respective responsibilities and obligations set out in the IRMP.

(b) The Operator must use reasonable endeavours to not cause, permit or contribute to any act or omission which may give rise to Interface Risks that are not addressed in the IRMP. If the Operator does cause, permit or contribute to any act or omission that gives rise to, or is likely to give rise to, Interface Risks that are not addressed in the IRMP, the Operator must notify Queensland Rail as soon as practicable of the act or omission (as applicable) and the relevant Interface Risk.

(c) Queensland Rail must use reasonable endeavours to not cause, permit or contribute to any act or omission which may give rise to Interface Risks that are not addressed in the IRMP. If Queensland Rail does cause, permit or contribute to any act or omission that gives rise to, or is likely to give rise to, Interface Risks that are not addressed in the IRMP, Queensland Rail must notify the Operator as soon as practicable of the act or omission (as applicable) and the relevant Interface Risk.

(d) If either Queensland Rail or the Operator (as applicable) fails to comply with the IRMP the non-complying Party must notify the Operator or Queensland Rail (as applicable) of the non-compliance as and when it becomes aware of such non-compliance. The notice must include details of the nature of the non-compliance and how the non-complying Party has rectified or intends to rectify the non-compliance.

9.2 Review of IRMP

(a) The Operator and Queensland Rail must:

(i) upon the reasonable request at any time by either of them; or

(ii) if the Operator changes its Operating Plan (in which case the Operator must provide a copy of the amended Operating Plan to Queensland Rail); and

(iii) for any new or varied Train Services or Ad Hoc Train Services from time to time,

jointly review the IRMP, and amend it (including by replacing it) as necessary, to ensure that the Operator and Queensland Rail continue to agree that the Interface Risk Assessment is still applicable and all reasonably foreseeable Interface Risks are effectively managed under the IRMP.

(b) For the purposes of a review referred to in clause 9.2(a):

(i) if either Queensland Rail or the Operator is not satisfied that the Interface Risk Assessment is still applicable and all reasonably foreseeable Interface Risks are effectively managed under the IRMP, then those Parties will undertake a joint Interface Risk Assessment (including, if those Parties agree that it is appropriate, only in relation to specific matters or activities) as part of such a review;

(ii) Queensland Rail (acting reasonably) may request that the Operator review and update its EIRMR and provide Queensland Rail with a copy of its updated EIRMR prior to and for the purposes of the Parties undertaking a joint Interface Risk Assessment; and

(iii) if Queensland Rail and the Operator are not able to agree any matter in relation to such a review, either of those Parties may treat that inability to agree as a Dispute for the purposes of clause 19.

(c) For clarity, the Operator must not:

(i) operate any new or varied Train Services under this agreement unless the IRMP has been reviewed in accordance with this clause 9.2 in relation to those new or varied Train Services (as applicable); and

(ii) use any Rolling Stock or Train Configuration in operating a Train Service unless the IRMP has either been:

(A) prepared on the basis of the Train Services being operated using that Rolling Stock or Train Configuration (as applicable); or

(B) reviewed in accordance with this clause 9.2 in relation to that Rolling Stock or Train Configuration (as applicable).

(d) For administrative ease, the IRMP may be amended by the exchange of written notices by the duly authorised representatives of the Parties.

9.3 Application of RSNL

(a) To the extent that anything under this clause 9 is inconsistent with the RSNL, the RSNL prevails to the extent of the inconsistency.

(b) The IRMP and the provisions under this agreement relating to the IRMP (including in relation to compliance with it and its review):

(i) together comprise an interface agreement (as defined under the RSNL) between the Operator and Queensland Rail; and

(ii) despite any other provision to the contrary in this agreement, may be disclosed to the Rail Safety Regulator to the extent that it is reasonably necessary to do so to comply with this agreement or the RSNL or any other Law.

(c) Without limiting clause 9.3(a), to the extent that the Rail Safety Regulator has:

(i) determined under section 110 of the RSNL an arrangement that is to apply in relation to the management of risks to safety as between the Operator and Queensland Rail; and

(ii) directed that the Operator or Queensland Rail give effect to those arrangements (as defined under the RSNL),

clauses 9.1 to 9.2 (including any IRMP) are subject to and must be consistent with that direction.

9.4 Rights for Inspection or Audit

(a) Subject to clause 9.4(b), if either the Operator or Queensland Rail has reasonable grounds to believe that the other has not complied, or is not complying, with any aspect of the IRMP or the Operating Requirements Manual, or any obligation or duty under the RSNL, then that Party may conduct, or require the conduct of, an inspection or audit in respect of that compliance.

(b) Prior to exercising a right under clause 9.4(a), a Party must:

(i) notify the other of those Parties of that belief (including the grounds supporting that belief) and require that other Party to demonstrate that they are compliant; and

(ii) only proceed to an inspection or audit if that other Party fails to demonstrate compliance to the first Party's satisfaction (acting reasonably).

(c) Without limiting clause 9.4(a), each of Queensland Rail and the Operator may conduct or require the conduct of an inspection or audit to assess the other's compliance with the IRMP periodically as specified in the IRMP.

9.5 Notice of Inspection or Audit

The Party (**Inspecting Party**) conducting or requiring the conduct of an inspection or audit referred to in clause 9.4 (**Inspection or Audit**) must give the other Party reasonable prior notice of that Inspection or Audit (except in the case of emergencies or if an event or circumstance referred to in clauses 14 or 15 has occurred) and that notice must include the following:

(a) details of the Inspection or Audit to be carried out;

(b) the name of the person conducting the Inspection or Audit;

(c) the timing and expected duration of the Inspection or Audit;

(d) the location of the Inspection or Audit;

(e) the grounds on which the Inspecting Party requires the Inspection or Audit; and

(f) the Inspecting Party's requirements (acting reasonably) of the other Party in relation to the Inspection or Audit.

9.6 Conduct of Inspection or Audit

(a) Subject to clause 9.6(b), any Inspection or Audit may be conducted by:

(i) the Inspecting Party or its appointed representative; or

(ii) by a suitably qualified person acceptable to Queensland Rail and the Operator (each acting reasonably).

(b) If an Inspection or Audit requires access to commercially sensitive information, then:

(i) the Inspection or Audit must only be conducted by a person referred to in clause 9.6(a)(ii); and

(ii) that person must:

(A) prior to being provided with the commercially sensitive information, execute a confidentiality deed:

(I) in favour of the Party who is subject to the Inspection or Audit;

(II) on terms satisfactory to that Party (acting reasonably); and

(III) that requires the person:

(1) to keep that information confidential;

(2) to use it only for the purpose of the Inspection or Audit;

(3) to not disclose that information to the Inspecting Party or any other person (or another Party); and

(4) to return (or, if applicable, destroy any copy of) that information after completion of the Inspection or Audit,

subject to reasonable exceptions including except to the extent:

(5) required or compelled by, or necessary to observe, administer or comply with, any Law;

(6) consistent with a person's right to disclosure under any Law; and

(7) necessary for the conduct of any legal proceedings (including any dispute resolution process under this agreement); and

(B) be given access to the commercially sensitive information, once they have executed that confidentiality deed and delivered it to the Party who it is in favour of.

(c) Each Party must use reasonable endeavours to ensure that an Inspecting Party, its appointed representative or the person appointed to conduct an Inspection or Audit is entitled to enter and be on its land and premises (whether or not owned or leased) and to access and inspect any other of its relevant property, including in the case of the Operator, its Rolling Stock, for the purposes of carrying out any Inspection or Audit.

(d) An Inspecting Party, in exercising any right of Inspection or Audit, must:

(i) not interfere unreasonably with another Party's Trains and Rolling Stock or the Network;

(ii) ensure that the Inspection or Audit does not adversely affect any other Network Participant's Train services or Train Movements;

(iii) not cause or contribute to any damage to property, any Environmental Harm or any injury or death of persons;

(iv) comply with the health, safety, environment and other requirements as required by another relevant Party (acting reasonably); and

(v) use reasonable endeavours to minimise any disruption to the Party who is subject to the Inspection or Audit.

(vi) use all reasonable endeavours to mitigate any loss or damage arising from the conduct of an Inspection or Audit.

(e) An Inspecting Party is not liable for:

(i) any delays or cancellation of Train Services; or

(ii) Claims suffered or incurred by or made or brought by or against another Party,

as a result of the Inspecting Party exercising its rights under clause 9.4 provided that the Inspecting Party complies with clause 9.6(d).

9.7 Cooperation for Inspection or Audit

(a) Each Party must provide all reasonable assistance required by the Inspecting Party in conducting any Inspection or Audit, including allowing the Inspecting Party, its appointed representative or a person appointed to conduct an Inspection or Audit to discuss any relevant matter with that Party's Associates. A member of the Associates of the Party who is subject to the Inspection or Audit may be present at the Inspection or Audit.

(b) Nothing in clauses 9.4 to 9.7(a):

(i) obliges Queensland Rail (as a Party subject to Inspection or Audit), or entitles the Operator (as the Inspecting Party), to do anything that may adversely affect:

(A) the operation of Train services by another Network Participant; or

(B) Queensland Rail's compliance with another Network Participant's access agreement or, if applicable, the Access Undertaking; or

(ii) obliges a Party who is subject to an Inspection or Audit, or entitles the Inspecting Party, to do anything that:

(A) would result in the Party who is subject to the Inspection or Audit not complying with any Law; or

(B) adversely affects the safe operation of the Network including the safety of any person.

9.8 Costs for Inspection or Audit

(a) For an Inspection or Audit under clause 9.4(c), the Inspecting Party must bear the costs of conducting the Inspection or Audit.

(b) For an Inspection or Audit under clause 9.4(a):

(i) the Party whose operations are Inspected or Audited must bear the reasonable costs of the conduct of the Inspection or Audit to the extent that the stated grounds for requiring the Inspection or Audit are demonstrated to exist; or

(ii) the Inspecting Party must bear the costs of conducting such Inspection or Audit to the extent that the stated grounds for requiring the Inspection or Audit are not demonstrated to exist,

as a result of the Inspection or Audit.

9.9 Results of Inspection or Audit and general compliance

(a) The Inspecting Party must provide the other Party with a copy of the report for the relevant Inspection or Audit.

(b) An Inspection or Audit by a Party does not relieve either Party of its obligations under this agreement or at Law.

9.10 Cooperation for rail safety investigation

If the Rail Safety Regulator, a rail safety officer, a prescribed authority (as those terms are defined under the RSNL) or other Authority is undertaking an investigation, inspection, audit or other review in relation to a Party's compliance with its obligations or duties under the RSNL, then the Parties will provide such cooperation and assistance to each other, as is reasonable in the circumstances, in relation to that investigation, inspection, audit or other review.

10. Incident, environmental and emergency management plan requirements

10.1 Operator's Emergency Management Plan

(a) Prior to commencing to operate any Train Services (including any new or varied Train Services) the Operator must develop a proposed Operator's Emergency Management Plan which:

(i) complies with the RSNL's requirements for an emergency management plan; and

(ii) except to the extent inconsistent with those requirements:

(A) details procedures that are adequate to manage an Incident including all actions to be taken to prevent, minimise or mitigate any threat or danger to any person or property including:

(I) the matters outlined in the Operating Requirements Manual, from time to time, relevant to the management of Network Incidents – for example, safety and environment matters; and

(II) any matters otherwise referred to in this agreement for inclusion in such a plan;

(B) at all times during the Term is compatible with this agreement and the Queensland Rail Emergency Procedures and with Queensland Rail's emergency management plan; and

(C) is consistent with:

(I) Prudent Practices, all relevant Laws and all applicable Australian or other industry standards; and

(II) this agreement including the Network Management Principles, the IRMP and the Operating Requirements Manual,

and obtain a notice from Queensland Rail (whose satisfaction must not be unreasonably withheld or delayed) that it has no objection to that plan.

(b) As soon as practicable after receiving the proposed Operator's Emergency Management Plan, Queensland Rail (acting reasonably) must either notify the Operator that it:

(i) has no objections; or

(ii) has objections (including details of those objections),

to the proposed Operator's Emergency Management Plan.

(c) If Queensland Rail notifies the Operator, under clause 10.1(b), that Queensland Rail has objections, then:

(i) the Operator must develop an amended plan in accordance with clause 10.1(a); and

(ii) clause 10.1(b) and this clause 10.1(c) will apply in respect of that amended plan.

(d) If the Operator intends to amend the Operator's Emergency Management Plan, then:

(i) the Operator must notify Queensland Rail and provide Queensland Rail with details of the proposed amendments and the reasons for them;

(ii) clauses 10.1(a) to 10.1(c) will also apply in respect of those amendments as if they were a proposed Operator's Emergency Management Plan; and

(iii) those amendments will not be effective unless and until the Operator has obtained a notice from Queensland Rail that it has no objection to those amendments.

(e) The Operator must ensure procedures are in place, and are implemented, which ensure compliance by the Operator with any reporting requirements in the Operator's Emergency Management Plan and, to the extent relevant, the Queensland Rail Emergency Procedures and Queensland Rail's emergency management plan.

(f) Without limitation to Queensland Rail's right to object to a proposed Operator's Emergency Management Plan (or an amendment to the Operator's Emergency Management Plan) under this clause 10.1, Queensland Rail must raise an objection if Queensland Rail considers that the proposed Operator's Emergency Management Plan (or the relevant amendment) is inconsistent with Queensland Rail's or another Network Participant's emergency management plan or would adversely affect a coordinated response to a Network Incident or other event or incident that is preventing or affecting, or is likely to prevent or affect, the operation of Train services on the Network.

(g) Queensland Rail (acting reasonably) may request the Operator to coordinate and cooperate with Queensland Rail or another Network Participant to ensure that the Operator, Queensland Rail and other Network Participants have emergency management

plans that are not inconsistent and allow a coordinated response to Network Incidents or other emergencies.

(h) Without limitation to the Operator's obligations under section 113(2) of the RSNL, if requested by Queensland Rail (acting reasonably), the Operator must assist and participate in exercises with Queensland Rail and, if applicable, other Network Participants, to test the effectiveness of the emergency management plans of Queensland Rail, the Operator and, if applicable, other Network Participants including whether those emergency management plans are inconsistent and allow for a coordinated response to Network Incidents or other emergencies.

(i) Despite clauses 10.1(f) to 10.1(h) or any other provision of this agreement, Queensland Rail is not obliged to ensure, and does not assume any responsibility for ensuring, that the Operator's Emergency Management Plan:

(i) is consistent with Queensland Rail's or any other Network Participant's emergency management plan; or

(ii) will allow for a coordinated response to Network Incidents or other emergencies.

(j) For the purpose of this clause 10.1, a reference to an **emergency management plan** is a reference to an emergency management plan as referred to under section 113 of the RSNL and, in the case of the Operator, the Operator's Emergency Management Plan.

10.2 Obstructions

(a) The Operator must not cause or contribute to any Obstruction or permit to continue any Obstruction to the extent caused or contributed to by the Operator.

(b) Queensland Rail must not cause or contribute to any Obstruction or permit to continue any Obstruction to the extent caused or contributed to by Queensland Rail.

(c) Queensland Rail may do anything that it considers reasonably necessary:

(i) to remove, rectify, mitigate or otherwise deal with any Obstruction; or

(ii) to recommence Train Movements where there is or was an Obstruction,

including to move, or remove from the Network, any of the Operator's Rolling Stock (including any freight) that is causing or contributing to an Obstruction or preventing or hindering Train Movements. To the extent that costs and expenses from an Obstruction are caused or contributed to by the Operator, the Operator must pay Queensland Rail's reasonable costs and expenses incurred by Queensland Rail in relation to that Obstruction (including reasonable costs and expenses for doing anything under this clause 10.2(c)) and those reasonable costs and expenses will be a debt due and owing by the Operator to Queensland Rail.

(d) Queensland Rail will use reasonable endeavours to consult with the Operator, prior to exercising any right under clause 10.2(c), where Queensland Rail intends to interfere with the Operator's Rolling Stock or any other thing for which the Operator is responsible.

(e) If Queensland Rail gives a Network Control Direction to the Operator to assist Queensland Rail to remove, rectify, mitigate or otherwise deal with an Obstruction caused or contributed to by another Network Participant (including to use any of the Operator's Rolling Stock to move, or remove from the Network, any Rolling Stock of another Network Participant), Queensland Rail will reimburse to the Operator its reasonable direct costs and expenses of providing such assistance.

10.3 Notification

(a) Queensland Rail will notify the Operator of any Network Incident (other than an Incident) that may reasonably be expected to materially adversely affect the Train Services as soon as practicable after the Network Incident comes to Queensland Rail's attention.

(b) As soon as practicable after the Operator or the Operator's Associates become aware of:

(i) any Incident;

(ii) any Environmental Harm;

(iii) any event, circumstance, condition, operation or activity which it is reasonably foreseeable is likely to result in:

(A) Environmental Harm; or

(B) a category A notifiable occurrence (as defined under the RSNL) or any other requirement for Queensland Rail to notify an Authority in accordance any Law;

(iv) any Obstruction;

(v) any material breach or suspected material breach of any Safeworking Procedures, Safety Standards or other safety requirements set out in the Operating Requirements Manual; or

(vi) anything which the Operator observes may cause or contribute to the occurrence of any matter referred to in clauses 10.3(b)(i) to 10.3(b)(v),

(Notifiable Events), the Operator must notify Queensland Rail of that Notifiable Event (including any action or intervention taken or being taken by the Operator).

(c) Where:

(i) the Operator is required to give a notice under clause 10.3(b); and

(ii) a Train Service is affected by, involved with or has caused or contributed to the relevant event,

the Operator's notice must specify the Train Service and provide details of:

(iii) any substance or thing carried by that Train Service that could potentially cause or contribute to any:

(A) Environmental Harm;

(B) loss of, damage to or destruction of real or personal property (including property of another Party); or

(C) personal injury to or death of any person; and

(iv) any Dangerous Goods (if any) carried by the Train Service.

(d) Without limitation to clauses 10.3(b) and 10.3(c), where any substance or thing referred to in clause 10.3(c) (including any Dangerous Goods carried by that Train Service) has escaped or been released or discharged or there is a material or imminent risk of such an escape, release or discharge, the Operator must immediately notify Queensland Rail and provide all relevant details of the release, discharge or risk (including as requested by Queensland Rail) relevant to Queensland Rail's Rail Infrastructure Operations.

(e) For clarity, clauses 10.3(c)(iv) or 10.3(d) apply without limitation to clause 10.5.

10.4 Management and response

(a) If an Incident occurs:

(i) the Operator and Queensland Rail must coordinate and manage the response to that Incident in accordance with this agreement and the relevant requirements in the Operating Requirements Manual; and

(ii) an investigation into that Incident will be conducted where required, and in accordance with the relevant provisions of the Operating Requirements Manual, the Operator and Queensland Rail must cooperate, and ensure their Associates cooperate, fully with any such investigation.

10.5 Dangerous Goods

[Option A: Where the Train Service is not to carry Dangerous Goods:

The Operator must ensure that the Train Services do not carry Dangerous Goods.]

[Option B: Where the Train Service will or may carry Dangerous Goods:

(a) The Operator must ensure that the Train Services do not carry Dangerous Goods, except:

(i) as expressly provided in this agreement; or

(ii) with the prior permission of Queensland Rail (not to be unreasonably withheld).

(b) If the Operator wishes to obtain Queensland Rail's permission to carry any Dangerous Goods, the Operator must first satisfy Queensland Rail (acting reasonably) that:

(i) carrying the relevant Dangerous Goods in the manner proposed by the Operator is permitted under or by all relevant Laws and Authorities and any applicable Dangerous Goods Code;

(ii) any Authorisations required under any applicable Law or Dangerous Goods Code have been, or will be, obtained and maintained and are, or will be, available for inspection by Queensland Rail if requested; and

(iii) all Laws, including Authorisations, applicable in relation to those Dangerous Goods and all requirements of any applicable Dangerous Goods Code are, or will be, complied with.

