

QCA submission version

Aurizon Network Pty Ltd

Customer

Studies Funding Agreement – Prefeasibility Study

[insert Expansion
name]

Drafting note: Aurizon Network will be the last party to execute the Funding Agreements. The Customer and each Other Customer must provide executed copies of their respective Funding Agreements to Aurizon Network. Aurizon Network will execute all Funding Agreements on the same date so that they all have the same Commencement Date. The Funding Agreements will contain the same conditions precedent.

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Date

Parties

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 14, Railcentre 1, 305 Edward Street, Brisbane, Queensland (**Aurizon Network**)

The party specified in item 1 of schedule 1 (**Customer**)

Background

- A The Customer and each Other Customer have requested that Aurizon Network provide each of them with access (or additional access) to the Railway Network.
 - B The Expansion is required in order to create sufficient capacity for Aurizon Network to provide the Customer and each Other Customer with the access (or additional access) to the Railway Network requested by each of them.
 - C Aurizon Network has agreed to carry out the Rail Study on the basis that:
 - (a) the Customer contributes to the funding of the Rail Study on the terms of this Agreement; and
 - (b) each Other Customer contributes to the funding of the Rail Study on the terms of its Other Funding Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

Access Legislation means any State or Commonwealth legislation which regulates third party access to the Railway Network (and which initially is the *Queensland Competition Authority Act 1997* (Qld)).

Access Regulator means any body with responsibility for regulating third party access to the Railway Network under the Access Legislation (and which initially is the Queensland Competition Authority).

Access Undertaking means an access undertaking, policy, code or other similar document applicable to any aspect of access to the Railway Network

which has been approved by the Access Regulator in accordance with the Access Legislation.

Additional Costs has the meaning given in **schedule 5**.

Additional Study Costs for a Tier for a Month means the amount calculated in accordance with **item 4 of schedule 6** for that Tier and Month.

Adjustment Amount has the meaning given in **item 1 of schedule 8**.

Adjustment Event means the occurrence of any event, circumstance or change:

- (a) which is beyond the reasonable control of Aurizon Network; and
- (b) the effects of which could not, by the exercise of reasonable diligence by Aurizon Network, have been avoided,

which will, or will likely, result in:

- (c) the Study Costs being greater than they otherwise would have been if the event, circumstance or change had not occurred; and/or
- (d) the time required to carry out the Rail Study being greater than it otherwise would have been if the event, circumstance or change had not occurred.

Agreement means this document, including the **schedules**.

All Continuing Customers' Study Percentage (Base) means the percentage calculated by aggregating:

- (a) the Customer's Study Percentage (Base); and
- (b) each "Customer's Study Percentage (Base)" (as defined in each Other Customer's Other Funding Agreement) for all Other Customers,

at the time of calculation.

Allocation Principles means the principles set out in **item 4 of schedule 5**.

Approval means a consent, licence, permit, authorisation, lodgement, filing, agreement, certificate, permission, direction, declaration, authority, accreditation, approval or exemption issued by an Authority.

Assign has the meaning given in **clause 18.2(a)**.

Assignee has the meaning given in **clause 18.3(a)**.

Audit has the meaning given in **clause 10.3(a)**.

Auditor has the meaning given in **clause 10.3(a)**.

Authority means any government or any governmental, semi-governmental, regulatory, statutory or similar entity or authority.

Bank Guarantee means a bank guarantee (or bank guarantees) (if applicable) satisfying the requirements of **clause 11** which is required to be given by the Customer to Aurizon Network as security under this Agreement.

Bank Guarantee Amount means the value of the Bank Guarantee required to be given by the Customer to Aurizon Network under this Agreement from time to time and, as at the Commencement Date, is the amount specified in **item 3 of schedule 1**.

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

Change in Law means the occurrence of any of the following after the Commencement Date:

- (a) the introduction or commencement of, repeal of, or a change in, applicable Legislation or a change in the common law or law of equity;
- (b) a change in the terms and conditions imposed under an Approval after it has been given or the imposition of any new terms or conditions under that Approval, in each case, other than if caused by the default of a party under that Approval;
- (c) the revocation or cancellation of an Approval, other than if caused by the default of a party under that Approval; or
- (d) the non-renewal or failure of an Authority to re-issue an Approval or its renewal or re-issue on new terms that are materially different from the terms of that Approval as at the Commencement Date, in each case, other than if caused by the default of a party under that Approval.

