

This mark-up contains a number of amendments which have been agreed between the QRC and Aurizon Network through consultation. For clarity, all mark-up shown in yellow highlighting reflects additional amendments proposed by the QRC which have not been agreed with Aurizon Network.

Part 5 Access Agreements

5.1 Development of Access Agreements

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the negotiation process.
- (b) The parties to the Access Agreement will be Aurizon Network and the Access Holder. The Access Holder need not be the Railway Operator for the relevant Train Services.
- (c) The terms of an Access Agreement will be those terms agreed by Aurizon Network and the Access Seeker and both Aurizon Network and the Access Seeker must negotiate those terms acting reasonably and in good faith. Where the terms cannot be agreed an Access Seeker may require, and Aurizon Network must offer to provide, Access on terms of:
 - (i) for coal-carrying services, where the Access Holder is the Railway Operator, the Standard Access Agreement (Operator);
 - (ii) for coal-carrying services, where the Access Holder will not be the Railway Operator:
 - (A) the Standard Access Agreement (Access Holder); or
 - (B) the Standard Access Agreement (End User); or
 - (iii) for non-coal-carrying services, an Access Agreement consistent with the relevant Standard Access Agreement subject to the changes necessary to reflect the fact that the Access is for non coal-carrying services.
- ~~(d)~~ (d) For the avoidance of doubt, **clause 5.1(c)** applies to a Renewal regardless of the terms of the relevant Access Holder's Access Agreement for the existing Access Rights.
- ~~(e)~~ (e) Where the terms of an Access Agreement cannot be agreed and the matter is referred for dispute resolution under **Part 11**, the dispute will be resolved by the QCA or an expert, as applicable, by completion of:
 - (i) where Access is required for coal-carrying services, the relevant form of Standard Access Agreement referred to in **clause 5.1(c)**;
 - (ii) where Access is required for non-coal-carrying services, an Access Agreement which is consistent with the relevant

Standard Access Agreement, subject to the changes necessary to reflect the fact that the Access is for non coal-carrying services.

(ii) 5.2 Execution of Access Agreements

(e)(a) Once the Access Seeker has notified Aurizon Network in writing that it is satisfied with the terms and conditions of the Access Agreement provided to it, Aurizon Network will, as soon as reasonably practicable, provide the Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) in final form to the Access Seeker for execution.

(f)(b) The parties will use reasonable endeavours to duly execute the final Access Agreement as soon as practicable after its completion by Aurizon Network.

(g)(c) Aurizon Network will execute an Access Agreement with an Access Seeker up to two years prior to the commencement of Train Services under the Access Agreement or such longer period as may be agreed.

(d) Where an Access Seeker is seeking Access Rights that are additional rights to, or a variation of, an existing Access Agreement, nothing in this Undertaking obliges Aurizon Network to agree to terms in respect of those Access Rights that are consistent with that existing Access Agreement.

(e) Subject to clauses 5.2(f) and 5.2(g), neither Aurizon Network nor an Access Seeker may execute an Access Agreement where that person knows the Available Capacity is insufficient to provide the Access Rights sought by that Access Seeker.

(f) Clause 5.2(e) does not operate to prevent Aurizon Network or an Access Seeker entering into an Access Agreement for Access Rights that will only commence on or after the creation of additional Capacity in accordance with this Undertaking, or the creation of Available Capacity, that can be allocated by Aurizon Network to the provision of those Access Rights.

(h)(g) For clarity, clause 5.2(e) does not limit the operation of clause 8.10.

5.2.5.3 Access Charges under Access Agreements

(a) An Access Holder's Train Service Entitlement may be comprised of various different types of Train Services described by reference to the characteristics set out in Part A, Schedule 2 of the Standard Access Agreement (Operator) (or an equivalent schedule under another applicable Standard Access Agreement). The Standard Access Agreements refer to each type of Train Service as a "Train Service Type".

(b) In the circumstances described in **clause 5.3(a)**, the Access Charges may be calculated by reference to each type of Train Service.