(c) Unless otherwise expressly provided in this agreement, where either clause 10.5(a)(i) or 10.5(a)(ii) are satisfied and the relevant Train Service will carry Dangerous Goods, the Operator must ensure that:

(i) any Authorisations required under any applicable Law or the applicable Dangerous Goods Code have been obtained prior to the operation of that Train Service and are available for inspection by, or for copies to be provided to, Queensland Rail if requested;

(ii) all Laws, including Authorisations, applicable in relation to those Dangerous Goods and all requirements of any applicable Dangerous Goods Code are complied with;

(iii) Queensland Rail is notified of the details of the Dangerous Goods (including an accurate description of the Dangerous Goods and the applicable Dangerous Goods United Nations (UN) Number) as soon as practicable prior to the operation of that Train Service; and

(iv) before any Dangerous Goods are carried on that Train Service, the Operator's Emergency Management Plan includes procedures for responding to an Incident involving those Dangerous Goods, or any other event or circumstance that gives rise to a material or imminent risk of an escape, release or discharge of those Dangerous Goods.]

10.6 Intervention to prevent or mitigate damage

Where:

(a) Queensland Rail becomes aware of any event, circumstance, condition, operation, activity or omission in connection with the Network, the Train Services or any other related activity of the Operator which has caused or contributed to or is likely to cause or contribute to:

(i) any Environmental Harm;

(ii) any failure by Queensland Rail to comply with or observe any Law;

(iii) Queensland Rail being subject to a lawful direction, order or other requirement by any Authority;

(iv) any loss of, damage to or destruction of real or personal property (including property of the other Party); or

(v) any personal injury to or death of any person; and

(b) Queensland Rail:

(i) considers that action or intervention is required; or

(ii) is given a direction by an Authority that action or intervention is required,

to prevent, mitigate or remedy the matter referred to in clause 10.6(a),

then:

(c) Queensland Rail will notify the Operator of that requirement and, where practicable, any action or intervention that Queensland Rail (acting reasonably) or, if applicable, the relevant Authority considers necessary to prevent, mitigate or remedy the matter referred to in clause 10.6(a); and

(d) as soon as practicable after receiving such a notice, the Operator will:

(i) comply with the requirements of the applicable Authority and any other requirements specified by Queensland Rail in that notice; and

(ii) take whatever other action or intervention is required to prevent, mitigate or remedy the matter referred to in clause 10.6(a).

10.7 Noise mitigation

(a) In addition to any noise mitigation or management requirements under the IRMP or as otherwise agreed between the Parties, the Operator must pay to Queensland Rail a contribution, as determined by Queensland Rail (acting reasonably), to the costs and expenses incurred by Queensland Rail in relation to any noise mitigation or management measures on the Network, or land adjacent to the Network, that are considered necessary by Queensland Rail (acting reasonably) to comply with noise levels, limits, standards, guidelines or other requirements that Queensland Rail is required to comply with or which are required in order for Queensland Rail to comply with under any applicable Law (**Noise Mitigation Requirements**).

(b) Queensland Rail will (acting reasonably):

(i) consult with the Operator prior to Queensland Rail electing to implementing noise mitigation or management measures on the Network, or land adjacent to the Network, to comply with any applicable Noise Mitigation Requirements from time to time; and

(ii) notify the Operator of how it will determine the Operator's contribution to its costs and expenses in relation to any noise mitigation or management measures, including, prior to electing to implement noise mitigation or management measures on the Network, providing to the Operator any tender documents and quotes to support any expenses which Queensland Rail will seek to recover.

11. Inspection of Trains and Rolling Stock

(a) Where:

(i) Queensland Rail believes (acting reasonably) that the Operator's Rolling Stock or Train Configurations do not comply with:

(A) the authorised Rolling Stock and Train Configurations applicable to the Train Services;

(B) any applicable Laws relevant to the Train Services; and

(ii) Queensland Rail cannot otherwise reasonably confirm that compliance,

Queensland Rail may:

(iii) notify the Operator of its belief (including the grounds supporting that belief) and require the Operator to demonstrate that the Rolling Stock or Train Configurations are compliant; and

(iv) where the Operator fails to demonstrate compliance:

(A) inspect any Trains or Rolling Stock utilised or intended to be utilised for the Train Services; or

(B) require the Operator to have an inspection conducted,

after giving notice of that inspection or requirement to the Operator and for this purpose, Queensland Rail or Queensland Rail's Associates will be entitled at any time to enter and ride on the Operator's Trains or Rolling Stock.

(b) Queensland Rail may require any of the Operator's Rolling Stock (either loaded or empty) to be available at such location on the Network as Queensland Rail may require (acting reasonably) for weighing, measuring or other inspection at any time specified by Queensland Rail (acting reasonably), provided that Queensland Rail must use reasonable endeavours to minimise any diversion or delay to a Train Service.

(c) If any of the Operator's Rolling Stock is reasonably considered by Queensland Rail to be loaded:

(i) in excess of its rated carrying capacity; or

(ii) in an unsafe or insecure manner,

then Queensland Rail may:

(iii) at any time require the Operator to discontinue the Train Service or to remove the excess or adjust the load at the Operator's expense; or

(iv) where the Operator fails to immediately remove the excess or adjust the load, arrange for its removal or adjustment and Queensland Rail's reasonable costs and expenses of doing so will be a debt due and owing by the Operator to Queensland Rail.

(d) The Operator must provide all reasonable assistance required by Queensland Rail in conducting any inspection, including allowing Queensland Rail, its appointed representative or a person appointed to conduct an inspection to discuss any relevant matter with the Operator's Associates. A member of the Operator's Associates may be present at the inspection.

(e) Nothing in this clause 11 obliges the Operator, or entitles Queensland Rail, to do anything that would result in the Operator not complying with any Law.

(f) The Operator must bear the reasonable costs of the conduct of the inspection to the extent that the inspection demonstrates that a relevant non-compliance exists.

(g) Queensland Rail must bear the costs of conducting the inspection to the extent that the inspection demonstrates that no relevant non-compliance exists.

(h) An inspection by Queensland Rail under this clause 11 does not relieve the Operator of its obligations under this agreement or at Law.

12. Risk and indemnities

12.1 Indemnities for personal injury and property damage

(a) Subject to clause 13 (and without limitation to clause 12.2), the Operator indemnifies and will keep indemnified each other Party and that other Party's Associates against all Losses

suffered or incurred by, or Claims brought against or made upon, that other Party or its Associates (as applicable) in respect of:

(i) any loss of, damage to or destruction of real or personal property (including property of any Party); or

(ii) personal injury to or death of any person,

in each case to the extent caused or contributed to by:

(iii) a breach of this agreement by the Operator; or

(iv) any negligent act or omission of the Operator or the Operator's Associates in the performance of obligations, or in the exercise of rights, under this agreement.

(b) Subject to clause 13 (and without limitation to clause 12.2), Queensland Rail indemnifies and will keep indemnified each other Party and that other Party's Associates against all Losses suffered or incurred by, or Claims brought against or made upon, that other Party or its Associates (as applicable) in respect of:

(i) any loss of, damage to or destruction of real or personal property (including property of any Party); or

(ii) personal injury to or death of any person,

in each case to the extent caused or contributed to by:

(iii) a breach of this agreement by Queensland Rail; or

(iv) any negligent act or omission of Queensland Rail or Queensland Rail's Associates in the performance of obligations, or in the exercise of rights under this agreement.

(c) Subject to clause 13, the Access Holder indemnifies and will keep indemnified each other Party and that other Party's Associates against all Losses suffered or incurred by, or Claims brought against or made upon, that other Party or its Associates (as applicable) in respect of:

(i) any loss of, damage to or destruction of real or personal property (including property of any Party); or

(ii) personal injury to or death of any person,

in each case to the extent caused or contributed to by:

(iii) a breach of this agreement by the Access Holder; or

(iv) any negligent act or omission of the Access Holder or the Access Holder's Associates in the performance of obligations, or in the exercise of rights under this agreement.

12.2 Operator's carriage indemnity

(a) This clause 12.2 only applies where the Operator holds the Access Rights and the Operator's Customer is not a Party.

(b) The Parties acknowledge and agree that if the Operator's Customer were a Party to this agreement, then clause 13 should and would apply as if a reference to the Operator in clause 13 included a reference to the Operator's Customer with the effect of limiting and excluding Claims and liability for Losses as between the Operator's Customer and Queensland Rail – for example, excluding Claims by the Operator's Customer against Queensland Rail for Consequential Loss (where applicable).

(c) As there is no contract between Queensland Rail and the Operator's Customer addressing the matters referred to under clause 12.2(b), the Operator indemnifies and will keep indemnified Queensland Rail and its Associates from all Claims by the Operator's Customer (including any Loss arising out of Claims) in a way that gives effect to clause 13 as if clause 13 did apply as between Queensland Rail and the Operator's Customer (with

any reference to the Operator in clause 13 being a reference to the Operator's Customer). For example, if the Operator's Customer is not a Party and commences a Claim against Queensland Rail for Consequential Loss in circumstances where the Operator is excluded from making any such Claim, then the Operator will indemnify Queensland Rail for that Consequential Loss.

(d) The Operator is responsible for all conduct of the Operator's Customer relating to this agreement (including the Train Services). Any act or omission of the Operator's Customer is deemed to be an act or omission by the Operator for the purposes of this agreement.

12.3 Conditions of carriage exclusions and limitations of liability

Without limiting clause 12.2, the Operator (and where the Operator's Customer is a Party, the Operator's Customer) must:

(a) ensure Queensland Rail has the benefit of any exclusion or limitation of liability in favour of, or for the benefit of, the Operator under the Operator's conditions of carriage in relation to any person, or any person whose property is, being transported on Train Services including the Operator's Customer; and

(b) provide to Queensland Rail details of the provisions of the conditions of carriage relevant to those exclusions and limitations of liability in place from time to time.

12.4 Assistance in defence of Claims arising from Network Incidents

Each Party must provide reasonable assistance to each other Party in the defence of any Claim made against that other Party by a third party arising out of any event in connection with a Network Incident.

12.5 Parties responsible for their Associates

(a) A Party may allow any of that Party's Associates to exercise any of the Party's rights or to comply with any of the Party's obligations under this agreement.

(b) Each Party is responsible for the conduct of that Party's Associates in exercising any of that Party's rights or complying with any of the Party's obligations as if that conduct was the conduct of that Party itself.

(c) If a Party delegates or subcontracts the exercise or performance of any of its rights or obligations under this agreement to any person, then:

(i) that Party remains fully responsible for the exercise or performance of the delegated or subcontracted (as applicable) rights or obligations; and

(ii) any conduct of any delegate or subcontractor (as applicable) will be taken to be the conduct of the Party.

12.6 Benefit of indemnities in favour of Associates

(a) Each Party acknowledges and agrees that its obligation to indemnify the other Party's Associates under this clause 12 is for the benefit of the other Party's Associates.

(b) For the purpose of section 55 of the *Property Law Act 1974* (Qld) (and without limiting the operation of that section), each Party acknowledges that any person who is comprised in the other Party's Associates may accept that benefit.

(c) Each of the Parties acknowledge that valuable consideration was received for the grant of the benefit referred to in clause 12.6(a) and that benefit may be enforced by its Associates (as applicable) in accordance with section 55 of the *Property Law Act 1974* (Qld).

(d) Without limiting clauses 12.6(a) to 12.6(c), each Party hereby gives notice, for and on behalf of that Party's Associates, to the other Party accepting the benefit of the indemnities under this clause 12 that are in favour of that Party's Associates. The notice under this clause 12.6(d) is taken to be given on each day during the Term (including the

Commencement Date and the Termination Date) and on each day after the Termination Date while those indemnities survive the expiry or termination of this agreement.

13. Limitations on liability

13.1 No liability for Consequential Loss

(a) Subject to clause 13.1(b), despite any other provision in this agreement no Party is liable to another Party for any Consequential Loss suffered or incurred by, or Claimed against, the other Party.

(b) Clause 13.1(a) does not apply in relation to any Loss suffered or incurred by, or Claimed against a Party to the extent caused or contributed to by an Inspecting Party failing to comply with its obligations under clauses 9.4 to 9.10 in relation to conducting that Inspection or Audit.

13.2 Limitation on Claims

A Party must not make any Claim against the other Party under, in relation to or arising out of this agreement or its subject matter including any breach of this agreement by, or any act or omission of, the other Party unless:

(a) notice and, to the extent known, full details of the Claim have been given to the other Party within one year after the occurrence of the event or circumstance out of which such Claim arises; and

(b) subject to clause 13.3, the amount of the Claim exceeds $100,000 in respect of any one event or cause of action or series of related events or causes of action (and, for clarity, the amount of any Claim is not limited to the amount exceeding that threshold).

13.3 Failure to pay amounts

No exclusion or limitation of liability, or restriction on the existence of or ability to make any Claim, in this clause 13 applies to Claims made by a Party against the other Party for monies due and payable in accordance with this agreement including under clause 6 and clauses 13.4, 13.5, and 13.6.

13.4 Liability for Network

(a) Subject to clause 13.4(b), without limiting any other provisions of this agreement and to the extent permitted by law, Queensland Rail and its Associates are not liable to another Party for any Losses, and the other Party must not make any Claim against either Queensland Rail or its Associates, including in respect of any damage to or loss or destruction of any property (including that other Party's property) or any injury to or death of any person, arising out of or in connection with:

(i) the standard, capability or condition of the Network; or

(ii) any failure of or defect in the Network;

(iii) maintenance of the Network; or

(iv) failure to meet Performance Indicators (but not including payments due for failure to meet the Agreed Performance Levels).

(b) Despite clause 13.4(a), another Party may bring a Claim against Queensland Rail to the extent that any Loss, damage, injury, cost or expense results directly from the failure of Queensland Rail to perform its obligations under clause 7.1 or Queensland Rail's negligence in performing those obligations.

13.5 Claims in respect of delays to Train Movements

No Party (**Affected Party**) will have or make any Claim against another Party (**Defaulting Party**) in respect of delays to Train Movements unless, and will only have a Claim to the extent that:

(a) the delay was a result of a breach of this agreement by the Defaulting Party, or negligence on the part of the Defaulting Party; and

(b) the delay is not attributable to:

(i) the Affected Party;

(ii) another Network Participant or Party (other than the Defaulting Party);

(iii) a Force Majeure Event;

(iv) a Planned Possession, Urgent Possession or Emergency Possession of the Network in a manner consistent with the Network Management Principles;

(v) Rail Infrastructure Operations scheduled in a manner consistent with the Network Management Principles;

(vi) an event, incident or circumstance on Private Infrastructure; or

(vii) any action taken by Queensland Rail (acting reasonably) or by an Authority in response to, or as a consequence of, an Emergency or a genuine safety risk (including a Network Incident), or any personal injury to or the death of any person on or near the Network, any Rolling Stock or any land or other thing on or near the Network.

13.6 Claims in respect of non-provision of access

Another Party will not have, and must not make, any Claim against Queensland Rail in respect of the non-provision of access or the cancellation of any Train Service (**Claim Event**) unless, and will only have a Claim to the extent that each of the following is satisfied:

(a) the Claim Event was a result of a breach of this agreement by, or the negligence of, Queensland Rail;

(b) the Claim Event is not attributable primarily to:

(i) a Party other than Queensland Rail;

(ii) another Network Participant (other than Queensland Rail);

(iii) a Force Majeure Event;

(iv) a Planned Possession, Urgent Possession, Emergency Possession or Rail Infrastructure Operations or other works related to such a Possession;

(v) Rail Infrastructure Operations scheduled in a manner consistent with the Network Management Principles;

(vi) an event, incident or circumstance on Private Infrastructure; or

(vii) any action taken by Queensland Rail (acting reasonably) or by an Authority in response to, or as a consequence of, an Emergency or a genuine safety risk (including a Network Incident), or any personal injury to or the death of any person on or near the Network, any Rolling Stock or any land or other thing on or near the Network; and

(c) a Train Service is cancelled due to Queensland Rail failing to make the Network available for the Operator to operate the Train Service at the Scheduled Time and Queensland Rail was not able to offer a reasonable Alternative Scheduled Time.

14. Suspension

14.1 Right of suspension – Operator

(a) Queensland Rail (acting reasonably) may, by notice in writing to the Operator, immediately suspend the right of the Operator to operate some or all of the Train Services upon the occurrence of any one or more of the following events or circumstances:

(i) any event or circumstance described in clauses 15.2(a) to 15.2(j) occurs;

(ii) the rights of the Access Holder are suspended in accordance with clause 14.2; or

(iii) the Operator has failed, or in Queensland Rail's reasonable opinion the Operator will, or intends to fail, to comply with:

(A) any Law or Network Control Direction or the Operating Requirements Manual relating to the operation of Train Services; or

(B) any obligation of the Operator under this agreement.

(b) Such a suspension will continue until such time as the Operator has satisfied Queensland Rail (acting reasonably) that:

(i) the relevant event or circumstance has been remedied or, if applicable, has been avoided and will not re-occur; and

(ii) where appropriate, that the Operator has taken action to prevent the recurrence of that event or circumstance.

14.2 Right of suspension – Access Holder

(a) Queensland Rail (acting reasonably) may, by notice in writing to the Access Holder, immediately suspend the right of the Access Holder to have an Operator operate some or all of the Train Services upon the occurrence of any one or more event or circumstance described in clauses 15.3(a) to 15.3(f) occurs which has not been remedied in accordance with clause 15.6.

(b) Such a suspension will continue until such time as the Access Holder has satisfied Queensland Rail (acting reasonably) that:

(i) the relevant event or circumstance has been remedied or, if applicable, has been avoided and will not re-occur; and

(ii) where appropriate, that the Access Holder has taken action to prevent the recurrence of that event or circumstance.

14.3 Details of suspension

A notice of suspension given by Queensland Rail in accordance with this clause 14 must set out:

(a) the rights of the Access Holder or the Operator which are affected by the suspension;

(b) the reasons for the suspension; and

(c) the actions the Access Holder or the Operator must take to have the suspension lifted.

14.4 Effect of suspension

The suspension of any rights by Queensland Rail in accordance with this clause 14:

(a) is revocable at any time by Queensland Rail;

(b) has no effect upon obligations, debts or liabilities which have accrued before that suspension took effect;

(c) does not affect or suspend any other obligation of the Access Holder or the Operator, including the obligation to pay Access Charges relating to the period of the suspension;

(d) is without prejudice to any Party's other rights and remedies in respect of the relevant default, event or circumstance; and

(e) if it is the Operator whose rights have been suspended:

(i) does not affect the Access Holder's Access Rights or the ability of the Access Holder to nominate an Operator generally in accordance with clauses 3.4 or 4.1; and

(ii) does not prohibit the Access Holder from nominating a different Operator to utilise the suspended Train Services in accordance with clauses 3.4 or 4.1.

15. Default and termination

15.1 Ipso Facto Amendments

(a) For the purpose of this clause 15, **Ipso Facto Amendments** means:

(i) the amendments to the *Corporations Act 2001* (Cth) set out in Part 2 of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth); and

(ii) any regulations, declarations or legislative instruments, prescribed, made or declared pursuant to sections 415D, 434J or 451E of the *Corporations Act 2001* (Cth).

(b) Clauses 15.2(c), 15.3(c), 15.4(a), 15.5(a) and 17.2 are subject to the Ipso Facto Amendments to the extent they apply to this agreement.