Claim includes any claim, demand, liability, cost, expense, damage, loss, proceeding, suit, litigation, investigation, audit, action or cause of action, whether judicial, administrative, investigative or otherwise, and whether arising in contract, tort (including negligence), under statute or otherwise, of whatever nature, known or unknown, liquidated or unliquidated.

Commencement Date means the date on which this Agreement is executed by Aurizon Network.

[Drafting note: Aurizon Network will require the Customer and each Other Customer to provide executed copies of their respective Funding Agreements to Aurizon Network. Aurizon Network will execute all of the Funding Agreements on the same day so that they will have the same Commencement Date.]

Commitment Percentage means the percentage as specified in **item 5 of schedule 1**.

Commitment Variation Request has the meaning given in **clause 6.1**.

Commitment Variation Request Notice means a Monthly Notice that includes a Commitment Variation Request.

Conditions means the conditions specified in **item 2 of schedule 1**.

Conditions Date for a Condition means the date specified for the Condition in **item 2 of schedule 1**.

Confidential Information of a Disclosing Party means:

- (a) the terms of this Agreement;
- (b) information disclosed by, or on behalf of, the Disclosing Party to the Recipient under or in connection with this Agreement which:
 - (i) is by its nature confidential or commercially sensitive;
 - (ii) is identified by the Disclosing Party as confidential or commercially sensitive;
 - (iii) the Recipient knows, or ought to know, is confidential or commercially sensitive; or
 - (iv) relates to the business, operations or financial affairs of the Disclosing Party or a Related Body Corporate of it,

but does not include those terms of this Agreement, or any other information, which:

- (c) are or become public knowledge other than by:
 - (i) breach of this Agreement or by a breach of confidentiality by the Recipient or any third party to whom the Recipient has disclosed the information; or
 - (ii) breach of confidentiality by an Auditor or Expert;
- (d) are in the possession of the Recipient or a Related Body Corporate of it without restriction in relation to disclosure before the date of receipt; or
- (e) have been independently developed or acquired by the Recipient or a Related Body Corporate of it.

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

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

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 of any person 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.

Customer's Additional Study Costs for a Tier for a Month means the amount calculated in accordance with **item 2 of schedule 6** for that Tier and Month.

Customer's Estimated Study Costs for a Month means the amount which is the sum of:

- (a) the amount which is the Customer's Study Percentage (Base) of the Estimated Study Costs for that Month; and
- (b) the Customer's Additional Study Costs for the Relevant Tier and each Previous Tier (if any) for that Month.

Customer's Study Budget means the amount specified for the Customer in row 1 column 4 of the table in **schedule 4** as varied under **clauses 2.6** or **6.4** from time to time.

Customer's Study Commitment means the sum of:

- (a) the Customer's Study Commitment (Base); and
- (b) if one or more Termination Events have occurred, the Customer's Study Commitment (Tier) for the Relevant Tier and each Previous Tier (if any).

Customer's Study Commitment (Base) means the amount specified for the Customer in row 1 column 5 of the table in **schedule 4** as varied under **clause 6.4** from time to time.

Customer's Study Commitment (Tier) for a Tier means initially zero or the amount varied to be the "Customer's Study Commitment (Tier)" for that Tier under **clause 6.4** from time to time.

Customer's Study Percentage (Base) means the percentage specified for the Customer in row 1 column 3 of the table in **schedule 4** as varied in accordance with **clause 2.7**.

Customer's Study Percentage (Tier) for a Tier means the percentage calculated in accordance with **item 3 of schedule 6** for that Tier.

Disclosee has the meaning given in **clause 19.3**.

Disclosing Party has the meaning given in **clause 19.1(a)**.

Dispute has the meaning given in **clause 15.1(a)** and includes:

- (a) a matter referred to an Expert for determination under this Agreement; and
- (b) a "Dispute" (as defined in an Other Funding Agreement) if Aurizon Network joins the Customer to the dispute resolution process under the Other Funding Agreement in accordance with **clause 15.9**.

Dispute Notice has the meaning given in **clause 15.1(a)**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 15**; and

- (b) if Aurizon Network joins the Customer to the dispute resolution process under an Other Funding Agreement in accordance with **clause 15.9**, the dispute resolution process under the Other Funding Agreement.

Drawdown Amount for a Month means the amount calculated in accordance with **schedule 7** for that Month.