15.2 Termination of Operator by Queensland Rail

Subject to clause 15.6, without limiting any other rights of termination in this agreement or otherwise existing at Law, Queensland Rail (acting reasonably) may, by notice in writing to the Operator, immediately terminate this agreement in relation to the Operator upon the occurrence of any one or more of the following events or circumstances:

(a) the Operator fails, in any material respect, to perform or comply with this agreement other than where this agreement excludes the Operator's liability for that failure, or where the Operator is not otherwise liable under this agreement for that failure;

(b) the Operator fails to pay when due any amount payable, or to provide and maintain Security, in accordance with this agreement;

(c) without limiting any other clause of this agreement and subject to clause 15.1, an Insolvency Event occurs in relation to the Operator;

(d) there are no Access Rights under this agreement including as a result of reductions or relinquishments in accordance with clause 21;

(e) a Repeated Breach by the Operator exists;

(f) the Operator fails to comply with a notice given by Queensland Rail requiring the Operator (within the reasonable time specified in that notice) to cease conduct that Queensland Rail considers (acting reasonably) is causing or threatening to cause serious environmental harm or material environmental harm (as those terms are defined in the *Environmental Protection Act 1994* (Qld));

(g) the Operator purports to Assign or Charge its rights or interest in this agreement other than in accordance with clause 22;

(h) the Operator fails to comply with the Train Service Description without first obtaining the prior written consent of Queensland Rail;

(i) the Operator fails to comply with the IRMP or any other safety or environment related obligation under this agreement; or

(j) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations or exercise its rights under this agreement.

15.3 Termination of Access Holder by Queensland Rail

Subject to clause 15.6, without limiting any other rights of termination in this agreement or otherwise existing at Law, Queensland Rail (acting reasonably) may, by notice in writing to the Access Holder, immediately terminate this agreement in relation to the Access Holder upon the occurrence of any one or more of the following events or circumstances:

(a) the Access Holder fails, in any material respect, to perform or comply with this agreement other than where this agreement excludes the Access Holder's liability for that failure, or where the Access Holder is not otherwise liable under this agreement for that failure;

(b) the Access Holder fails to pay when due any amount payable, or to provide and maintain Security, in accordance with this agreement;

(c) without limiting any other clause of this agreement and subject to clause 15.1, an Insolvency Event occurs in relation to the Access Holder;

(d) a Repeated Breach by the Access Holder exists;

(e) the Access Holder fails to comply with a notice given by Queensland Rail requiring the Access Holder (within the reasonable time specified in that notice) to cease conduct that Queensland Rail considers (acting reasonably) is causing or threatening to cause serious environmental harm or material environmental harm (as those terms are defined in the *Environmental Protection Act 1994* (Qld)); or

(f) the Access Holder purports to Assign or Charge its rights or interest in this agreement other than in accordance with clause 22.

15.4 Termination by the Operator

Subject to clause 15.6, without limiting any other rights of termination in this agreement or otherwise existing at Law, the Operator (acting reasonably) may, by notice in writing to the other Parties, immediately terminate this agreement insofar as it relates to the Operator upon the occurrence of any one or more of the following events or circumstances:

(a) without limiting any other clause of this agreement and subject to clause 15.1, an Insolvency Event occurs in relation to Queensland Rail;

(b) Queensland Rail fails to pay when due any amount payable under this agreement; or

(c) Queensland Rail fails, in any material respect, to perform or comply with this agreement other than where this agreement excludes Queensland Rail's liability for that failure, or where Queensland Rail is not otherwise liable under this agreement for that failure.

15.5 Termination by the Access Holder

Subject to clause 15.6, without limiting any other rights of termination in this agreement or otherwise existing at Law, the Access Holder (acting reasonably) may, by notice in writing to the other Parties, immediately terminate this agreement upon the occurrence of any one or more of the following events or circumstances:

(a) without limiting any other clause of this agreement and subject to clause 15.1, an Insolvency Event occurs in relation to Queensland Rail;

(b) Queensland Rail fails to pay when due any amount payable under this agreement; or

(c) Queensland Rail fails, in any material respect, to perform or comply with this agreement other than where this agreement excludes Queensland Rail's liability for that failure, or where Queensland Rail is not otherwise liable under this agreement for that failure.

15.6 Remedy

If an event or circumstance set out in clause 15.2 or 15.3 (except clauses 15.2(c) to 15.2(d) and clause 15.3(c) to 15.3(d)) (**Event**) occurs then the relevant Party (**Terminating Party**) may only terminate this agreement if:

(a) the Terminating Party serves a notice (**Notice to Remedy**) on the other Party (**Defaulting Party**) notifying the Defaulting Party of the Event, providing details of the Event and requiring the Defaulting Party:

(i) to remedy the Event (if the Event is capable of being remedied); or

(ii) to take action to ensure such an Event does not recur (if the Event is not capable of being remedied),

and specifying a reasonable period in which to do the things in paragraph 15.6(a)(i) or 15.6(a)(ii), as applicable having regard to the nature of the Event (**Relevant Period**) – however, if the Event is one in:

(iii) clause 15.2(b) or 15.3(b), then the Relevant Period must be 10 Business Days; or

(iv) clause 15.2(a) or 15.3(a), then the Relevant Period must be 20 Business Days; and

(b) no Defaulting Party:

(i) remedies the Event, if the Event is capable of being remedied; or

(ii) takes action to ensure such an Event does not recur and pays, if applicable, reasonable compensation to the Terminating Party in respect of the Event (subject to any relevant exclusions or limitations of liability under this agreement including clause 13), if the Event is not capable of being remedied,

within the Relevant Period.

15.7 Termination for Change in Control

Queensland Rail may terminate this agreement immediately if:

(a) there is a Change in Control of the Access Holder; and

(b) the Access Holder has not obtained Queensland Rail's prior consent (such consent not to be unreasonably withheld) to that Change in Control.

15.8 Effect of Termination of Operator

The termination of any Operator's rights to operate by Queensland Rail in accordance with this clause 15:

(a) does not affect the Access Holder's Access Rights or the ability of the Access Holder to nominate an Operator generally in accordance with clauses 2.2 or 4.1; and

(b) does not prohibit the Access Holder from nominating a different Operator to utilise the suspended Train Services in accordance with clauses 2.2 or 4.1.

15.9 Effect of Termination of Access Holder

If the agreement is terminated in accordance with clause 15.3; then the Access Holder is deemed to have withdrawn its nomination of the Operator in accordance with clause 4.1.

15.10 Obligations and other rights upon termination or expiration

(a) A Party's right to make a Claim or recover damages or avail itself of other remedies under this agreement or at Law or to recover monies due to it under this agreement is not prejudiced by the termination, pursuant to clause 15, or expiry of this agreement.

(b) The expiry or termination of this agreement releases all Parties from all further obligations or liabilities under this agreement except for:

(i) rights which accrued on or before termination, including for breach of this agreement which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this agreement; or

(ii) any provisions which are expressed as surviving the expiry or termination of this agreement.

15.11 Removal of Rolling Stock following termination

(a) Immediately on expiration of the Term, and as soon as practicable after termination of the operational right to operate for any other reason, the Operator must, at the Operator's cost and risk, remove from the Network (or the land on which the Network is located) all of the Operator's Rolling Stock and all vehicles, equipment, freight, debris, or rubbish brought onto the Network (or the land on which the Network is located) by, for or on behalf of the Operator relating to the Train Services.

(b) If the Operator fails to remove its Rolling Stock and other items from the Network in accordance with clause 15.11(a):

(i) Queensland Rail may give a notice to the Operator demanding the removal of Rolling Stock by a time specified by Queensland Rail; and

(ii) if the Operator fails to remove that Rolling Stock by that time, Queensland Rail may remove that Rolling Stock and recover the reasonable costs of doing so from the Operator.

(c) The Operator is liable, and indemnifies Queensland Rail, for all costs and expenses incurred by Queensland Rail in relation to any damage caused to the Network by the Operator in removing any Rolling Stock.

(d) The Operator must comply with all Network Control Directions, and all other directions issued by Queensland Rail (acting reasonably), in relation to the removal of the Rolling Stock and other items in accordance with this clause 15.11.

15.12 Access Holder remedy of Operator breach

If the Operator has breached the agreement then the Access Holder, at its election, may seek to remedy the breach in accordance with clause 15.6.

16. Insurance

16.1 Operator's Obligation to obtain and maintain Insurance

(a) The Operator must:

(i) effect, or cause to be effected, before the Commitment Date (or, if applicable, the earliest Commitment Date); and

(ii) maintain, or cause to be maintained, until both the expiry of the Term and the Operator having fully complied with clause 15.11,

insurances in accordance with Prudent Practices having regard to the Operator's activities, works, obligations and responsibilities under this agreement (including insurances covering all risks of an insurable nature in respect of which the Operator is obliged to indemnify Queensland Rail under this agreement) provided that such insurances must include:

(iii) insurance covering such liability as arises at common law or by virtue of any relevant Workers Compensation Legislation in respect of any Operator's staff;

(iv) a public liability policy of insurance:

(A) for an amount of not less than $350 million per occurrence;

(B) the coverage of which includes:

(I) the rights, interests and liability in respect of any Claim against an Insured Party arising out of:

(1) any damage or loss occurring to any property; and

(2) injury (including death) to any person,

arising out of or in connection with the business activities of the Operator.

(C)

(v) all other insurances that the Operator or the Operator's agents, consultants, contractors and their sub-contractors are required by Law to hold in relation to or in connection with the exercise of rights or the performance of obligations under this agreement.

(b) The Operator agrees to use its best endeavours to engage its agents, consultants and contractors involved in the provision of services relevant to the performance of the Operator's functions under this Agreement on terms that require those agents, consultants and contractors to hold the same types and values of insurance policies that the Operator is obliged to hold under this Agreement, to the extent relevant to the particular service being provided by the consultant or contactor.

16.2 Access Holder's obligation to obtain and maintain Insurance

The Access Holder must:

(a) effect, or cause to be effected, before the Commitment Date (or, if applicable, the earliest Commitment Date); and

(b) maintain, or cause to be maintained, until both the expiry of the Term and the Operator having fully complied with clause 15.11,

insurance in accordance with Prudent Practices having regard to the Access Holder's activities, works, obligations and responsibilities under this agreement (including insurances covering all risks of an insurable nature in respect of which the Access Holder is obliged to indemnify Queensland Rail under this agreement) provided that such insurances must include insurance covering such liability as arises at common law or by virtue of any relevant Workers Compensation Legislation in respect of any Access Holder's staff.

16.3 Insurer

The Access Holder and the Operator must ensure that their respective insurance, effected and maintained in accordance with clause 16.1 or 16.2, is with an insurer that is:

(a) a corporation (as defined in the Corporations Act); and

(b) licensed to conduct insurance business in Australia; or

(c) otherwise reasonably acceptable to Queensland Rail.

16.4 Essential terms and conditions

The Access Holder and the Operator must ensure that, for their respective Insurances, to the extent permitted by Law, all Insurances effected and maintained in accordance with clause 16.1 or 16.2 must:

(a) note the interests of Queensland Rail; and

(b) not contain any exclusions, endorsements or alterations which reduce the cover below that which is required by clause 16 of this agreement.

16.5 Payment of premium and deductibles

The Access Holder and the Operator:

(a) must pay when due all premiums, charges and other expenses necessary for effecting and maintaining in force their respective Insurances; and

(b) are responsible for the payment of all policy deductibles or excesses for their respective Insurances.

16.6 No prejudicial action by the Operator

The Access Holder and the Operator respectively must not do, or permit anything to be done (including any omission), which:

(a) may result in any respective Insurance being vitiated or rendered void or voidable; or

(b) would give rise to an entitlement by its insurer to avoid payment of any claim in whole or in part under its respective Insurances.

16.7 Disclosure of Insurance

(a) The Access Holder and the Operator must provide to Queensland Rail evidence of their respective insurance policies effected and maintained pursuant to this clause 16 (including evidence that the cover provided under those insurance policies comply with clause 16 and of the currency of those insurance policies) to Queensland Rail's reasonable satisfaction:

(i) at least ten Business Days prior to the initial Commitment Date;

(ii) upon renewal of each Insurance during the Term; and

(iii) whenever requested to do so in writing by Queensland Rail.

(b) If the Access Holder or the Operator, whenever required to do so under this agreement, fails to produce to Queensland Rail evidence to the satisfaction of Queensland Rail (acting reasonably) of Insurances that have been effected or maintained by it, Queensland Rail may:

(i) effect and maintain the Insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Queensland Rail; or

(ii) suspend this agreement under clause 14.1(a)(i) or 14.2(a).

(c) For the avoidance of doubt, a certificate of currency which provides evidence of compliance with clause 16 will be considered sufficient evidence for the purposes of clause 16.7(a).

16.8 Compliance

The Access Holder and the Operator must at all times comply with the terms of their respective Insurances effected under this clause 16.

16.9 Claims

(a) In addition to any other obligation on the Access Holder or the Operator, the Access Holder and the Operator respectively must:

(i) notify Queensland Rail as soon as practicable after the occurrence of any claim under their respective Insurance (including providing reasonable details of the claim relevant to or arising out of the subject matter of this agreement); and

(ii) keep Queensland Rail informed of subsequent developments concerning any claim

to the extent that such claims affect, relate to or are in connection with this agreement or any right, liability or real or other property of Queensland Rail or otherwise affect the ability to claim under the relevant policy of insurances.

(b) Upon settlement of a claim under any Insurance covering damage to the Network, if Queensland Rail is entitled to payment in respect of such damage, the Insurance monies received must be paid to Queensland Rail unless the Access Holder or the Operator has already partially or totally indemnified Queensland Rail for the relevant damage (including in respect of the amount of any deductible), in which case the monies will be paid to the Access Holder or the Operator (as applicable) but only to the extent that Queensland Rail has been indemnified.

16.10 Insurance not a limit of Operator's liability

The Access Holder and the Operator's compliance with their respective Insurances does not limit that Party's liabilities or obligations under this agreement.

16.11 Joint Insurance Policy

(a) To the extent that the Operator has complied with its obligations to insure in accordance with clause 16.1, the Access Holder is not required to take out insurance which would cover the same risks.

(b) If the Operator and Access Holder deem it efficient and appropriate, the Operator and Access Holder may take out joint insurance policies to comply with their respective insurance obligations under this clause 16.

17. Security

17.1 Obligation to provide Security

(a) The Operator and the Access Holder (if the Access Holder is not also the Operator) must (in appropriate cases):

(i) on or before the Commitment Date, provide to Queensland Rail security in the form set out in clause 17.1(b) for the relevant Security Amount respectively (except where the relevant Security Amount is zero); and

(ii) thereafter maintain that security (including for any increased or decreased amount or any top up) in accordance with this clause 17.

The initial Security Amount for each of the Operator and the Access Holder will be set out in Item 11 of Schedule 1.

(b) Security must be in the form of:

(i) a bank guarantee that:

(A) is unconditional and irrevocable and in favour of Queensland Rail;

(B) is issued by an Australian institution:

(I) authorised to carry on a banking business and entitled to call itself a 'bank' pursuant to the *Banking Act 1959* (Cth); and

(II) which has an Acceptable Credit Rating;

(C) requires the issuing bank to pay on demand by Queensland Rail:

(I) without recourse to the Operator or the Access Holder (as the case may be) or any other person;

(II) irrespective of the performance or non-performance of the Operator or the Access Holder (as the case may be) or Queensland Rail under this agreement; and

(III) despite any notice or other communication from the Operator or the Access Holder (as the case may be) or any other person,

an amount or amounts up to the amount specified in the bank guarantee;

(D) has no expiry date; and

(E) is otherwise in a form acceptable to Queensland Rail; or

(ii) any other form acceptable to Queensland Rail (in its absolute discretion).

17.2 Recourse to Security

(a) Subject to clause 15.1, a Security may be called upon by Queensland Rail in any circumstance where the Access Holder or Operator (as the case may be):

(i) fails to pay, on or before the due date, any amount that is payable by the Access Holder or Operator (as the case may be) to Queensland Rail under this agreement; or

(ii) Queensland Rail otherwise suffers or incurs a Loss in respect of which the Access Holder or Operator (as the case may be) is required to indemnify Queensland Rail in accordance with this agreement.

(b) If Queensland Rail calls on a Security, the Access Holder or Operator (as the case may be) must deliver to Queensland Rail a further Security for the amount called upon, or a replacement Security for the remaining amount of the existing Security plus the amount called upon in exchange for the existing Security, within five Business Days after Queensland Rail calls on the Security so that the Security held by Queensland Rail is equal to the Security Amount.

(c) Subject to clause 15.1, if an Insolvency Event occurs, or Queensland Rail (acting reasonably) suspects that an Insolvency Event has occurred, in relation to the Access Holder or Operator (as the case may be), Queensland Rail may:

(i) in respect of any amounts due but unpaid by the Access Holder or Operator (as the case may be) under this agreement:

(A) decline payment from the Access Holder or Operator (as the case may be) of all or part of those amounts; and

(B) immediately call upon the Security for those amounts for which payment was so declined; or

(ii) in respect of any amounts paid by the Access Holder or Operator (as the case may be) under this agreement after the time when the Insolvency Event occurred or Queensland Rail (acting reasonably) suspects that an Insolvency Event occurred:

(A) refund all or part of those amounts to the Access Holder or Operator (as the case may be); and

(B) immediately call upon the Security for the amounts so refunded.

17.3 Review of Security

(a) Queensland Rail may:

(i) at any time, from time to time, and must upon a request from the Access Holder or Operator (who may each request a review only once in any 12 month period), review the amount of the Security Amount, taking into consideration all of the matters that Queensland Rail considers relevant including:

(A) the financial performance of the Operator or the Access Holder (as the case may be);

(B) the Operator's or the Access Holder's (as the case may be) past performance under this agreement (whether in relation to payments or otherwise); and

(C) expected future payment obligations under this agreement; and

(ii) acting reasonably, determine that the amount of the Security Amount should be increased or decreased.

(b) If Queensland Rail determines under clause 17.3(a) that the amount of the Security Amount should be:

(i) increased, the relevant Security provider must deliver to Queensland Rail further Security for the amount of the increase, or a replacement Security for the revised amount in exchange for the existing Security; or

(ii) decreased, the relevant Security provider must deliver to Queensland Rail a replacement Security for the revised amount in exchange for the existing Security,

within ten Business Days after Queensland Rail gives notice of its determination so that the Security held by Queensland Rail is equal to the Security Amount as determined by Queensland Rail.

17.4 Return of Security

Queensland Rail must, subject to the rights of recourse to the Security under this clause 17, promptly return the Security to the relevant Security provider as soon as practicable after both of 17.4(a) and 17.4(b) below occur or 17.4(c) below occurs:

(a) this agreement has expired or terminated; and

(b) in Queensland Rail's opinion (acting reasonably) there is no reasonable prospect that:

(i) money or damages will become owing (whether actually or contingently) by that Party to Queensland Rail in connection with this agreement; and

(ii) any payment towards the satisfaction of that Party's obligation to pay any amount to Queensland Rail under this agreement will be void, voidable or refundable under any Law (including any Law relating to insolvency),

provided that, in any event, Queensland Rail will return the Security to the relevant Party within three months of the expiry or termination of this agreement; or

(c) an Assignee provides a replacement Security in accordance with clause 22.2(d)(ii) (in which case Queensland Rail must return the relevant Security within two Business Days of lodgement of that replacement Security).

18. Adjustment for changes

18.1 Review of Schedule 3

(a) This clause 18.1:

(i) applies to the extent that a Reference Tariff applies to the Train Services (including where a relevant Reference Tariff is approved by the QCA after the Commencement Date); and

(ii) does not apply where there is no Reference Tariff that is applicable to the relevant Train Services.

(b) Schedule 3 must be reviewed by Queensland Rail as soon as practicable after a Reference Tariff Provision, or any change in a Reference Tariff Provision, is approved by the QCA from time to time. For clarity, Queensland Rail is not obliged to conduct such a review where there ceases to be a Reference Tariff that is relevant to the Train Services.

(c) The purpose of the review under this clause 18.1 is to determine the amendments to Schedule 3 that are necessary to ensure Schedule 3 remains consistent with the Reference Tariff Provisions (including take or pay) —to the extent that Schedule 3 was

consistent with those Reference Tariff Provisions at the Commencement Date (and always subject to any differences referred to in clause 18.1(d)(ii)).

(d) Without limiting the matters that Queensland Rail must consider in a review under clause 18.1(b), any review of Schedule 3 must have regard to the following:

(i) any relevant new or varied Reference Tariff;

(ii) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Provision; and

(iii) any other relevant provisions of the Access Undertaking.

(e) After Queensland Rail's review of Schedule 3, Queensland Rail must notify the other Parties of whether it proposes to amend Schedule 3 and if so, the amendments to Schedule 3 that will apply and the date from which those amendments take effect (Amendment Notice). For clarity, the amendments may take effect retrospectively, but must not take effect prior to the time when the relevant Reference Tariff Provision, or amendments to the relevant Reference Tariff Provision, take effect as approved by the QCA.

(f) If the Access Holder does not accept some or all of the amendments in the Amendment Notice or where Queensland Rail has decided not to amend Schedule 3, then:

(i) the Access Holder may only give Queensland Rail a Dispute Notice within ten Business Days after being given that Amendment Notice; and

(ii) if the Access Holder gives such a Dispute Notice and the Parties do not resolve the Dispute in accordance with clause 19.2, the Dispute must be referred for determination by an Expert under clause 19.3.

(g) For clarity, in this clause 18.1 a reference to Schedule 3 includes each other provision (including defined terms) of this agreement relevant to Schedule 3 but only to the extent that they are directly necessary for the application, or interpretation, of Schedule 3.

(h) For clarity, clause 2.2 of Schedule 3 and clause 18.1 must not be applied in a manner that will result in any part of an Access Charge Input being escalated twice for the same period based on the change in CPI over that period.

18.2 Adjustment for a Material Change

(a) This clause 18.2 does not apply where a Reference Tariff applies or in relation to a Material Change to the extent that the Net Financial Effect of that Material Change has been, or will be, removed as a result of:

(i) amendments to Schedule 3 in accordance with clause 18.1; or

(ii) the escalation or variation of Access Charge Inputs in accordance with this agreement.

(b) If a Material Change occurs, then Queensland Rail must as soon as reasonably practicable notify the Access Holder giving details of the Net Financial Effect of that Material Change.

(c) Within five Business Days after Queensland Rail gives a notice under clause 18.2(b), the Access Holder and Queensland Rail must meet and negotiate, in good faith, adjustments to this agreement, including adjustments to the Access Charges, in order to remove as far as practicable the relevant Net Financial Effect and to put Queensland Rail in the position it would have been in had there been no Material Change.

(d) If the Access Holder and Queensland Rail do not reach agreement within 15 Business Days after Queensland Rail's notice under clause 18.2(b) or otherwise resolve the matter in accordance with clause 19.2, then the matter must be referred to an Expert for determination in accordance with clause 19.3.

(e) Each Party's obligations under this agreement will continue despite the existence of a Material Change.

19. Disputes

19.1 Application of Dispute resolution process

If any dispute, complaint or question arises between the Parties in relation to this agreement (Dispute), then:

(a) that Dispute must be resolved in accordance with this clause 19; and

(b) a Party may give the other Parties a notice in writing (**Dispute Notice**) setting out details of the Dispute and requiring that it be dealt with in the manner set out in this clause 19.

19.2 Resolution by escalation

(a) Within five Business Days after the date on which a Party gives the other Parties a Dispute Notice (**Dispute Notice Date**), representatives of the Parties must meet and use reasonable endeavours to resolve the Dispute.

(b) If the Dispute is not resolved under clause 19.2(a), senior management representatives of the Parties (who, for a Party, are senior to that Party's representative(s) referred to in clause 19.2(a)) must, within 10 Business Days after the Dispute Notice Date, meet and use reasonable endeavours to resolve the Dispute.

(c) If the Dispute is not resolved under clause 19.2(b), the Dispute must be referred to each Party's chief executive officer (or his or her nominee – who, for a Party, must be more senior than that Party's representative(s) referred to in clauses 19.2(a) and (b)) for resolution and who must use reasonable endeavours to resolve the Dispute within ten Business Days (or such longer period as agreed by the parties) after the Dispute has been so referred.

(d) If the Dispute is not resolved under clause 19.2(c) within 10 Business Days after the dispute has been so referred (or such other time as agreed between the Parties), the relevant Dispute:

(i) unless otherwise agreed by the Parties to the Dispute (in each Party's absolute discretion), must, where this agreement requires referral to an Expert; and

(ii) may, by agreement of the Parties to the Dispute (in each Party's absolute discretion) in any other case,

be referred for resolution by an Expert in accordance with clause 19.3.

(e) If a Party's representative under clause 19.2(a) or 19.2(b) is not authorised:

(i) to act on behalf of that Party in relation to the Dispute; or

(ii) to resolve the Dispute with immediate binding effect on that Party,

the Dispute is deemed to have not been resolved under clause 19.2(a) or 19.2(b) (as applicable).

19.3 Resolution by Expert

(a) If a Dispute, or any other matter, is required to be referred to, or determined by, an Expert in accordance with this agreement (including under clause 19.2(d)):

(i) the Expert must be appointed by agreement between the Parties or, in default of such appointment within 10 Business Days after the need to refer the Dispute to an Expert, will be that person nominated, at either Party's request, by:

(A) where the Parties agree the Dispute is primarily of a technical nature, the President (for the time being) of Engineers Australia – Queensland Division;

(B) where the Parties agree the Dispute is primarily of a financial or accounting nature, the Chairperson (for the time being) of the Resolution Institute; or

(C) in any other case, the President (for the time being) of the Queensland Law Society Inc.;

(ii) the Expert must:

(A) have appropriate qualifications and practical experience having regard to the nature of the Dispute;

(B) have no interest or duty which conflicts or may conflict with his or her function as Expert, he or she being required to fully disclose any such interest or duty by written notice to the Parties before his or her appointment;

(C) not be an employee of a Party or of a Related Party of a Party;

(D) not be permitted to act until he or she has given written notice to each Party that he or she is willing and able to accept the appointment;

(E) have regard to the provisions of this agreement and consider all submissions (including oral submissions by each Party provided that such oral submissions are made in the presence of the Parties), supporting documentation, information and data with respect to the matter submitted by the Parties;

(F) for clarity, only make a determination in a way that is consistent with this agreement;

(G) provide the Parties with a copy of his or her determination in the form of a report within a reasonable time after his or her appointment;

(H) be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties; and

(I) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration including the *Commercial Arbitration Act 2013* (Qld), will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and

(iii) if the Expert is to be nominated by a person referred to in clause 19.3(a)(i), the Parties must comply with and do all things necessary to satisfy and to give effect to the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert; and

(iv) the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of an agreed or nominated Expert (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person accepting appointment as the Expert.

(b) The Parties must do everything reasonably requested by the Expert to assist the Expert including producing information and materials as requested by the Expert and attending any hearing convened by the Expert.

(c) In the absence of manifest error, a decision of the Expert is final and binding upon all Parties.

(d) The costs of the Expert (and any advisers engaged by the Expert) will be borne in equal shares by the Parties. Each Party must bear its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).

19.4 Resolution of technical Disputes

If there is a Dispute in respect of clauses 6.7(e), 8.3(c), 8.6, 8.7(b), 8.8(a), 8.8(c), 8.10, 9.1(a), 9.1(d), 9.2 or 10.7:

(a) the Parties must seek to resolve the Dispute in accordance with clause 19.2; and

(b) if the Parties do not resolve the Dispute in accordance with clause 19.2, the Dispute must be referred for determination by an Expert under clause 19.3.

19.5 Determination by court

If any Dispute is not resolved in accordance with this clause 19, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.

19.6 Injunctive Relief

Nothing in this agreement prevents a Party from seeking urgent injunctive relief from a court.

19.7 Dispute not to affect performance of obligations

The Parties are not relieved from performing their obligations under this agreement because of the existence of a Dispute.

19.8 Extension of time frames

Where a timeframe applies under this clause 19 in relation to a Dispute, the Parties may (acting reasonably) agree to vary that timeframe and if the Parties do agree a varied timeframe then this clause 19 will apply in relation to that Dispute subject to that varied timeframe.

20. Force majeure

20.1 Force Majeure Event occurrence

(a) If a Party (**Affected Party**) is prevented or hindered by a Force Majeure Event from fully or partly complying with any obligation (except for any obligation to pay money) under this agreement, the Affected Party must, as soon as reasonably practicable, give notice of the Force Majeure Event to the other Parties including reasonable details of:

(i) the Force Majeure Event;

(ii) the effect of the Force Majeure Event on the performance of the Affected Party's obligations;

(iii) the likely duration of the delay in performance of those obligations; and

(iv) details of the actions the Affected Party has taken to remedy the situation and details of any actions that the Affected Party proposes to take to remedy the situation.

20.2 Suspension of obligations

(a) The obligations of the Affected Party will be suspended where by reason of a Force Majeure Event that Party is delayed in, or prevented from, carrying out its obligations under this agreement.

(b) Notwithstanding clause 20.2(a), the Access Holder will be relieved from obligations in respect of the payment of Access Charges during the period that the Network is damaged

or destroyed by a Force Majeure Event or the Force Majeure Event otherwise prevents Queensland Rail from providing access to the Network in accordance with clause 2 of this agreement.

20.3 Duty to Mitigate

Each Party will use all reasonable diligence to remedy or overcome the effect of the Force Majeure Event as soon as possible and will attempt to identify alternative viable means of providing the Access Rights affected and to mitigate the effect of the Force Majeure Event. No Party will be obliged to settle any strike, lockout or other labour dispute on terms not acceptable to it.

20.4 End of period of Force Majeure

Subject to clauses 20.5(c) and clause 20.6, the suspension of the obligations of the Parties due to a Force Majeure Event ends when the Affected Party is able to resume full performance of its obligations under this agreement at which time it must issue a notice to the other Parties advising that it intends to recommence the performance of its obligations and must thereafter recommence the performance of its obligations.

20.5 Termination for Loss or Damage to the Network

(a) In the event that any part of the Network is damaged or destroyed by a Force Majeure Event and in Queensland Rail's reasonable opinion the cost of repairing such damage or replacing that part of the Network is not economic on the basis of the then and committed future utilisation of that part of the Network, Queensland Rail must promptly by written notice advise the Access Holder of:

(i) the estimated cost of effecting the necessary repairs or replacement works;

(ii) the amount of insurance available to effect the necessary repairs and replacement works;

(iii) a detailed explanation as to why the cost of repairing or replacing is not economic; and

(iv) Queensland Rail's intention to not repair or replace the relevant part of the Network unless the Access Holder or any other access holder using that part of the Network pays the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.

(b) If the Access Holder gives notice to Queensland Rail advising that it will pay the difference between the amount of insurance available to effect the necessary repairs or replacement works and the cost of necessary repairs or works (or a part of that cost as requested by Queensland Rail), then Queensland Rail will proceed with the repairs or replacement within a reasonable time after receipt by Queensland Rail from the Access Holder of payment of the relevant amount subject to reaching agreement with any other access holder using the affected part of the Network. Where the Access Holder pays to Queensland Rail the whole of the estimated cost, Queensland Rail must, upon completion of the necessary repairs or replacement works, refund to the Access Holder any amount by which the amount paid by the Access Holder exceeds the actual cost and the Access Holder shall pay to Queensland Rail the amount by which the actual cost exceeds the amount paid by the Access Holder.

(c) If within three months after receipt of a notice from Queensland Rail under clause 20.5(a) the Access Holder has not given notice to Queensland Rail pursuant to clause 20.5(b)indicating that it will pay the whole, or that part requested by Queensland Rail, of the cost of the necessary repairs or replacement works, and Queensland Rail has not subsequently agreed to fund the repairs or replacement works within that period, the Access Holder or Queensland Rail shall have the right to terminate this agreement in accordance with clause 20.7.

20.6 Repair Negotiations

If an Access Holder gives Queensland Rail a notice pursuant to clause 20.5(b), then the Access Holder and Queensland Rail will promptly commence negotiations of a Funding agreement in accordance with clause 1.4 of the Access Undertaking.

20.7 Termination after extended Force Majeure Event

Subject to clause 20.6 or the process under clause 20.5 having been finalised (if applicable), if by reason of a Force Majeure Event either Queensland Rail or the Access Holder (relevantly the **Afflicted Party**) is rendered unable to perform its obligations under this agreement for a period of more than six consecutive months, the Access Holder and Queensland Rail must meet in an endeavour to identify any alternative viable means to provide the suspended Access Rights and failing an alternative means being agreed upon within one month of the end of the six month period the other Party may terminate this agreement by 30 days' written notice to the Afflicted Party and the provisions of this agreement relating to termination set out in clauses 15.10 and 15.11 apply without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

21. Reduction and relinquishment of Access Rights

21.1 Reduction of Access Rights

(a) If:

(b) the Access Holder fails to have an Operator operate all Train Services on Scheduled Train Paths for seven or more (not necessarily consecutive) weeks out of any 12 consecutive weeks when such Train Services are scheduled; and

(c) Queensland Rail can demonstrate that it has a reasonable expectation of:

(d) a sustained alternative demand for the capacity used by the Access Rights in question; or

(e) receiving a commercial benefit sufficiently material to justify the resumption of the Access Rights in question,

then:

(i) Queensland Rail may, within ten Business Days after the last of those seven occasions, give a notice to the Access Holder (**Resumption Notice**):

(A) that Queensland Rail is considering reducing the Access Holder's Access Rights from a nominated date (**Date of Resumption**) to the extent of that underutilisation; and

(B) requesting the Access Holder to demonstrate a sustained requirement for the Access Rights.

(f) If a Resumption Notice is given to the Access Holder and the Access Holder has not demonstrated to Queensland Rail's reasonable satisfaction, within 40 Business Days (or longer period if agreed between the Access Holder and Queensland Rail (both acting reasonably)) of receiving the Resumption Notice, a sustained requirement for the Access Rights that were not utilised:

(i) Queensland Rail must promptly notify the Access Holder of whether Queensland Rail has decided to proceed with the resumption and, if Queensland Rail has decided to proceed, whether Queensland Rail has decided to reduce the level of resumption, or nominate a later date for the Date of Resumption, from that given in the Resumption Notice (**Resumption Decision Notice**); and

(ii) if Queensland Rail has decided to proceed with the resumption, the Access Holder's entitlement to operate Train Services shall be reduced to the level specified in the Resumption Notice with effect on and from the Date of

Resumption (except to the extent that those matters have been varied in accordance with clause 21.1(f)(i)).

(g) If the Access Holder does not agree with the reduction of the Access Holder's entitlement proposed by Queensland Rail pursuant to clause 21.1(a) and 21.1(f), the Access Holder may, within 20 Business Days of the receipt of the Resumption Decision Notice, notify Queensland Rail in writing that it disputes the proposed reduction in which case the Access Holder may refer the Dispute for determination by an Expert in accordance with clause 19.3 of this agreement (subject to any other dispute resolution process otherwise agreed by the Parties to the Dispute (in each Party's absolute discretion)). The Expert will determine whether the conditions for a reduction in Access Rights set out in clause 21.1(a) have been met and whether the Access Holder has demonstrated a sustained requirement for that part of the Access Rights to which the reduction would apply. The reduction proposed in the Resumption Decision Notice will not take effect until resolution of the dispute and then only to the extent that the reduction is consistent with the Expert's determination.

(h) Queensland Rail may withdraw the Resumption Notice or the Resumption Decision Notice at any time prior to the later of the Date of Resumption and 10 Business Days following the resolution of the dispute.

(i) In the event that the Access Holder's entitlement to operate Train Services is reduced in accordance with this clause 21.1, the agreement (including the Access Charges) will be varied accordingly.

(j) A Train Service has not been operated on a Scheduled Train Path if the Operator has failed:

(i) to present the relevant Train at the scheduled entry point onto the Network; or

(ii) to operate the relevant Train so that it completes its full journey

in conformance with the locations and days set out in the Scheduled Train Paths applicable to such Train Service except:

(iii) where the prior agreement of Queensland Rail and the Operator has resulted in the Operator using an alternative Train Path for that Train Service.

21.2 Relinquishment of Access Rights

(a) If the Access Holder intends to relinquish all or part of the Access Rights, the Access Holder must give Queensland Rail reasonable notice of its intention to do so specifying:

(i) the Access Rights that the Access Holder intends to relinquish (**Nominated Access Rights**);

(ii) if the Access Holder intends that all or part of the Relinquished Access Rights be used so Queensland Rail can grant specific access rights to a specified Access Seeker (as defined in the Access Undertaking) (**Transfer**), the identity of that Access Seeker (**Transferee**) – and, for clarity, the Access Holder may itself be that Access Seeker; and

(iii) subject to clause 21.2(b), the date (**Relinquishment Date**) on which and the period for which the Nominated Access Rights are to be relinquished.

(b) The period from the giving of the notice under clause 21.2(a) until the Relinquishment Date must not exceed nine months.

(c) The relinquishment of any Nominated Access Rights in accordance with this clause 21.2 is subject to and conditional on the Access Holder paying to Queensland Rail the Relinquishment Fee on or before the Relinquishment Date.

(d) If the Access Holder pays the Relinquishment Fee to Queensland Rail on or before the Relinquishment Date, then the terms of this agreement will cease to apply in respect of the Nominated Access Rights on the Relinquishment Date.

(e) Queensland Rail must facilitate a Transfer in respect of a Transferee if:

(i) the relevant Access Rights to be granted to the Transferee are included in a new or varied access agreement with the Transferee on terms satisfactory to Queensland Rail (acting reasonably);

(ii) Queensland Rail is satisfied (acting reasonably) that the new or varied access agreement with the Transferee has been developed in accordance with the requirements of the Access Undertaking;

(iii) the Access Holder has complied with clause 21.2(a) and paid the Relinquishment Fee to Queensland Rail on or before the Relinquishment Date; and

(iv) Queensland Rail has sufficient Available Capacity (as defined in the Access Undertaking) so that it can grant all of the relevant access rights to the Transferee without adversely affecting any other third Party.

(f) If the Relinquishment Fee is not paid on or prior to the Relinquishment Date, then the Access Holder is taken to have withdrawn the notice given under clause 21.2(a) and Queensland Rail has no further obligations under this clause 21.2 in relation to the relevant relinquishment.

21.3 Replacement Access Agreement

If Queensland Rail or the Access Holder identify an opportunity for Queensland Rail to enter into an access agreement with an existing or prospective access holder that would result in a lessening of the Relinquishment Fee that would otherwise be payable to Queensland Rail under clause 21.2, Queensland Rail will not unreasonably delay the process for negotiating and executing an Access Agreement with that existing or prospective access holder.

21.4 Termination where no Access Rights remain

(a) Subject to clause 21.4(b), where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this agreement to the extent that there are no longer any Access Rights remaining the subject of this agreement, then Queensland Rail may terminate this agreement by notice to the Access Holder (without prejudice to those provisions which are stated to survive this agreement).

(b) Where, but for the operation of Ad Hoc Train Services, the Access Holder has no right to utilise the Network, unless otherwise agreed between the Parties (each acting reasonably), this agreement will continue to operate in relation to those Ad Hoc Train Services.