Drawdown Notice has the meaning given in **clause 5.3(a)**.

Estimated Study Costs for a Month means the sum of:

- (a) the total Study Costs Incurred by Aurizon Network as at the end of that Month; and
- (b) the total Study Costs which Aurizon Network reasonably estimates, as at the end of that Month, will in the future be Incurred by Aurizon Network.

Expansion means the “Expansion” (as defined in the Access Undertaking) generally described in **schedule 2**.

Expert has the meaning given in **clause 15.2(b)**.

External Costs has the meaning in **schedule 5**.

Feasibility Study Agreement means an agreement (or series of related agreements) setting out the terms and conditions upon which (amongst other matters) Aurizon Network will carry out a feasibility study in relation to the Expansion.

Financial Obligation means any obligation of a Party to:

- (a) pay, or cause to be paid, an amount of money, including damages for a breach of this Agreement; and
- (b) provide a Bank Guarantee or an additional or replacement Bank Guarantee.

Force Majeure Event in respect of Aurizon Network means any event or circumstance:

- (a) which is beyond the reasonable control of Aurizon Network; and
- (b) the effects of which could not, by the exercise of reasonable diligence by Aurizon Network, have been avoided.

Funding Customers means the Customer and each Other Customer.

Gross Negligence means any negligence committed by Aurizon Network in connection with this Agreement involving such wanton and reckless conduct as constitutes an utter disregard for the harmful, foreseeable and avoidable consequences which result from such conduct.

Increased Bank Guarantee Amount means the amount which is:

- (a) the amount which would be the Customer’s Study Commitment if the variations specified in the applicable Commitment Variation Request Notice take effect under **clause 6.4(b)**; less
- (b) the Loaned Amount as at the end of that Month.

Incurred has the meaning given in **clause 10.1**.

Intellectual Property Rights means all industrial and intellectual property rights including rights to inventions, discoveries, innovations, technical information, technical data, prototypes, manufacturing processes, improvements, patent rights, circuitry, algorithms, computer software programs, software code and source documents, drawings, plans, specifications, trademark rights, trade names, design rights, copyright (including moral rights), and other monopoly rights, samples and know-how.

Interest Rate means, for any day in a Month, the annual interest rate that is the sum of:

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last Business Day of the previous Month (or in the event that such a rate is not quoted at, or in respect of, any relevant date, such other similar rate as is quoted by a major commercial bank agreed by the Parties or, failing agreement, as determined by an Expert under **clause 15.3**).

Internal Costs has the meaning given in **schedule 5**.

Joint Venture means the unincorporated joint venture (if any) between the JV Participants specified in **item 1.3** of **schedule 1**.

JV Participants means the entities (if any) specified in **item 1.4** of **schedule 1**.

Latent Conditions means physical conditions of the potential railway corridors the subject of the Rail Study and their near surrounds (including artificial things but excluding weather conditions) which differ materially from the physical conditions which could have been reasonably anticipated by Aurizon Network as at the date of this Agreement.

Legislation means statutes, ordinances, regulations, by-laws, proclamations and subordinate legislation of the Commonwealth, the State or an Authority.

Licence Fee means the fee payable by the Customer for the grant of a Rail Study Licence under **clause 5.4(b)(i)**, being an amount equal to the Loaned Amount on the date on which the fee is payable.

Loaned Amount means, at any time, the aggregate outstanding principal amount of all loans provided by the Customer to Aurizon Network under this Agreement.

Month means a calendar month.

Monthly Notice has the meaning given in **clause 5.2**.

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

Other Customer means, subject to **clauses 2.5** and **6.5(c)**:

- (a) initially, each person listed in **schedule 4** other than the Customer; and

- (b) after Conditions 1 and 2 have been satisfied or waived by Aurizon Network, each person listed in **schedule 4** other than the Customer who is party to an Other Funding Agreement.

Other Funding Agreement means an agreement dated on or about the Commencement Date on terms substantially similar to this Agreement and titled “*Studies Funding Agreement – Prefeasibility Study: [insert Expansion details]*” between Aurizon Network and another party (or parties) in respect of the Rail Study.

Parties means at a time the parties to this Agreement at that time, and **Party** means any one of them.

Previous Tier has the meaning given in **item 1 of schedule 6**.

Proceedings has the meaning given in **clause 15.7(b)(i)**.

Progress Report has the meaning given in **clause 7.3**.

Project Management Fee means the amount calculated in accordance with **item 3 of schedule 8**.