(c) Any termination under clause 21.4 is without prejudice to any rights of any Party which accrued on or before termination.

21.5 Effect on entitlement to operate and Access Charge Rates

Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this agreement then for the avoidance of doubt:

(a) the Access Holder's entitlements to have an Operator operate Train Services is also reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights;

(b) the Access Holder's Nominated Monthly Train Services for each applicable Train Service Description will be taken to be varied to be reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights; and

(c) the Access Holder will no longer be obliged to pay Access Charges in respect of the resumed, reduced, relinquished or transferred Access Rights (except for any such Access Charges that accrued prior to the resumption, reduction, relinquishment or transfer payable in respect of the part of the Year prior to the resumption, reduction, relinquishment or transfer).

22. Assignment

22.1 Assignment by Queensland Rail

(a) If Queensland Rail will no longer have a right to operate the Network or any part of the Network relevant to providing the Access Rights under this Agreement it will Assign all or part of its rights or obligations under this agreement corresponding to the parts of the Access Rights which Queensland Rail can no longer provide to an Assignee who:

(i) will have the right to operate the relevant parts of the Network; and

(ii) has the expertise (including accreditation), the financial resources and other relevant resources to enable it to provide the relevant Access Rights,

without the prior consent of the other Parties, provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to provide the Access Rights to the extent of the rights and obligations Assigned to the Assignee.

(b) Queensland Rail may Assign all or part of its rights or obligations under this agreement to an Assignee who has the expertise, the financial resources and other relevant resources to enable it to discharge the obligations of Queensland Rail under the QCA Act and this agreement without the prior consent of the other Parties provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to be bound by and to perform the obligations of Queensland Rail under this agreement to the extent of the rights and obligations Assigned to the Assignee.

(c) Before exercising its right under clause 22.1(a) or 22.1(b), Queensland Rail will:

(i) give the Access Holder and the Operator no less than 21 Business Days notice; and

(ii) use its best endeavours to secure the cooperation of the Assignee to:

(A) provide information requested by the Access Holder or the Operator to confirm that it has the expertise, financial resources and other relevant resources to enable it to provide the relevant Access Rights; and

(B) negotiate and enter into an interface agreement (as defined in the RSNL) with the Operator.

(d) On the Assignee entering a deed required under clause 22.1(a) or clause 22.1(b), and subject to that deed becoming effective in accordance with its terms, Queensland Rail is released and discharged from further liability under this agreement in respect of the obligations which the Assignee has undertaken to be bound by and to perform.

22.2 Assignment by the Access Holder

(a) The Access Holder may only Assign all or part of its rights and obligations under this agreement in accordance with this clause 22.2.

(b) The Access Holder may, provided it is not in material default in the performance or observance of any of its obligations under this agreement, Assign the whole of its rights and obligations under this agreement to:

(i) subject to clause 22.2(c), a Related Party who is capable of performing the obligations of the Access Holder under this agreement; or

(ii) a person who is not a Related Party with the prior written consent of Queensland Rail provided that such consent will not be unreasonably withheld if Queensland Rail is satisfied (acting reasonably) that such person:

(A) has the financial resources and capability to perform the Access Holder's obligations under this agreement; and

(B) is otherwise capable of performing the Access Holder's obligations under this agreement.

(c) Where clause 22.2(b)(i) applies:

(i) the Access Holder remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee (**Assigned Obligations**); and

(ii) the Assignee's performance of the Assigned Obligations will (to the extent of such performance) discharge the Access Holder's liability for performance of those Assigned Obligations.

(d) Any Assignment by the Access Holder of its rights or obligations under this agreement is conditional on and does not take effect until:

(i) the Assignee covenants with Queensland Rail by deed, in such terms as Queensland Rail may reasonably require, to be bound by and to perform the obligations of the Access Holder under this agreement; and

(ii) the Assignee provides to Queensland Rail any Security that is required to be provided and maintained by the Access Holder in accordance with clause 17.

22.3 Assignment by Operator

The Operator cannot Assign all or part of its rights and obligations under this agreement.

22.4 Charging

(a) The Access Holder (Chargor) may only mortgage, charge, encumber or otherwise grant any security over (Charge) all or any of its rights and obligations under this agreement in whole or in part, in favour of any person (Chargee), if the Chargor, the Chargee and Queensland Rail execute a covenant by deed on terms satisfactory to Queensland Rail (acting reasonably), including terms that the Chargee, and any person (including any receiver or receiver and manager or agent) claiming through the Chargee, must comply with the provisions of this agreement including this clause 22 in the exercise of its rights in relation to the Charge (including in exercising any power of sale) as if it were originally a Party to this agreement in the position of the Chargor.

(b) If the Operator is not also the Access Holder, then the Operator cannot Charge all or any of its rights and obligations under this agreement in favour of any person.

22.5 Effect of Assignment or Charge

Any purported Assignment or Charge in breach of this clause 22 is of no effect.

23. Representations and warranties

(a) In addition to any other express or implied representations and warranties in this agreement, Queensland Rail and the Operator respectively represent, warrant and undertake to each other that:

(i) it is a corporation validly existing under the laws applicable to it;

(ii) it has the power to enter into and perform all of its obligations under this agreement and has obtained all necessary consents and approvals to enable it to do so;

(iii) it has the resources and capability to perform all of its obligations under this agreement and is able to pay its debts as and when they fall due;

(iv) its obligations under this agreement are enforceable in accordance with the relevant terms and are fully binding on it;

(v) it is not in breach or default under any agreement to which it is a Party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this agreement;

(vi) there is:

(A) no litigation, arbitration or administrative proceeding taking place, pending, commenced or, to its knowledge, threatened against it; and

(B) no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it,

which would or could have a material adverse effect on its ability to perform its obligations under this agreement;

(vii) it will as soon as practicable notify the other Party of the occurrence of, or pending or threatened occurrence of, any event that may cause or constitute a material breach of any of the acknowledgments, representations, warranties or covenants of that Party under this agreement and any event that could have a material adverse effect on its ability to perform its obligations under this agreement;

(viii) it and its Associates have all of the necessary competencies, skills and experience to exercise its rights (including to operate the Train Services) and perform its obligations, under this agreement in accordance with Prudent Practices; and

(ix) all information provided by each Party to the other Party, whether pursuant to this agreement or otherwise, in relation to or in connection with the Train Services, the Party's rights or obligations under this agreement or the negotiation of this agreement, is correct and complete in all material respects and is not, whether by omission or otherwise, misleading or deceptive.

(b) The representations and warranties set out in clause 23(a) are taken to be given and made on the Commencement Date and on each day during the Term.

(c) The Operator has the right, at its cost and risk, to inspect the Network (including circumstances of the Network such as fencing and level crossing protection) subject to:

(i) the Operator giving written notice to Queensland Rail of its request to inspect the Network a reasonable time prior to the date of the intended inspection;

(ii) the Operator receiving from Queensland Rail a notice (not to be unreasonably withheld) confirming that the inspection may occur and setting out the requirements for that inspection including in relation to any of the matters referred to in clauses 23(c)(iii) to 23(c)(v);

(iii) that inspection being conducted:

(A) in the presence of a nominated representative of Queensland Rail;

(B) at a time satisfactory to Queensland Rail; and

(C) in a manner that does not cause or contribute to any disruption of, or other adverse effect to, any Train Movements or Rail Infrastructure Operations;

(iv) the Operator paying, or if paid by Queensland Rail reimbursing, to Queensland Rail the costs and expenses reasonably incurred by Queensland Rail in relation to the Operator's inspection (including the costs and expenses of a representative of Queensland Rail attending the inspection and, if relevant, for any track protection officers) and those costs and expenses will be a debt due and owing by the Operator to Queensland Rail; and

(v) such other conditions as may be required by Queensland Rail (acting reasonably) in relation to the inspection including compliance with Queensland Rail's Safeworking Procedures and Safety Standards.

(d) Any inspection undertaken pursuant to clause 23(c) does not restrict or limit any obligation which Queensland Rail has under this agreement.

24. Confidentiality

24.1 Confidentiality obligation

Subject to clause 24.2, a Party (Recipient), in respect of the Confidential Information of another Party (Disclosing Party) that is provided to the Recipient by or on behalf of the Disclosing Party, must:

(a) treat that Confidential Information as (and keep it) confidential;

(b) only use that Confidential Information for the purposes of this agreement or for which it was disclosed; and

(c) treat that Confidential Information as the property of the Disclosing Party.

24.2 Exceptions

A Recipient of Confidential Information is not required to comply with clause 24.1 to the extent that:

(a) the Disclosing Party has given its written consent (which must not be unreasonably withheld) to the relevant disclosure or use; or

(b) another Confidentiality Exception applies to the relevant disclosure or use.

25. Notices

25.1 Form of Notice

A notice, demand, certification, process or other communication (Notice) relating to this agreement (other than Network Control Directions) must be in writing in English and may be given by an agent of the sender and may be in electronic form.

25.2 Notices to each Party

If a provision of this agreement requires a Party to give Notice to a particular Party, then the Party giving the Notice must, at the same time, also give that Notice to every other Party to this agreement in the same manner as the original Notice was required to be given.

25.3 Method of giving a Notice

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

(a) personally delivered;

(b) left at the Party's current delivery address for Notices;

(c) sent to the Party's current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or

(d) sent by email to the Party's current email address for Notices.

25.4 Particulars for the giving of Notices

(a) The particulars for the giving of Notices are initially:

Queensland Rail

Delivery address: Floor 14, 305 Edward Street, Brisbane Qld 4000

Postal address: GPO Box 1429, Brisbane Qld 4001

Email: GeneralCounsel@qr.com.au

Attention: General Counsel

Access Holder

As set out in Item 2 of Schedule 1.

Operator

As set out in Item 4 of Schedule 1.

(b) Each Party may change its particulars for delivery of Notices by notice to each other Party.

25.5 Effect and receipt of Notices

(a) Subject to clause 25.5(b), a Notice is given:

(i) if personally delivered, at the time of delivery;

(ii) if posted, on the third day after the date of posting; and

(iii) if sent by email, on receipt of a delivery confirmation report by the sender which records the time that the email was delivered to the recipient or the recipient's email server.

(b) If a Notice is given:

(i) after 5:00pm in the place of receipt; or

(ii) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken to have been given on the next day which is not a Saturday, Sunday or public holiday in the place of receipt.

25.6 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this agreement may be served by any method contemplated by this clause 25 or in accordance with any applicable law.

25.7 Representatives of the Operator

(a) The persons referred to in Item 12 of Schedule 1 are the relevant Party's representatives in relation to the relevant matters for which they have been nominated in respect of this agreement or the Train Services.

(b) The initial contact details for those persons are as set out in Item 12 of Schedule 1.

(c) Each Party:

(i) must notify all other Parties of any changes to those representatives or their contact details on or prior to that change occurring (subject to clause 25.7(c)(ii)); and

(ii) must ensure that any person ceasing to be such a representative is replaced on or prior to (or, if this is not possible, as soon as practicable after) the time when that person ceases to be a representative.

(d) Nothing in this clause 25.7 limits the requirements that may be set out in the Operating Requirements Manual in relation to the nomination of representatives or the provision of contact details for nominated representatives (including, for example, the nomination of persons as incident response coordinators or for the recovery of Rolling Stock).

26. GST

26.1 Definitions

In this agreement the expressions **adjustment note**, **consideration**, **GST**, **input tax credit**, **supply**, **tax invoice**, **recipient** and **taxable supply** have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

26.2 Sums exclude GST

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

26.3 Responsibility for GST

(a) Despite any other provisions in this agreement, if GST is imposed on any supply made by a Party (or any entity through which that Party acts) (**Supplier**) under or in connection with this agreement, the recipient must pay to the Supplier an amount equal to the GST payable on the supply.

(b) Subject to clause 26.5, the recipient must pay the amount referred to in clause 26.3(a) in addition to, and at the same time as, payment for the supply is required to be made under this agreement.

26.4 Reimbursement of expenses

If this agreement requires a Party to reimburse or indemnify any other Party for any expense, loss or outgoing (**Reimbursable Expense**) incurred by another Party, the amount required to be reimbursed or indemnified by the first Party will be the sum of:

(a) the amount of the Reimbursable Expense net of input tax credits (if any) to which the other Party (or the representative member of the GST group of which the other Party is a member) is entitled in respect of the Reimbursable Expense; and

(b) if the other Party's recovery from the first Party is a taxable supply, any GST payable in respect of that supply.

26.5 Tax invoice

If an amount on account of GST or a GST inclusive price is charged or varied under this agreement, the Supplier must provide to the recipient of the supply a valid tax invoice or adjustment note at or before the time of payment or variation.

26.6 Adjustment

If the amount of GST paid or payable by the Supplier (or the representative member of the GST group of which the Supplier is a member) on any supply made under this agreement differs from the amount on account of GST paid by the recipient, because the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the Supplier or the Supplier to the recipient, as the case requires.

27. General

27.1 Duty

(a) The Access Holder, as between the Parties, is liable for and must pay all duty (including any fine, interest or penalty except where it arises from default by Queensland Rail) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

(b) If Queensland Rail pays any duty (including any fine, interest or penalty except where such fine, interest or penalty arises from a default by Queensland Rail) on or relating to this agreement, any document executed under it or any dutiable transaction evidenced or effected by it, the Access Holder must pay that amount to Queensland Rail on demand.

27.2 Legal costs

Except as expressly stated otherwise in this agreement, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this agreement.

27.3 Waiver and exercise of rights

(a) Waiver of any right arising in relation to a failure to comply with this agreement must be in writing and signed by the Party granting the waiver.

(b) A single or partial exercise or waiver by a Party of a right relating to this agreement does not prevent any other exercise of that right or the exercise of any other right.

(c) A Party is not liable for any Loss of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

(d) A failure or delay in the exercise, or partial exercise, of a right arising from a breach of this agreement does not result in a waiver of that right.

27.4 Amendments

Except as otherwise provided in this agreement and subject to clause 4.1(c) and 4.2(a)(ii), an amendment of this agreement will only be effective if it is in writing and executed by all Parties.

27.5 Rights cumulative

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

27.6 Consents

Except as expressly stated otherwise in this agreement, a Party may conditionally or unconditionally give or withhold any consent, approval, acceptance or notice of no objection to be given under this agreement and is not obliged to give its reasons for doing so.

27.7 Further steps

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this agreement and to perform its obligations under it.

27.8 Governing law and jurisdiction

(a) This agreement is governed by and is to be construed in accordance with the laws applicable in the State of Queensland.

(b) Each Party irrevocably and unconditionally:

(i) agrees that the courts of the State of Queensland and any courts which have jurisdiction to hear appeals from any of those courts are to have exclusive jurisdiction to settle disputes which may arise out of or in connection with this agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this agreement may be brought in, and only in, such courts;

(ii) waives any objection which it may have now or in the future to the laying of the venue of any Proceedings in such courts and any claim that any such Proceedings have been brought in an inconvenient forum; and

(iii) agrees that a final judgment in any Proceedings brought in such courts is conclusive and binding upon such Party and may be enforced in the courts of any other jurisdiction.

27.9 Liability

An obligation of two or more persons binds them separately.

27.10 Counterparts

This agreement may consist of a number of counterparts (electronic or otherwise) and, if so, the counterparts taken together constitute one document and become binding upon each Party upon exchange of counterparts.

27.11 Legally binding

This agreement is binding on the Access Holder, Queensland Rail and the Operator when executed by those Parties or when counterparts are exchanged between those Parties pursuant to clause 27.10.

27.12 Entire understanding

(a) This agreement contains the entire understanding between the Parties as to the subject matter of this agreement.

(b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this agreement are merged in and superseded by this agreement and are of no effect.

(c) No oral explanation or information provided by any Party to another:

(i) affects the meaning or interpretation of this agreement; or

(ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

27.13 Relationship of Parties

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

27.14 Severability

(a) Subject to clause 27.14(b), if a provision of this agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this agreement.

(b) Clause 27.14(a) does not apply if severing the provision:

(i) materially alters:

(A) the scope and nature of this agreement; or

(B) the relative commercial or financial positions of the Parties; or

(ii) would be contrary to public policy.

27.15 Survival

(a) Clauses 4.4, 4.5, 6, 8.9(c) to (d), 12, 13, 15.9, 15.10, 15.11, 16.9, 17.2, 17.4, 18, 19 and 24 to 28 remain in full force and effect and survive the expiry or termination of this agreement.

(b) Clause 15.11 remains in full force and effect and survives the expiry or termination of this agreement until the Operator has fully complied with it.

(c) All indemnities and exclusions, limitations and other restrictions on liability contained in this agreement survive the expiration or termination of this agreement.

(d) All representations and warranties in this agreement survive the execution and delivery of this agreement and the completion of the transactions contemplated by it.

27.16 Benefit

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

27.17 No merger

The rights and obligations of the Parties:

(a) continue until satisfied in full;

(b) do not merge on the completion of any transaction contemplated by this agreement; and

(c) survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

27.18 Enforcement of indemnities

It is not necessary for a Party to incur expense or make a payment before enforcing an indemnity contained in this agreement.

27.19 Sublease

(a) The Parties acknowledge that:

(i) Queensland Rail's interest in all or part of the land on which the Network is located and over which the Train Services will operate is or will be held under:

(A) the Sublease; or

(B) a lease, easement, licence, statutory right or other arrangement or right other than the Sublease,

(**Land Tenure**); and

(ii) this agreement is subject to the terms and conditions (including all reservations), whether express or implied, of the Sublease (or the Head Lease) and any other Land Tenure.

(b) Queensland Rail must do either or both of the following:

(i) give the Access Holder and the Operator a copy of any Land Tenure (together with any relevant amendments from time to time); or

(ii) notify the Access Holder and the Operator of any requirements that the Operator must comply with in relation to that Land Tenure (together with any amendments from time to time) (**Tenure Requirements**).

(c) Despite any other clause in this agreement and to the extent that the Operator operates Train Services on any part of the Network on land, or otherwise accesses land, that is the subject of any Land Tenure, the Operator must:

(i) observe and comply with all relevant obligations of Queensland Rail under that Land Tenure and the Tenure Requirements; and

(ii) not act, omit to act or permit, cause or contribute to any act or omission that may result in Queensland Rail:

(A) breaching a term of any Land Tenure; or

(B) incurring (directly or indirectly) any costs or expenses in complying with a Land Tenure that Queensland Rail would not otherwise have incurred.

(d) If there is an inconsistency between the terms of this agreement and the terms of any Land Tenure or Tenure Requirements which means that Queensland Rail or the Operator

cannot comply with both this agreement and that Land Tenure or those Tenure Requirements, then the terms of that Land Tenure or those Tenure Requirements (as applicable) prevail to the extent of the inconsistency and the provisions of this agreement will be construed accordingly.

(e) If Queensland Rail's rights in respect of the Land Tenure are terminated for any reason other than the default of Queensland Rail of any agreement that affects Queensland Rail's use of that Land Tenure or other than by agreement between Queensland Rail and the relevant land owner, then Queensland Rail may by notice to the Access Holder and the Operator suspend and/or terminate this agreement insofar as it relates to that part of Network which is situated on that Land Tenure (in which case the Access Holder's obligation to pay Access Charges is suspended and/or terminated commensurate with that suspension or termination).

27.20 Most favoured nation status

(a) The Access Holder may (acting reasonably) notify Queensland Rail that it believes that:

(i) Queensland Rail has entered into an access agreement with another Network Participant for a Train service whose characteristics are alike and are provided to service the same end market as a Train Service is provided (**Like Train Service**); and

(ii) the access charges applicable to the Like Train Service have been developed in contravention of the price differentiation provisions under the relevant Access Undertaking's pricing principles that applied to the development of those access charges (**Price Differentiation Provisions**),

and provide Queensland Rail with reasons why the Access Holder considers this to be the case.

(b) Within 20 Business Days after receiving such a notice, Queensland Rail must notify the Access Holder:

(i) whether it agrees that the access agreement with the other Network Participant is for a Like Train Service including, if it does not agree, its reasons; and

(ii) where it does agree with the matter in clause 27.20(b)(i), whether it agrees that the access charges applicable to the Like Train Service have been developed in contravention of the Price Differentiation Provisions including, if it does not agree, its reasons.

(c) Within 40 Business Days after giving a notice under clause 27.20(b) agreeing to the matter in clause 27.20(b)(ii), Queensland Rail must notify the Access Holder:

(i) whether Queensland Rail has been able to vary the access charges applicable to the Like Train Service to rectify the contravention of the Price Differentiation Provisions; or

(ii) where Queensland Rail has not been able to vary those access charges, that Queensland Rail agrees to vary the Access Charge to rectify the contravention of the Price Differentiation Provisions including how the Access Charge will be varied.

(d) If the Access Holder (acting reasonably) is not satisfied with Queensland Rail's responses under clauses 27.20(b) or 27.20(c), the dispute must be referred to an Expert for resolution in accordance with clause 19.3 (subject to any other dispute resolution process otherwise agreed by the Parties to the Dispute (in each Party's absolute discretion)).

(e) If:

(i) another Network Participant notifies Queensland Rail that it believes:

(A) that some or all of the Train Services has characteristics that are alike and are provided to service the same end market as a Train service operated by that other Network Participant is operated; and

(B) that the Access Charges for those Train Services have been developed in contravention of the Price Differentiation Provisions under the relevant Access Undertaking's pricing principles that applied to the development of the Access Charges; and

(ii) Queensland Rail agrees with the matters referred to in clauses 27.20(e)(i)(A) and 27.20(e)(i)(B),

then Queensland Rail may notify the Access Holder varying the Access Charge to rectify the relevant contravention.

(f) In this clause 27.20, a reference to the Access Charges, or the access charges applicable to another Network Participant's Train service, includes the methodology, rates and other inputs used to calculate those Access Charges or access charges, as applicable.

(g) This clause 27.20 only applies in relation to an access agreement or access charges for a Like Train Service where that access agreement was entered into by the relevant parties after the date of this agreement.

28. Interpretation

28.1 Definitions

In this agreement:

Acceptable Credit Rating means a minimum long term credit rating of not less than "A" from Standard and Poor's Rating Service (or equivalent rating by another internationally recognised ratings agency).

Access Charge Input means a rate or other input, used for the purpose of calculating Access Charges, as specified in clause 1 of Schedule 3 (including as varied, escalated or replaced from time to time in accordance with this agreement).

Access Charges means the charges which includes Take or Pay Charges, determined in accordance with Schedule 3. [***NOTE: where a Reference Tariff does not apply to the setting of Access Charges, this definition must be checked against what the Parties agree to in schedule 3.***]

Access Undertaking means Queensland Rail's access undertaking as approved by the QCA under the QCA Act, from time to time.

Access Rights has the meaning given in clause 2.1.

Access Seeker has the meaning given in the Access Undertaking.

Accreditation means accreditation (including any exemption from the requirement for such accreditation and any conditions applying to that accreditation or exemption) in accordance with Part 3 Division 4 of the RSNL and Accredited means to have Accreditation.

Ad Hoc Train Service means a train service additional to the number of Train Services permitted under this agreement and varying from the Train Service Description, but agreed to by Queensland Rail.

Additional Train Service means the operation of a Train in accordance with this agreement that would be a Train Service but for it being in addition to the Train Service levels set out in the Train Service Description.

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

Afflicted Party has the meaning given in clause 20.7.

Agreed Performance Levels has the meaning given in clause 6.7(c).

Amendment Notice has the meaning given in clause 18.1(e).

Alternative Schedule Time has the meaning given to that term in the Access Undertaking.

Assign means assign, novate, transfer or otherwise deal with, and **Assignment** and **Assignee** have a corresponding meaning.

Assigned Obligations has the meaning given in clause 22.2(c)(i).

Associates means, for a Party:

(a) directors, officers, employees, contractors, agents or consultants of that Party; and

(b) where the Party is:

(i) the Operator, any other person under the control or supervision of, or acting for or on behalf of, the Operator in connection or relating to the Train Services;

(ii) the Access Holder, any other person under the control or supervision of, or acting for or on behalf of, the Access Holder in connection or relating to the Access Holder's obligations under this agreement; or

(iii) Queensland Rail, and any other person under the control or supervision of, or acting for or on behalf of, Queensland Rail in connection with or relating to the provision of the Access Rights,

including any worker (as defined under the *Work Health and Safety Act 2011* (Qld)) who carries out work for that Party, but for the avoidance of doubt, the Operator is not an Associate of the Access Holder and the Access Holder is not an Associate of the Operator for the purposes of this agreement.

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

Authority means:

(a) the Crown or any minister of the Crown;

(b) any government, federal, state or local government department or other governmental, semi-governmental or judicial body or authority including local government, a court or a tribunal;

(c) any corporation, authority, body or force constituted for a public purpose (including any police service or force);

(d) any holder of an office for a public purpose;

(e) any governmental, semi-governmental or judicial person; and

(f) any person (whether autonomous or not) who is charged with the administration or enforcement of a Law,

including any officer or agent of the foregoing acting in that capacity but excluding the Rail Authority and, for the avoidance of doubt, excluding Queensland Rail.

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

Certification has the meaning given in clause 8.10(a)(i).

Change in Control means:

(a) a change in the entity that controls a Party;

(b) an entity that controls a Party ceases to control a Party; or

(c) if a Party is not controlled, another entity acquires control of a Party,

except where:

(d) a Party is listed on the Australian Securities Exchange before, and remains listed after, the relevant change;

(e) the relevant change relates directly to the initial listing of a Party on the Australian Securities Exchange; or

(f) for paragraphs (a) and (b), the ultimate holding company of a Party remains the same following the relevant change.

For the purposes of this definition “control”, “controls”, “controlled” and “ultimate holding company” have the meaning given to those terms in the Corporations Act.

Change in Law means:

(a) any amendment, repeal, modification or enactment of any Law;

(b) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority;

(c) the making of any new directive, or any change in an existing directive, of any Authority;

(d) the imposition of a requirement for Authorisations not required as at the Commencement Date;

(e) after the date of grant of any Authorisation, a change in the terms, conditions or requirements relating to that Authorisation including any new terms, conditions or requirements;

(f) any such Authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application therefore being duly made, or being renewed on a basis that is materially less favourable than the original Authorisation;

(g) an amendment to or replacement of the Access Undertaking; or

(h) a change in the application or interpretation of the Access Undertaking resulting from a decision of a court or other Authority.

Change to Credit means:

(a) (i) a change in the rate, or basis of calculation, of; or

(ii) the introduction or cessation of,

a credit, rebate, deduction, refund, exemption, concession or any other benefit or allowance (whether or not relating to an Impost), including, without limitation, a fuel tax credit, diesel fuel rebate or similar credit to which Queensland Rail is or was entitled; or

(b) any change in the funding received by Queensland Rail from any Authority in relation to the relevant part of the Network.

Charge has the meaning given in clause 22.4.

Chargee has the meaning given in clause 22.4.

Chargor has the meaning given in clause 22.4.

Claim means any claim, cause of action, proceeding, liability, suit or demand (including by way of contribution or indemnity) whether:

(a) arising in contract, in tort (including negligence), under any Law or otherwise; or

(b) present or future, fixed or unascertained, actual or contingent.

Claim Event has the meaning given in clause 13.6.

Commitment Date, for a Train Service, has the meaning given in Item 10 of Schedule 1 for that Train Service.

Commencement Date has the meaning given in Item 7 of Schedule 1.

Compliance Date, for a Train Service, has the meaning given in Item 9 of Schedule 1 for that Train Service.

Confidential Information means:

(a) the terms of this agreement; and

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

(i) the disclosure of the information by the Recipient would reasonably be expected to adversely affect the commercial interests of the Disclosing Party; or

(ii) the information is marked or otherwise indicated as confidential at the time of the disclosure to the Recipient,

excluding information that:

(iii) was in the Recipient's lawful possession prior to the disclosure; or

(iv) whether before or after the disclosure:

(A) is in the public domain through means other than a breach of confidentiality by the Recipient (or anyone to whom the Recipient has disclosed it); or

(B) is received by the Recipient independently from a third party who is free to disclose such information.

Confidentiality Exception means:

(a) any disclosure or use of Confidential Information consented to by the Disclosing Party under clause 24.2(a);

(b) any disclosure of Confidential Information to another Party, provided that the confidentiality obligations under this agreement continue to apply to that Confidential Information as if the disclosure was made directly by the Disclosing Party to that other Party; or

(c) any disclosure or use of Confidential Information:

(i) to the extent necessary to:

(A) the Recipient's directors, officers or employees; or

(B) without limiting paragraph (c)(xii) of this definition, the directors, officers or employees of a Related Party of the Recipient;

(ii) to the extent required or compelled by, or necessary to observe, administer or comply with, any Law (other than section 275(1) of the *Personal Property Securities Act 2009* (Cth));

(iii) to the extent consistent with a person's right to disclosure under any Law;

(iv) without limiting paragraphs (c)(ii) or (iii) of this definition, in accordance with the Access Undertaking (including the Network Management Principles) including:

(A) in publishing or providing MTPs and DTPs; and

(B) for the purpose of consultations or negotiations relating to a modification of a MTP or the scheduling of a DTP in variation from an MTP;

(v) to the extent necessary for the conduct of any legal proceedings (including any dispute resolution process under the Access Undertaking or the QCA Act);

(vi) to the extent required under any stock exchange listing requirement or rule;

(vii) to the Rail Safety Regulator or the QCA;

(viii) to the Recipient's solicitors, barristers, or accountants under a duty of confidentiality (which is not waived by the Recipient without the prior written consent of the Disclosing Party);

(ix) to the Recipient's engineering or other technical consultants and advisers to the extent necessary for the provision of advice to the Recipient (provided they are under a legal obligation not to disclose the Confidential Information to any third party);

(x) to the Recipient's banker, financier or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Disclosing Party under which they are obliged to keep the Confidential Information confidential;

(xi) if Queensland Rail is the Recipient, to any responsible Minister (as defined in the Rail Authority Act);

(xii) if Queensland Rail is the Recipient, to the extent necessary to:

(A) the Rail Authority; and

(B) the Rail Authority's board members;

(C) the Rail Authority's:

(I) chief executive officer, chief finance officer and other senior executives (as those terms are defined under the Rail Authority Act); and

(II) other officers and employees;

(xiii) for the purpose of facilitating Network Control Directions where the disclosure of information is by Queensland Rail in the usual course of undertaking Network Control;

(xiv) to the extent necessary by any person involved in clearing a Network Incident or other event or incident that is preventing or affecting the operation of Train services on the Network;

(xv) to the extent necessary by Queensland Rail for the purpose of responding to, managing or clearing a Network Incident or other event or incident that is preventing or affecting, or is likely to prevent or affect, the operation of Train services on the Network; or

(xvi) to any bona fide assignee if such assignee has executed a legally enforceable confidentiality deed in favour of the Disclosing Party under which they are obliged to keep the Confidential Information confidential.

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

(a) any special, indirect or consequential loss;

(b) any economic loss in respect of any claim in tort;

(c) any loss of profits, loss of revenue, loss of production, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill, wasted overheads or any damage to credit rating whatsoever; and

(d) any loss arising out of any Claim by a third party,

whether arising in contract, in tort (including negligence), under any law or otherwise and whether present or future, fixed or unascertained, actual or contingent, but does not include:

(e) a loss (including a loss arising out of a Claim by a third party) in respect of:

(i) the cost of repairing, replacing or reinstating any real or personal property owned or leased by any person (including a Party) that has been lost, damaged or destroyed; or

(ii) personal injury to or death of any person; or

(f) in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims.

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

CPI means the Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No. 6401.0) as published by the Australian Bureau of Statistics (or other successor, authority or instrumentality having jurisdiction in the matter) as varied from time to time in accordance with this agreement.

Daily Train Plan or **DTP** has the meaning given to that term in the Access Undertaking.

Dangerous Goods means any substance or thing defined as dangerous goods, explosives or radioactive material under a Dangerous Goods Code.

Dangerous Goods Code means:

(a) the Australian Code for the Transport of Dangerous Goods by Road and Rail;

(b) the Australian Code for the Transport of Explosives by Road and Rail; or

(c) the Code of Practice for the Safe Transport of Radioactive Material,

as published and in force from time to time and as amended or replaced.

Data has the meaning given in clause 8.9(a).

Date of Resumption has the meaning given in clause 21.1(e)(i).

Disclosing Party has the meaning given in clause 24.1.

Dispute has the meaning given in clause 19.1.

Dispute Notice has the meaning given in clause 19.1(b).

Dispute Notice Date has the meaning given in clause 19.2(a).

Emergency includes any actual or impending circumstance that poses a threat of causing or contributing to:

(a) injury or death of any person;

(b) the destruction of, or material damage to, any real property or personal property;

(c) a material interference with, or loss is disruption of, a person's normal business operations; or

(d) any Environmental Harm.

Emergency Possession means a Possession:

(a) that is required to rectify a fault with the Network:

(i) that is considered by Queensland Rail to be dangerous or potentially dangerous to any person; or

(ii) where severe speed restrictions have been imposed that affect the scheduled Train services of Network Participants; and

(b) that Queensland Rail intends to carry out within five Business Days after the detection of the fault.

Endorsed Variation Event has the meaning given to that term in the Access Undertaking.

End Date means, for a Train Service, the date specified in Item 8 of Schedule 1.

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

EIRMR means the environmental investigation and risk management report developed by the Operator to identify and assess the environmental risks associated with the proposed Train Services and to identify applicable control measures to effectively manage those risks and as further outlined in the Operating Requirements Manual. For the avoidance of doubt, the EIRMR is used to inform the Interface Risk Assessment and the development of the IRMP.

Existing Agreement means an existing access agreement between Queensland Rail, the Access Holder and a nominated Accredited Rolling Stock Operator relating to the operation of any of the Train Services.

Expert means an expert appointed in accordance with clause 19.3.

Extension has the meaning given to that term in the Access Undertaking.

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

(a) is beyond the reasonable control of the Affected Party; and

(b) by the exercise of due diligence the Affected Party was not reasonably able to prevent or is not reasonably able to overcome,

and includes:

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

(d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the Affected Party is a party to such industrial action or would be able to influence or procure the settlement of such industrial action;

(e) an act of God;

(f) war, invasion, act of terrorists, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade, civil disturbance or public disorder;

(g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Prudent Practices or accident or accidental damage to any thing;

(h) malicious damage or sabotage;

(i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste;

(j) failure of electricity supply from the electricity grid;

(k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;

(l) fire, flood, storm surge, cyclone, tornado, tsunami, earthquake, washaway, landslide, explosion, hail, lightning, severe weather conditions or other catastrophe or natural calamity;

(m) any act or omission of any third party (including any third party's presence on or near the Network), without the express authorisation of Queensland Rail, that results in damage to the Network or the use or operation of the Network being prevented or impeded;

(n) epidemic or quarantine restriction; and

(o) delay of a supplier due to any of the foregoing whenever arising.

GST has the meaning given in clause 26.1.

Head Lease means the lease from the Governor in Council to the State of Queensland (represented by the Department of Transport and Main Roads) of land on which all or part of the Network is located, granted in accordance with section 240(2) of the TIA.

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

Impost Change means:

(a) the introduction or imposition of a new Impost;

(b) a change in the rate, amount or application of an Impost; or

(c) a change in the basis of calculation of an Impost.

Incident means any Network Incident involving the activities of the Operator.

Initial Operator means the first Accredited Rolling Stock Operator nominated by the Access Holder (in item 3 of schedule 1 of a document in the form of this agreement) to become bound to an access agreement with Queensland Rail and the Access Holder relating to the operation of any of the Train Services.

Insolvency Event means, in relation to a Party, any one or more of the following events:

(a) the Party is not able to pay all its debts from the Party's own money as and when they become due or has stated that it is unable to do so;

(b) the Party has been presumed to be insolvent or unable to pay its debts under any applicable legislation;

(c) a resolution is passed that the Party be wound up or placed in liquidation voluntarily or that an administrator be appointed;

(d) an application or order has been made for the winding up or dissolution of the Party (other than an application which is dismissed or withdrawn within ten Business Days after such proceedings were commenced);

(e) a controller, administrator, receiver, liquidator or provisional liquidator has been appointed to the Party or in respect of any of its property;

(f) the Party has entered into or taken any action to enter into (whether formally or informally) an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;

(g) a mortgagee has entered into possession of any of the Party's assets or undertakings; or

(h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction has occurred in respect of the Party,

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

Inspecting Party has the meaning given in clause 9.5.

Inspection or **Audit** has the meaning given in clause 9.5.

Insurance means those insurances to be effected and maintained in accordance with clause 16.

Interest Rate means the rate which is the aggregate of:

(a) 2% per annum; and

(b) the Commonwealth Bank of Australia's reference rate being the "Reference Rate" quoted by the Commonwealth Bank of Australia (or any successor bank) for borrowers with overdrafts of $100,000 or more on any relevant date as published in the Australian Financial Review, or in the event that such a rate is not so quoted or published at or in

respect of any relevant date, such other similar rate to the "Reference Rate" specified by a major commercial bank agreed between the Parties or, if not agreed, a rate determined by an Expert in accordance with clause 19.3 (subject to any other dispute resolution process otherwise agreed by the Parties to the Dispute in each Party's absolute discretion).

Interface Risk means a risk to the safety of persons or property or to the environment[3] arising from the interaction between the Operator's proposed operations and any one or more of:

(a) the Network;

(b) operations on the Network (including those of other Network Participants and Queensland Rail); and

(c) persons using the Network, persons on or near the Network or members of the public (including any activities on the Network that may affect those matters),

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

Interface Risk Assessment means an assessment to:

(a) identify all reasonably foreseeable Interface Risks;

(b) evaluate the possibility of the Interface Risks occurring and the safety, commercial and other consequences of those Interface Risks;

(c) identify appropriate controls and measures to adequately manage all Interface Risks (including any training required for the Operator's Associates);

(d) identify the Party responsible for implementing such controls and measures and ensuring their on-going effectiveness;

(e) identify the applicable Safeworking Procedures and Safety Standards to be adhered to including Queensland Rail's safety policies and procedures and the Operating Requirements Manual;

(f) identify the minimum standards relating to the interface between Rolling Stock and the Network with which the Rolling Stock and Train Configurations must comply in order for them to be able to be operated on the relevant parts of the Network (or, if already agreed, agree variations (if any) to those standards);

(g) identify:

(i) any relevant Laws and the controls, standards and procedures developed from time to time by Queensland Rail to comply with such Laws; and

(ii) any relevant elements of Queensland Rail's environmental management system and the Operating Requirements Manual,

to be adhered to;

(h) satisfy the requirements under the RSNL (including for an interface agreement (as defined in the RSNL)) or under any other relevant Laws relating to health or safety; and

(i) satisfy the relevant requirements under the Operating Requirements Manual for such an assessment.

Interface Standards has the meaning given to that term in the Operating Requirements Manual.

Interim Take or **Pay Notice** has the meaning given to that term in clause 5.4(b) of Schedule 3.

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[3] Environmental risks include:

- risks in relation to water quality, pollution, contaminated land, nature conservation, hazardous substances and dangerous goods, waste and noise; and
- risks of serious environmental harm, material environmental harm and environmental nuisance as defined in the *Environmental Protection Act 1994* (Qld).