Provisional Project Management Fee means the amount calculated in accordance with **item 2 of schedule 8**.

Quarter means each three month period commencing on 1 January, 1 April, 1 June and 1 October (and includes the shorter period between (and including) the Commencement Date and the day prior to the next occurrence of such dates).

Rail Study means a study in accordance with the Scope of Works.

Rail Study Licence means a non-exclusive irrevocable licence to:

- (a) use the Rail Study Report solely for the Customer’s business purposes related to its rights and obligations under this Agreement and to make necessary copies; and
- (b) sub-licence the rights referred to in **paragraph (a)** of this definition to any Related Body Corporate, consultant or contractor of the Customer.

Rail Study Report means a report setting out the outcomes of the Rail Study.

Rail Study Works means the rail infrastructure enhancements identified in the Rail Study Report.

Railway Network means Aurizon Network’s central Queensland coal railway network.

Recipient has the meaning given in **clause 19.1**.

Related Body Corporate has the meaning given in section 50 of the *Corporations Act 2001* (Cth).

Relevant Tier has the meaning given in **item 1 of schedule 6**.

Reviewed Amount has the meaning given in **clause 11.3(a)(i)**.

Scope Change Event mean each of the following:

- (a) a Change in Law;
- (b) a Latent Condition encountered while carrying out the Rail Study; or
- (c) the occurrence of any event or circumstance which impacts on any aspect of the coal supply chain of which the Expansion will form part.

Scope of Works means the scope of works for the Rail Study specified in **schedule 3** as varied under **clause 2.6** or **clause 8** from time to time.

Sensitive Information means any information which Aurizon Network is under a contractual or other obligation (including an equitable obligation of confidence) not to disclose.

State means State of Queensland.

Study Costs means for the Rail Study:

- (a) Internal Costs;
- (b) Additional Costs;
- (c) External Costs; and
- (d) an amount which is [insert]% of all amounts referred to in **paragraphs (a), (b) and (c)** of this definition.

Supplier has the meaning given in **clause 22.3**.

Target Date means the date specified as such in **item 4** of **schedule 1** as varied under **clause 8** or **9** from time to time.

Target Study Cost means the amount specified as such in **item 4** of **schedule 1** as varied under **clauses 2.6, 8** or **9** from time to time.

Terminated Other Customer means a person that was an Other Customer immediately prior to the termination of that person's Other Funding Agreement under clause 6.5 of that person's Other Funding Agreement.

Termination Event means the termination, during a Month, of one or more Other Funding Agreements under clause 6.5 of the Other Funding Agreement.

Tier has the meaning given in **item 1** of **schedule 6**.

Variation Notice has the meaning given in **clause 8.1** or **8.2(a)**.

Wilful Default means an intentional breach of the terms of this Agreement.

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;

- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) “includes” means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (g) if the documents comprising this Agreement contain any ambiguity, discrepancy or inconsistency, then the following order of precedence will apply to resolve that ambiguity, discrepancy or inconsistency:
 - (i) this Agreement excluding the **schedules**; and
 - (ii) the **schedules**;
- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender include every gender;
- (j) references to clauses and schedules are references to clauses of, and schedules to, this Agreement;
- (k) a requirement for a Party to obtain the consent or approval of the other Party requires the first Party to obtain the consent or approval in writing; and
- (l) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) 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;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane, Queensland;
 - (vi) \$ or dollars is a reference to Australian currency;
 - (vii) this Agreement or any other document includes this Agreement or the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission;
 - (ix) a notice to, or consent from, an Other Customer in this Agreement is a reference to a notice to, or consent from, that Other Customer under its Other Funding Agreement; and

- (x) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

2 Conditions precedent

2.1 Conditions

All of the obligations of the Parties under this Agreement (except for those under this **clause 2** and **clauses 4, 11, 13, 15, 17, 18, 19, 20, 21, 22, 23.2** to **23.18** and **24**) are subject to the Conditions.

2.2 Waiver of Conditions

- (a) The Conditions are for the benefit of Aurizon Network.
- (b) Conditions 1 and 2 can only be waived in whole or in part by the written waiver of Aurizon Network.
- (c) Condition 3 cannot be waived.