IRMP means the interface risk management plan set out in schedule 4, as amended from time to time in accordance with clause 9.2.

Land Tenure has the meaning given in clause 27.19(a)(i).

Law includes:

(a) any statute, ordinance, code, law, by-law, proclamation, rule or regulation or any other subordinate legislation, whether State, Commonwealth or otherwise;

(b) the terms of any Authorisation;

(c) common law and equity; and

(d) any order, circular, requirement, condition, notice, decree, decision, direction or guidelines of any Authority with which the Operator or Queensland Rail (as the case may be) is legally required to comply including any requirement to pay fees and charges,

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

Like Train Services has the meaning given in clause 27.20(a)(i).

Loss means loss, damage, cost or expense including the costs and expenses of defending or settling any Claim (including legal costs and expenses on a full indemnity basis) whether:

(a) arising in contract, in tort (including negligence), under any Law or otherwise; or

(b) present or future, fixed or unascertained, actual or contingent.

Maintenance Work means any works involving maintenance, repairs to, renewal, and associated alterations or removal of, the whole or any part of the Network and includes any inspections or investigations of the Network.

Master Train Plan or **MTP** has the meaning given to that term in the Access Undertaking.

Material Change means:

(a) an Impost Change;

(b) a Change in Law; or

(c) a Change to Credit.

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

Net Financial Effect means the net effect in financial terms of a Material Change on Queensland Rail in relation to performing its obligations or exercising its rights under this agreement including any offsetting benefits or adverse effects directly or indirectly connected to the Material Change (and, for clarification, any change in the funding from governments in respect of the relevant part of the Network for the relevant commodity which is adverse to Queensland Rail shall, to the extent that change affects the financial position of Queensland Rail, be deemed to be an additional cost to Queensland Rail of performing its obligations under this agreement).

Network means the rail transport infrastructure (as defined in the TIA) the use of which is a service declared under Part 5, Division 2 of the QCA Act.

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

(a) all Train Movements;

(b) all other operations of Rolling Stock on the Network; and

(c) any activities affecting or potentially affecting such Train Movements or Rolling Stock operation or the proper, efficient and safe operation and management of the Network.

Network Control Directions means instructions, directions and notifications from time to time issued by Queensland Rail for the purpose of Network Control (including preventing or minimising the effect of a material breach of this agreement).

Network Control Officer means a person appointed by Queensland Rail from time to time to perform Network Control for a relevant part of the Network.

Network Control System means the software, databases and systems used from time to time by Queensland Rail in connection with Network Control.

Network Incident means any Rolling Stock derailment, Rolling Stock disablement or breakdown, accident, collision or any other unplanned occurrence on the Network which causes or could cause death or injury to any person, damage to property or Environmental Harm or a disruption to or cancellation by Queensland Rail of any Train Movement.

Network Management Principles has the meaning given to that term in the Access Undertaking (from time to time) or, if the Access Undertaking ceases to define that term, the network management principles included in the Operating Requirements Manual from time to time.

Network Participant means:

(a) any person who holds, or uses any other person's, rights of access to any part of the Network in relation to Train services; and

(b) any Accredited rail transport operator (as defined in the RSNL) who uses the Network,

including:

(c) the Operator; and

(d) any person in control of, or operating, any Private Infrastructure that is connected to the Network.

Noise Mitigation Requirements has the meaning given in clause 10.7(a).

Nominated Access Rights has the meaning given in clause 21.2(a)(i).

Nominated Monthly Train Services means the number of Train Services for that Train Service Description that the Access Holder is entitled to have operated during any calendar month.

Notice has the meaning given in clause 25.1.

Obstruction means any thing or circumstance (including debris or other things on the Network), which has the potential to cause a disruption to or cancellation by Queensland Rail of Train Services or Train Movements and includes any Network Incident but does not include an Operational Constraint imposed by Queensland Rail.

Operating Plan has the meaning given to that term in the Access Undertaking.

Operating Requirements Manual has the meaning given in the Access Undertaking.

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

Operator means the Initial Operator or any Subsequent Operator.

Operator's Customer means:

(a) any person that has a rail haulage agreement or arrangement with the Operator in relation to the Access Rights;

(b) any consignor of goods to be transported by the Operator; and

(c) any person with title to, or an interest in, any thing to be transported by the Operator;

provided that if Items 5 and 6 of Schedule 1 have been completed and the person whose details are set out in Items 5 and 6 of Schedule 1 has executed this agreement, then that person is the "Operator's Customer".

Operator's Emergency Management Plan means the emergency management plan, including as amended or replaced from time to time:

(a) that is developed and maintained by the Operator under clause 10.1; and

(b) for which the Operator has obtained a notice from Queensland Rail, in accordance with clause 10.1(a) (and, if applicable, clause 10.1(d)(iii)), that Queensland Rail has no objection to that plan (including any amendments).

Over-Allocation has the meaning given in clause 4.3.

Parties means collectively the parties to this agreement, and Party means one of them.

Performance Indicators has the meaning given in clause 6.7(a).

Performance Level Reporting Regime has the meaning given in clause 6.7(c).

Planned Possession means a Regular Planned Possession or an Ad Hoc Planned Possession (as those terms are defined in the Access Undertaking).

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

Present Value means the present value calculated at a discount rate equal to the Weighted Average Cost of Capital (WACC) (as defined in the Access Undertaking from time to time).

Price Differentiation Provisions has the meaning given in clause 27.20(a)(ii).

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

Proceedings has the meaning given in clause 27.8(b)(i).

Productivity Proposal has the meaning given in clause 1.3(a)(i).

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

QCA means the Queensland Competition Authority established under the QCA Act.

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

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

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

(a) an Operational Constraint;

(b) a Force Majeure Event (to the extent that the Force Majeure Event prevents Queensland Rail from providing access to the Network in accordance with clause 2);

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

(d) any other action by Queensland Rail other than Queensland Rail complying with an obligation in accordance with this agreement, the Access Undertaking or any applicable Law,

except where Queensland Rail's inability to make the Network available for the operation of Train Services in accordance with this agreement is primarily attributable to the Operator or the Access Holder.

Queensland Rail Emergency Procedures means Queensland Rail's emergency procedures as set out in the Operating Requirements Manual.

Rail Authority means the authority established under section 6 of the Rail Authority Act.

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

Rail Infrastructure Operations means:

(a) the construction of any rail transport infrastructure (as defined in the TIA) to improve, upgrade, expand, extend, replace or vary the whole or any part of the Network;

(b) any management, maintenance or operational activities relating to the Network, including the improvement, maintenance, repair, modification, installation, removal, renewal or decommissioning of the whole or any part of the Network; and

(c) any inspections or investigations of the Network.

Railway Manager means an Accredited rail infrastructure manager (as defined in the RSNL).

Rail Safety Regulator means the National Rail Safety Regulator or the Acting National Rail Safety Regulator appointed under Part 2 Division 2 of the RSNL.

Recipient has the meaning given in clause 24.1.

Reference Tariff means a prescribed access charge applicable for a specified Reference Train Service as set out in the Access Undertaking.

Reference Tariff Provisions means, to the extent that a Reference Tariff applies to the Train Services, the provisions in the Access Undertaking that either set out that Reference Tariff or are directly or indirectly related to the application or interpretation of that Reference Tariff.

Reference Train Service means a notional Train service described in the Access Undertaking in respect of a Reference Tariff and conforming to certain criteria, including carrying a specified commodity type, operating between specified geographical areas and conforming to specified technical characteristics, operational characteristics and contract terms and conditions.

Reimbursable Expense has the meaning given in clause 26.4.

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

Relinquished Access Rights means the Available Capacity (as defined in the Access Undertaking) that is created as a result of a relinquishment by the Operator of Nominated Access Rights in accordance with clause 21.2.

Relinquishment Date has the meaning given in clause 21.2(a)(iii).

Relinquishment Fee means:

(a) in relation to Train Services for which the Access Undertaking requires, subject to clause 3.3(c) of the Access Undertaking, that the Access Charge be consistent with the Reference Tariff, a fee:

  (i) which, unless the Parties (each acting reasonably) agree otherwise, is equivalent to 80 per cent of the Present Value of the aggregate of the Take or Pay Charges that would have been payable on and from the Relinquishment Date until the end of the Term if the relevant Access Rights were not relinquished and the Operator did not use those Access Rights; and

  (ii) if, prior to the Relinquishment Date, Queensland Rail has granted access rights (with effect on or after the Relinquishment Date) to a third party (including a Transferee) (**New Access Holder**) under an access agreement using the Relinquished Access Rights, adjusted to offset an amount equivalent to the

Present Value of the aggregate of the take or pay charges, under that access agreement, payable by the New Access Holder:

(A) that are directly attributable to that part of the access rights granted to the New Access Holder derived solely from the Relinquished Access Rights;

(B) for all or part of the same period as that used to calculate the amount under paragraph (i); and

(C) calculated assuming the New Access Holder does not use the relevant access rights,

provided that if this calculation would result in an amount less than zero, then the fee equals zero; and

(b) in relation to Train Services other than those described in paragraph (a), a fee determined in accordance with Schedule 6.

Repeated Breach means an event or circumstance where:

(a) Queensland Rail has given to the Operator at least two notices to remedy a material breach of a particular provision of this agreement;

(b) each notice referred to in paragraph (a) relates to a separate breach of the particular provision;

(c) the Operator commits a further breach of the particular provision; and

(d) all of the breaches happened within a period of 12 months.

Resumption Decision Notice has the meaning given in clause 21.1(f)(i).

Resumption Notice has the meaning given in clause 21.1(e)(i).

Rolling Stock means rolling stock (as defined under the RSNL) that operates on or uses Track.

Rolling Stock Operator has the meaning given to that term in the RSNL and, for clarity, includes an Access Holder's nominated Operator.

RSNL means the Rail Safety National Law (Queensland) as defined in the *Rail Safety National Law (Queensland) Act 2017* (Qld).

Safety Standards has the meaning given to that term in the Operating Requirements Manual.

Safeworking Procedures has the meaning given to that term in the Operating Requirements Manual.

Scheduled Time means the time at which a Train Service has been scheduled by Queensland Rail to operate on the Network as detailed in the Train Schedule or as modified or varied by Queensland Rail from time to time on the day of operation in accordance with the Network Management Principles.

Scheduled Train Path means a Train Path that has been scheduled by Queensland Rail in a Train Schedule.

Security has the meaning given in clause 17.1(a).

Security Amount, in respect of the Operator and the Access Holder respectively, is the amount determined in respect of that Party by Queensland Rail having regard to:

(a) the financial capability of the Operator or the Access Holder, as the case requires;

(b) the expected payment obligations under this agreement of the Operator or the Access Holder, as the case requires; and

(c) the allowable range in Item 11 of Schedule 1 (if applicable),

as that amount may be varied in accordance with clause 17.3.

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

Sublease means:

(a) the sublease of the Head Lease between the State of Queensland (represented by the Department of Transport and Main Roads) (as sublessor) and Queensland Rail (as sublessee) for all or part of the land on which the Network is located; and

(b) any tenure or other right to that land which replaces all or part of that sublease from time to time and entitles Queensland Rail to operate, and provide access to, the Network.

Subsequent Agreement means an access agreement between Queensland Rail, the Access Holder and a Subsequent Operator relating to the operation of any of the Train Services in the same terms as this agreement (unless otherwise agreed by the Access Holder and Queensland Rail) which reflects, in Schedule 1 to that agreement, particulars applicable to the relevant Subsequent Operator and which reflects, in Schedule 2 to that agreement, the Access Rights which the Access Holder wishes to allocate to that Subsequent Operator and includes any further changes required pursuant to clause 4.2.

Subsequent Operator means any Accredited Rolling Stock Operator nominated by the Access Holder pursuant to clause 3.4 (but, for the avoidance of doubt, does not include the Initial Operator).

Take or **Pay Charges** means that part of the Access Charges calculated as "TP" in accordance with Schedule 3. [***NOTE: Where a Reference Tariff does not apply to the setting of Access Charges, this definition must be checked against what the Parties agree to include in schedule 3.***]

Tenure Requirements has the meaning given in clause 27.19(b)(ii).

Term means the term of this agreement as determined in accordance with clause 1.

Termination Date means the earlier of:

(a) the latest End Date; and

(b) the termination of this agreement in accordance with its provisions (including clauses 15 and 8.5(c)(iv)(B), 20.5(c), and 20.7 as applicable) or any Law.

Third Party Works means any works, maintenance of any thing or other activities (including design, construction, testing and commissioning activities) undertaken or required to be undertaken on, over or under the land on which the Network is located:

(a) by or on behalf of an Authority;

(b) which Queensland Rail must permit in accordance with any Law or direction from an Authority;

(c) by or on behalf of a third party who wants and is entitled under any Law to install and operate services or other infrastructure on, over or under that land; or

(d) which Queensland Rail is required to permit either in accordance with the Sublease or because Queensland Rail's rights under the Sublease are subject to the rights of a third party to install and operate services or other infrastructure on, over or under that land.

For clarity, Third Party Works does not include any works or maintenance of any thing or other activities (including design, construction, testing and commissioning activities) undertaken in connection with or relating to the provision of the Access Rights and the operation of Train Services.

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

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

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

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

Train Movement means the operation of a Train on the Network by the Operator or any other Network Participant.

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

Train Schedule means the train diagrams, yard schedules, terminal schedules and any other form of train timetable, plan or schedule prepared by Queensland Rail in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Network.

Train Service means a Train operating on the Network in accordance with this agreement (including the Train Service Description) and, in schedule 3, a Train Service is a one way Train Service – that is, the journey from the origin to the destination is one Train Service, and the return journey from the destination to the origin is a second Train Service.

Train Service Description means the details set out in schedule 2.

Transfer has the meaning given in clause 21.2(a)(ii).

Transferee has the meaning given in clause 21.2(a)(ii).

Urgent Possession means a Possession:

(a) that is required to correct problems in relation to the Network that are considered by Queensland Rail to be potentially dangerous to persons or property; and

(b) that Queensland Rail intends to carry out within less than three months after the detection of the problem,

other than an Emergency Possession.

Year means, as applicable:

(a) the period from the Commencement Date to the next 30 June;

(b) a 12 month period during the Term subsequent to the period in paragraph (a) of this definition (subject to paragraph (c) of this definition); and

(c) if the Termination Date is not 30 June, the period from (and including) 1 July immediately preceding the Termination Date and ending on the Termination Date.

28.2 Construction

Unless expressed to the contrary, in this agreement:

(a) words in the singular include the plural and vice versa;

(b) any gender includes the other genders;

(c) if a word or phrase is defined its other grammatical forms have corresponding meanings;

(d) "include", "includes" and "including" must be read as if followed by the words "without limitation";

(e) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;

(f) a reference to:

(i) a person includes a partnership, joint venture, unincorporated association, corporation, a government or statutory body or authority and any other entity recognised by law;

(ii) a person includes the person's legal personal representatives, successors, permitted assignees and persons substituted by novation;

(iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

(iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;

(v) a right includes a benefit, remedy, discretion or power;

(vi) conduct includes:

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

(B) any omission and any representation, statement or undertaking, whether or not in writing;

(vii) time is to local time in Brisbane;

(viii) a month is a reference to a calendar month;

(ix) "$" or "dollars" is a reference to Australian currency;

(x) this or any other document includes this agreement or that other document, as applicable, as novated, varied or replaced and despite any change in the identity of the Parties or, for another document, the parties to that document;

(xi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;

(xii) this agreement includes all schedules and annexures to it;

(xiii) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this agreement; and

(xiv) an Authority includes:

(A) any successor to, or replacement of, that Authority;

(B) any re-constitution or re-naming of that Authority; and

(C) any other Authority who is transferred any of the powers of functions of that Authority;

(g) if the date on or by which any act must be done under this agreement is not a Business Day, the act must be done on or by the next Business Day;

(h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;

(i) if a term used in this agreement has the meaning given to that term, or as defined, under any legislation, then:

(i) that term has the meaning given, or as defined, under that legislation from time to time; and

(ii) where that legislation ceases to define that term, the meaning given to that term in this agreement is the last meaning given to that term under the relevant legislation; and

(j) if there is any inconsistency:

(i) between matters contained in a schedule to this agreement and other provisions of this agreement that are not contained in a schedule, then those other provisions of this agreement prevail; or

(ii) between matters contained in the Access Undertaking and this agreement, the provisions of this agreement prevail.

28.3 Headings

Headings do not affect the interpretation of this agreement.

Schedule 1 - Reference schedule

1.	**Access Holder**	[insert name] ABN [insert] of [insert]
2.	**Access Holder's particulars for Notices**	Delivery address: [insert] Postal address: [insert] Facsimile: [insert] Email: [insert] Attention: [insert]
3.	**Operator**	[insert name] ABN [insert] of [insert]
4.	**Operator's particulars for Notices**	Delivery address: [insert] Postal address: [insert] Facsimile: [insert] Email: [insert] Attention: [insert]
5.	**Operator's Customer**	[***NOTE: If the Operator's Customer is a Party to this agreement, then complete items 5 and 6 in the same format as for items 3 and 4. If the Operator's Customer is not a Party to this agreement, then do not insert details in items 3 and 4.***]
6.	**Operator's Customer's particulars for Notices**	
7.	**Commencement Date**	[insert date of execution by Parties]
8.	**End Date**	[insert date when access will cease to be available]
9.	**Compliance Date**	[insert date when compliance with clause 8.4(a) should be completed]
10.	**Commitment Date**	[insert date when access is to be available]
11.	**Security Amount**	[insert a Security Amount for each of the Access Holder and the Operator. This may not exceed the sum of six months' Access Charges except where Queensland Rail has determined that the Security Amount should be increased following a review undertaken in accordance with clause 17.3, or, in the case of the Access Holder's Security Amount, the Access Holder does not satisfy the prudential requirements in clause 2.8.3 of the Access Undertaking]
12.	**Initial details for the Operator's representatives**	**Representative for Obstructions** Name: Position: Phone: Mobile: Facsimile: Email: **Representative for loading of Train Services**

		Name: Position: Phone: Mobile: Facsimile: Email: **Representative for Operational Meetings** Name: Position: Phone: Mobile: Facsimile: Email: **Representative for Contractual Meetings** Name: Position: Phone: Mobile: Facsimile: Email: **Representative for Document Control** Name: Position: Phone: Mobile: Facsimile: Email:

Schedule 2 - Train Service Description

The details for the Train Service Description are as follows:

Origin	
Destination	
Average Haul Distance	
Traffic Task / Commodity	
Dwell Times[4]	
Accredited Rolling Stock Operator(s)	[insert each Accredited Rolling Stock Operator who has been nominated to operate some or all of the Train Services and identify the relevant Train Services which each Accredited Rolling Stock Operator has been nominated to operate.]
Applicable Network	The part of the Network to be used by the Train Services is described in the train route acceptance in Attachment 3 of this Schedule 2.
Rolling Stock and Train Configuration	The details for the Rolling Stock and Train Configuration to be used for the Train Services are set out in the train route acceptance in Attachment 3 of this Schedule 2.
Train Service Levels	The description of the Train Service levels is set out in Attachment 1 of this Schedule 2.
Special Operating Requirements	The special operating requirements of the Train Service are set out in Attachment 2 of this Schedule 2.
Storage	The Train Services do not include the storage of Trains (whether short or long term) on the Network except short term storage as agreed, from time to time, between the Parties (in each Party's absolute discretion).
Differences from the relevant Reference Train Service	The Train Services must only differ from the Reference Train Service as follows: • [insert]; • [insert]; and • in accordance with any other differences as expressly set out in this agreement. [***NOTE: Only use where a Reference Tariff applies to set the Access Charges. In all other circumstances this row can be deleted or the words above can be replaced with "Not Applicable".***]
Dangerous Goods	[insert]
Stowage	[***NOTE: If any part of the relevant Network is not available, stowage will be provided for the Operator's Rolling Stock at mutually agreed locations taking into consideration the Operator's maintenance requirements, depot locations and crew accessibility i.e. walkways.***]

4 A dwell time is the time period from when the Train Service arrives at a specified point on its journey until it has completed all relevant activities and is ready to depart from that point and has advised the relevant ~~Network Controller~~ Network Control Officer accordingly.