2.3 Conditions Date

- (a) If a Condition is not satisfied, or waived by Aurizon Network in accordance with **clause 2.2**, by the Conditions Date for the Condition, then this Agreement will automatically terminate without the need for a Party to give notice of termination to the other Party.
- (b) Aurizon Network must notify the Customer in writing as soon practicable after:
 - (i) a Condition has been satisfied; or
 - (ii) this Agreement is automatically terminated in accordance with **clause 2.3(a)**.

2.4 Effect of termination

If this Agreement is terminated under **clause 2.3(a)**, this Agreement (except for this **clause 2.4** and **clauses 4, 11, 13, 15, 17, 18, 19, 20, 21, 22, 23** and **24**) is of no further effect.

2.5 Termination of Other Funding Agreement

If an Other Funding Agreement terminates under clause 2 of that agreement, then for the purposes of this Agreement:

- (a) that Other Funding Agreement will cease to be an Other Funding Agreement; and
- (b) the Other Customer under that Other Funding Agreement will cease to be:
 - (i) an Other Customer; or
 - (ii) a Funding Customer,

on and from the date of termination of that Other Funding Agreement.

2.6 Aurizon Network may vary Scope of Works, Target Study Cost and Customer's Study Budget if Other Funding Agreement terminates

If:

- (a) Conditions 1 and 2 are satisfied or waived by their Conditions Date in accordance with this **clause 2**; but
- (b) on the Business Day after the Conditions Date for those Conditions:
 - (i) one or more Other Funding Agreements have terminated under clause 2 of those agreements; or
 - (ii) a person who was an Other Customer on the Commencement Date is no longer an Other Customer,

then Aurizon Network may, by notice to the Funding Customers within 25 Business Days of the Commencement Date, vary:

- (c) the Scope of Works so as to remove from the Scope of Works any works which relate solely to components of the Expansion which are only required to create sufficient capacity for Aurizon Network to provide the access (or additional access) to the Railway Network that had been requested by the persons who have ceased to be Other Customers; and
- (d) the Target Study Cost, the Customer's Study Budget and the "Customer's Study Budget" under an Other Funding Agreement to reflect the variations to the Scope of Works.

2.7 Revision of Customer's Study Percentage (Base)

Immediately after last Condition is satisfied, or waived by Aurizon Network in accordance with **clause 2.2**, the Customer's Study Percentage (Base) is taken to be varied to be the amount calculated in accordance with the following formula:

$$A / B$$

where:

- A = the percentage specified for the Customer in row 1 column 3 of the table in **schedule 4**
- B = the All Continuing Customers' Study Percentage (Base), calculated immediately after the last Condition is satisfied or waived.

Aurizon Network must promptly provide the Funding Customers with notice confirming any change to the Customer's Study Percentage (Base) and "Customer's Study Percentage (Base)" under an Other Funding Agreement.

3 Term

This Agreement commences on the Commencement Date and, unless earlier terminated in accordance with this Agreement, continues until the Loaned Amount is repaid to the Customer under **clause 5.4**.

4 Other Funding Agreements

- (a) Aurizon Network warrants that each Other Funding Agreement will be on terms which are substantially the same as the terms of this Agreement (subject to Customer-specific particulars specified in the **schedules**).
- (b) Aurizon Network must not:
 - (i) unless otherwise expressly permitted under this Agreement; or
 - (ii) without the consent of all Funding Customers,
agree to vary the terms of an Other Funding Agreement if the variation would result in the Other Funding Agreement ceasing to be on terms which are substantially the same as the terms of this Agreement.

5 Customer's funding

5.1 Funding commitment

- (a) Subject to **clause 5.1(b)**, the Customer agrees to provide interest free loans to Aurizon Network for Drawdown Amounts specified in Drawdown Notices issued by Aurizon Network in accordance with **clause 5.3(a)** from time to time.
- (b) The maximum aggregate amount that the Customer is obliged to lend to Aurizon Network under this Agreement at any time is the Customer's Study Commitment at that time.

5.2 Monthly Notice

- (a) Within ten Business Days after the end of each Month, Aurizon Network must give the Customer a notice for that Month (**Monthly Notice**) specifying:
 - (i) the Customer's Estimated Study Costs for that Month; and
 - (ii) if a Termination Event has occurred during that Month:
 - (A) the names of each Terminated Other Customer;
 - (B) the Additional Study Costs for the Relevant Tier and each Previous Tier (if any) for that Month;
 - (C) the Customer's Study Percentage (Tier) for the Relevant Tier and each Previous Tier (if any); and
 - (D) the Customer's Additional Study Costs for the Relevant Tier and each Previous Tier (if any) for that Month;

- (iii) the Customer's Study Commitment (Base) as at the end of that Month;
 - (iv) the Customer's Study Commitment (Tier) for each Tier as at the end of that Month; and
 - (v) the Customer's Study Commitment as at the end of that Month.
- (b) Each Monthly Notice must include, or be accompanied by, reasonable details of the determination or calculation (as applicable) of the amounts specified in the Monthly Notice.