Attachment 1 - Train Service levels

[insert relevant Train Services levels including daily, weekly, monthly and/or annual description of Train Services and other details relevant to the preparation of the Master Train Plan, including section run times.]

[***NOTE: If a Train Service is only a one way Train Service for the purposes of this description, then this should be specifically referred to in the description.***]

Attachment 2 - Special operating requirements

1 Provisioning locations

The provisioning locations for Train Services are:

(a) [insert]; and

(b) any other locations as agreed with Queensland Rail (in its absolute discretion),

except that if a Network Incident or delay occurs that affects more than one Train Service, the provisioning locations will be as agreed between the Parties (acting reasonably) for agreed Train Services and an agreed time period.

2 [insert]

[insert other requirements – for example, exit and entry points, shunting areas]

Attachment 3 - Train route acceptance

1 Applicable Network

[insert]

2 Rolling Stock and Train Configuration

[insert]

Schedule 3- Calculation of Access Charges and other charges

[***NOTE: The contents of this Schedule 3 are only applicable where the Reference Tariff applies to set the Access Charges. Where the Reference Tariff does not apply in relation to the Access Charges, the contents of this Schedule 3 will need to be replaced with terms negotiated by the Parties.***]

1. Access Charge Inputs

(a) The Access Charge Inputs (as at the Commencement Date) to apply for specific Train Services are as set out below.

	Origin				
	Destination				
Access Charge Inputs	Variable rate ($/1000gtk)	$AT_{1(W)}$			
	Fixed rate ($/Train Path)	$AT_{2(W)}$			
	Variable rate ($/1000gtk)	$AT_{1(M)}$			
	Fixed rate ($/Train Path)	$AT_{2(M)}$			
	QCA Levy[5] ($/Net Tonne)	QL			
	Locomotive Weight (t)		94.5		
	Wagon Weight (Unloaded) (t)		15.2		
	Wagon Weight (Loaded) (t)		63		

[***NOTE: The Locomotive Weight and Wagon Weights shown above are based on the Reference Train Service. If the relevant Train Service differs from the Reference Train Services those number may be different too.***]

Miscellaneous services[6]	Access Charge Input Miscellaneous service rate ($/tkm[7])
Unscheduled repositioning of Rolling Stock within the Applicable Network described in schedule 2	
All other such relocations and movements	

(b) The Access Charge Inputs will be varied or escalated in accordance with clauses 2 and 3 of this schedule 3 and clause 18, as applicable.

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5 The purpose of the QCA Levy is to recover the fee charged by the QCA from the beneficiaries of the QCA's regulatory services. The QCA Levy and its allocation to Train Services will be determined and published by Queensland Rail each Year in accordance with clause 3.7 of the Access Undertaking.

6 For clarity, a **miscellaneous** service to which the miscellaneous service rates apply will be treated as a special type of ad hoc train service for the purposes of this agreement including the application of the Network Management Principles and are comprised in 'Ad Hoc Train Services' as referred to under the Network Management Principles.

7 Where tkm is a reference to train kilometre – that is, each kilometre or part thereof travelled on the Network by the Train(s) or Rolling Stock involved. For example, if the relevant miscellaneous service rate is $X/tkm and the total tkm for in respect of those miscellaneous services is 1000, then the relevant charge will be X multiplied by 1000.

2. CPI escalation

2.1 Calculation of CPI escalation where a Reference Tariff applies

Where a Reference Tariff continues to apply to the Train Services after the Commencement Date, the Access Charges will be escalated under this agreement in the same manner as that Reference Tariff is escalated from time to time under the Access Undertaking.

2.2 Calculation of CPI escalation where no Reference Tariff applies

(a) This clause 2.2 only applies where a Reference Tariff ceases to apply in relation to the Train Services.

(b) The Access Charge Inputs (other than the QCA Levy), and any other charges or rates expressed in this agreement as being subject to escalation, will escalate on each 1 July during the Term (**Escalation Date**), in accordance with the following formula:

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

where:

ACI_n means the amount of the relevant Access Charge Input (or other charge or rate) that commences to apply on the relevant Escalation Date;

ACI_{n-1} means the amount of the relevant Access Charge Input (or other charge or rate) applicable immediately prior to the relevant Escalation Date;

CPI_n means the CPI for the Quarter which commenced six months prior to the relevant Escalation Date;

CPI_{n-1} means the CPI for the Quarter which commenced 18 months prior to the relevant Escalation Date.

(c) If:

(i) the basis of assessment of the CPI is altered in a material way; or

(ii) the CPI ceases (or is likely to cease) to be:

(A) published; or

(B) published at sufficiently regular intervals for the purpose of the calculation in clause 2.2 of this Schedule 3,

then a Party may notify the other Parties that the CPI is required to be replaced.

(d) After a notice is given in accordance with clause 2.2(c) of this Schedule 3:

(i) the Parties will negotiate in good faith for the purpose of agreeing to vary or replace the CPI; and

(ii) if the Parties fail to agree within 30 days after that notice is given, then the matter must be referred to an Expert for determination in accordance with clause 19.3 (subject to any other dispute resolution process otherwise agreed by the Parties to the Dispute (in each Party's absolute discretion)).

(e) For clarity, if the Parties reach agreement, or the Dispute is resolved, after the relevant Escalation Date, the Parties agree to retrospectively adjust any Access Charges (or other relevant amounts) invoiced since that date to be consistent with that agreement, or the resolution of the Dispute, in accordance with clause 6.6.

3. Variation of QCA Levy

Queensland Rail may, from time to time, vary the Access Charge Input for the QCA Levy by giving notice in writing to the Access Holder of that variation. However such variations may only be made in accordance with the Access Undertaking or as otherwise approved by the QCA.

4. Calculation of invoice for access

4.1 Invoice calculations

The amount of the invoice for charges payable by the Operator to Queensland Rail under this agreement for a relevant month is calculated in accordance with the following formula:

$$TC = AC \times (1 + GST) + G$$

where:

TC is the total amount of charges payable by the Operator for the relevant month;

AC is the sum of VCM, FCM, VCW, FCW and QCAL for each Train Service for the relevant month and, if the relevant month is:

(a) the last month of the Year; or

(b) the month in which this agreement has expired or terminated,

TP;

FCM is the fixed charge component for the relevant Train Service calculated by the formula:

$$AT_{2(M)} \times rtp_{(M)}$$

where:

$rtp_{(M)}$ has the meaning given to that term in the Access Undertaking in relation to the relevant Train Service (or, where a Reference Tariff ceases to apply in relation to the Train Services, as last defined in the Access Undertaking); and

$AT_{2(M)}$ is the amount specified as such in clause 1 of this Schedule 3 for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

VCM is the variable charge component for the relevant Train Service calculated by the formula:

$$AT_{1(M)} \times \frac{gtk_{(M)}}{1000}$$

where:

$gtk_{(M)}$ is the gross tonne kilometres for the relevant Train Service calculated in accordance with clause 5.2 of this Schedule 3 relating to the Metropolitan System; and

$AT_{1(M)}$ is the amount specified as such in clause 1 of this Schedule 3 for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

FCW is the fixed charge component for the relevant Train Service calculated by the formula:

$$AT_{2(W)} \times rtp_{(W)}$$

where:

$rtp_{(W)}$ has the meaning given to that term in the Access Undertaking in relation to the relevant Train Service (or, where a Reference Tariff ceases to apply in relation to the Train Services, as last defined in the Access Undertaking); and

$AT_{2(W)}$ is the amount specified as such in clause 1 of this Schedule 3 for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

VCW is the variable charge component for the relevant Train Service calculated by the formula:

$$AT_{1(W)} \times \frac{gtk_{(W)}}{1000}$$

where:

$gtk_{(W)}$ is the gross tonne kilometres for the relevant Train Service calculated in accordance with clause 5.2 of this Schedule 3 relating to the West Moreton System (as defined under the Access Undertaking or, where that term ceases to be defined in the Access Undertaking, as last defined in the Access Undertaking); and

$AT_{1(W)}$ is the amount specified as such in clause 1 of this Schedule 3 for the relevant Train Service applicable for the relevant month as escalated, or varied, from time to time in accordance with this agreement;

QCAL is the QCA Levy component for the relevant Train Service which is calculated by the formula:

$$QL \times nt$$

where:

QL is the amount specified as such in clause 1 of this Schedule 3 for the relevant Train Service applicable for the relevant month as varied from time to time in accordance with this agreement; and

nt is the net tonnes for the relevant Train Service calculated in accordance with clause 1 of this Schedule 3;

TP will be calculated in accordance with the principles outlined in Schedule D of the Access Undertaking. TP will only be determined and charged where the revenue that Queensland Rail earns in relation to Reference Train Services in a Year is less than the Approved Ceiling Revenue Limit (as defined in the Access Undertaking) for that Year.

If the Approved Ceiling Revenue Limit has been reached then even if the Access Holder has not operated a level of Train Services commensurate with its Access Rights, no take or pay charge is due.

If the Approved Ceiling Revenue Limit has not been reached then TP is the take or pay charge for the relevant Year which is the greater of zero and the amount calculated by the formula except that no amount of TP is payable which would cause the Approved Ceiling Revenue Limit to be breached:

$$\left(\left(AT_{1(W)} \times \frac{gtk_{(W)}}{1000}\right) + AT_{2(W)} + \left(AT_{1(M)} \times \frac{gtk_{(M)}}{1000}\right) + AT_{2(M)}\right) \text{x NTNO x 1}$$

where:

$AT_{1(M)}$, $AT_{2(M)}$, $AT_{1(W)}$ and $AT_{2(W)}$ are the amounts specified as such in clause 1 of this schedule 3, as escalated, or varied, from time to time in accordance with this agreement, for the relevant Train Service as applicable on the last day of the relevant Year;

$gtk_{(M)}$ and **$gtk_{(W)}$** are the average gross tonne kilometres for the relevant Train Services calculated in accordance with clause 5.2 of this Schedule 3 in relation to the Metropolitan System and West Moreton System (as defined under the Access Undertaking or, where that term ceases to be defined in the Access Undertaking, as last defined in the Access Undertaking) respectively; and

NTNO is the amount calculated by the formula:

$$NTNO = TSEY - TSOY - TSQRCY$$

where:

TSEY is the number of Train Services that the Operator was entitled to operate for the Year under this agreement;

TSOY is the number of Train Services that the Operator operated for the Year under this agreement; and

TSQRCY is the number of relevant Train Services which failed to operate for the Year under this agreement due to a Queensland Rail Cause;

GST is the rate of GST (expressed as a decimal) applicable at the time the supply is made; and

G is the sum of any other amount due and payable under this agreement not calculated in AC above including, but not limited to:

(A) charges for any additional GST;

(B) payments for interest (if any is payable);

(C) payments for ad-hoc train services and miscellaneous services; and

(D) any Adjustment Charges (as defined in the Access Undertaking) and any other adjustments (positive or negative).

4.2 Effects of interim take or pay notices

For the avoidance of doubt, if Queensland Rail has issued one or more Interim Take or Pay Notices (as defined in clause 5.4 of this Schedule 3), then the amounts paid pursuant to those notices will be subtracted from the Yearly take or pay charges otherwise charged to the Access Holder in accordance with this clause 4 of this Schedule 3.

5. Interpretation

5.1 Train Services operate in the period in which they commence to operate

For the purposes of clause 4.1 of this Schedule 3, a Train Service is taken to have operated in the month or a Year in which it commenced operation from its origin even if that Train Service does not reach its destination until the next month or Year.

5.2 Gross tonne kilometres

(a) The gross tonnes (**gt**) for a Train Service is calculated as the sum of:

(i) where gtk is being calculated under clause 4.1 for the purpose of:

(A) VCW or VCM, the maximum gross mass as specified in the Network Control System for each locomotive comprised in the Train Service; or

(B) TP, the Locomotive Weight (as set out in clause 1(a) of this Schedule 3 for the Train Service) multiplied by the number of locomotives comprised in the Train Service;

(ii) except where clause 5.2(a)(iii) of this Schedule 3 applies, the Wagon Weight (Loaded) (as set out in clause 1(a) of this Schedule 3 for the Train Service) multiplied by the number of wagons comprised in the Train Service (for clarity, an empty or partly loaded wagon in a Train Service will be treated as a loaded wagon);

(iii) if the Train Service is operated empty (after unloading at its destination), the Wagon Weight (Unloaded) (as set out in clause 1(a) of this Schedule 3 for the Train Service) multiplied by the number of empty wagons comprised in the Train Service; and

(iv) for all other Rolling Stock, the maximum gross mass specified in the Network Control System for each item of such Rolling Stock comprised in the Train Service.

(b) For the purpose of clause 5.2(a) of this Schedule 3, the number of wagons comprising a Train Service will be no less than the number of wagons:

(i) set out in the Train Service Description for that Train Service; or

(ii) where no number of wagons is set out in the Train Service Description, for the Reference Train Service relating to the relevant Reference Tariff as set out in the Access Undertaking.

(c) The gross tonne kilometres (**gtk**) for a Train Service is determined as the multiple of the gt for the Train Service and the distance travelled in kilometres by the Train Service.

[***NOTE: This standard access agreement is based on a train loading at an origin and travelling to a destination where it is unloaded. Modified provisions will be needed in circumstances where, for example, a train loads at its origin and then travels to an intermediate destination where it is either partially unloaded or further loaded before travelling on to its final destination and unloading.***]

5.3 Net tonnes

The net tonnes (**nt**) for a Train Service is equal to the gt for the Train Service calculated in clause 5.2(a) of this Schedule 3 less the sum of:

(a) the Locomotive Weight (as set out in clause 1(a) of this Schedule 3 for the Train Service) multiplied by the number of locomotives comprised in the Train Service;

(b) the difference between Wagon Weight (loaded) and the Wagon Weight (unloaded) (each as set out in clause 1 of this Schedule 3) for the Train Service) multiplied by the number of wagons comprised in the Train Service and expressed as a positive number; and

(c) for all other Rolling Stock, the tare mass specified in the Network Control System for each item of such Rolling Stock comprised in the Train Service.

5.4 Interim take or pay notices

(a) Queensland Rail may, from time to time, give the Access Holder a statement of the accrued Take or Pay Charge liability in respect of a particular period. If such a statement is given, Queensland Rail and the Access Holder will meet, or otherwise discuss that statement, in good faith, to seek to agree the accrued Take or Pay Charge liability in respect of that period.

(b) Queensland Rail may, from time to time, give the Access Holder a notice under this clause 5.4 that states the accrued Take or Pay Charge liability in respect of a particular period (**Interim Take or Pay Notice**).

(c) If the Access Holder wishes to dispute any matter set out in an Interim Take or Pay Notice, then any Dispute Notice to be given by the Access Holder under clause 19 of this agreement must be given within ten Business Days (or such longer period as agreed by Queensland Rail) after the relevant Interim Take or Pay Notice was given to the Access Holder. Where the Access Holder does not give a Dispute Notice within that time period,

the Access Holder is taken to reject the matters in the relevant Interim Take or Pay Notice as incorrect.

(d) Where an Interim Take or Pay Notice is disputed under clause 5.4(c) and that dispute has been finally resolved in a way that requires amendments to that Interim Take or Pay Notice, then Queensland Rail will give the Access Holder an amended Interim Take or Pay Notice (to replace the original Interim Take or Pay Notice) that is consistent with the resolution of the dispute.

(e) Where two or more Interim Take or Pay Notices relate in whole or part to the same period:

(i) if there is any inconsistency between those Interim Take or Pay Notices in respect of that period, then the most recent Interim Take or Pay Notice prevails to the extent of that inconsistency; and

(ii) if there is no inconsistency between those Interim Take or Pay Notices in respect of that period, then the Access Holder has no right to dispute the accrued Take or Pay Charge liability for that period under any of those Interim Take or Pay Notices except to the extent that the Access Holder still has a right to dispute the earliest of those Interim Take or Pay Notices under clause 5.4(a) (including where the Access Holder has already commenced such a dispute).

Schedule 4 - Interface Risk Management Plan

[***NOTE: Insert initial IRMP as agreed during the negotiation process with the access seeker and/or Operator.***]

Schedule 5 - Performance Indicators

1. Performance Indicators

(a) The Performance Indicators are to be reported on by Queensland Rail pursuant to clause 6.7 of this agreement as follows:

(i) Contracted Versus Scheduled Versus Actual Train Service Consumption by the Operator and the Access Holder;

(ii) the Network Availability Days for the track utilised by this agreement for the Operator and the Access Holder;

(iii) the planned and unplanned network maintenance undertaken by Queensland Rail across track utilised by this agreement;

(iv) Queensland Rail's planned and actual track closures across track utilised by this agreement and the performance of actual track closures with Queensland Rail reporting on the percentage of track closures commenced and returned to daily services within the planned timeframe;

(v) the Sectional Run Time Performance for the Train Services operated under the agreement by the Operator and the Access Holder;

(vi) the Below Rail Transit Time Performance for the Train Services operated under the agreement by the Operator and the Access Holder;

(vii) the Forecast Versus Scheduled Versus Actual GTKs hauled under the agreement by the Operator and the Access Holder;

(viii) the number of Train Services cancelled during the month;

(ix) the number of Train Services cancelled during the month which are not rescheduled; and

(x) a list of speed restrictions in place at the end of each month (including when such restriction was applied, the speed and the start and finish locations).

2. Definitions

Sectional Run Time (SRT) Performance: this KPI measures Queensland Rail's reliability where actual SRTs are assessed against SRTs contained in the access agreement.

Below Rail Transit Time (BRTT) Performance: this KPI measures Queensland Rail's reliability where actual BRTTs are assessed against SRTs as contained in this access agreement for the relevant sections of the network.

Contracted Versus Scheduled Versus Actual Train Service Consumption: this KPI measure an Access Holder's and an Operator's consumption of Train Services and allows, if relevant, for the tracking of the Access Holders Take or Pay liability. Actual Train Service consumption is assessed against contracted Train Service. The contracted Train Services should identify and deduct those Train Services that were cancelled as a result of Queensland Rail Causes and Force Majeure Events.

Availability Days: this KPI measures Network availability where the number of days the network was actually made available to deliver full contractual Train Services is assessed against the target number of days that is required to deliver full Train Services.

Forecast Versus Scheduled Versus Actual GTKs: this KPI measures contract performance where actual GTKs are assessed against the forecast GTKs provided for in the agreement.

Schedule 6 - Relinquishment Fee

[***To be completed in relation to Train Services covered by paragraph (b) of the definition of Relinquishment Fee***]

Schedule 7 – Renewal Right

[***See clause 1.2***]

Signing page

Executed as an agreement.

Executed by **Queensland Rail Limited** by its duly authorised officer in the presence of

Signature of officer

Signature of witness

Name of officer (print)

Name of witness (print)

Office held

Executed by **[Insert name of Access Holder]**

Signature of director/company secretary
(Please delete as applicable)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Name of director/company secretary (print)

Executed by **[Insert name of Operator]**

Signature of director/company secretary
(Please delete as applicable)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Name of director/company secretary (print)

[***NOTE: If the Operator's Customer is not a Party to the agreement, then the execution block above should be deleted.***]