5.3 Drawdown of Customer funding

- (a) After the end of each Month, Aurizon Network must give the Customer a notice (**Drawdown Notice**) specifying the Drawdown Amount for that Month.
- (b) Within ten Business Days after Aurizon Network gives the Customer a Drawdown Notice, the Customer must pay the Drawdown Amount specified in that Drawdown Notice to Aurizon Network.
- (c) For the avoidance of doubt, the Customer must pay the Drawdown Amount specified in a Drawdown Notice to Aurizon Network whether or not:
 - (i) the total Study Costs exceed, or are estimated to exceed, the Target Study Cost; and/or
 - (ii) the date of completion of the Rail Study is later, or is estimated to be later, than the Target Date.

5.4 Repayment of Loaned Amount

- (a) If:
 - (i) Aurizon Network enters into a Feasibility Study Agreement;
 - (ii) the Feasibility Study Agreement becomes unconditionally binding on all of the parties to them; and
 - (iii) Aurizon Network is paid funds under the Feasibility Study Agreement which it is permitted to apply in repaying, and which are sufficient to fully repay, loans made by the Customer under this Agreement and by Other Customers under Other Funding Agreements,

then, within ten Business Days after Aurizon Network is paid the funding referred to in **clause 5.4(a)(iii)**, Aurizon Network must repay, in cleared funds, the Loaned Amount to the Customer.
- (b) If, within nine years and 11 months after the Commencement Date, Aurizon Network does not become obliged to repay the Loaned Amount to the Customer under **clause 5.4(a)**, then:
 - (i) Aurizon Network is, subject to **clause 5.4(b)(iv)**, obliged to repay the Loaned Amount;

- (ii) Aurizon Network will grant the Customer a Rail Study Licence;
- (iii) the Customer will be obliged to pay the Licence Fee to Aurizon Network;
- (iv) the Customer will deduct from the Licence Fee payable to Aurizon Network under **clause 5.4(b)(iii)** the Loaned Amount repayable by Aurizon Network; and
- (v) on the grant of the Rail Study Licence by Aurizon Network to the Customer under **clause 5.4(b)(i)**:
 - (A) the Loaned Amount is taken to be fully repaid by Aurizon Network to the Customer; and
 - (B) the Customer will have no Claim against Aurizon Network in respect of the Loaned Amount.
- (c) The Customer's right to repayment of the Loaned Amount is subject and subordinate to the rights of, and will rank in priority of point of payment after, all debts and liabilities of Aurizon Network (other than any liability of Aurizon Network to Other Customers in respect of the repayment of loans made under Other Funding Agreements).
- (d) Despite any other clause in this Agreement, the Customer:
 - (i) will have no entitlement to have resort or recourse to any asset of Aurizon Network; and
 - (ii) agrees that its right to recourse is limited to the grant of the Rail Study Licence under **clause 5.4(b)(i)**.
- (e) For the avoidance of doubt, the Customer will not have any right to be repaid the Loaned Amount (or any part of it) except as expressly provided in this **clause 5.4** and **clauses 10.4(d)(ii)** and **12.3**.

6 Funding commitment variation process

6.1 Commitment Variation Request

If the Customer's Estimated Study Costs for a Month exceed the Customer's Study Commitment as at the end of that Month, then Aurizon Network must, in the Monthly Notice for that Month, request (**Commitment Variation Request**) the consent of the Customer for:

- (a) the Customer's Study Budget to be varied to be the amount which is the sum of:
 - (i) Customer's Study Percentage (Base) of the Estimated Study Costs for that Month (as specified in that Commitment Variation Request Notice); and
 - (ii) if one or more Termination Events has occurred, the Customer's Additional Study Costs for the Relevant Tier and for each Previous Tier (if any) for that Month,

- (as specified in that Commitment Variation Request Notice);
- (b) the Customer's Study Commitment (Base) to be varied to be the amount which is the Commitment Percentage of the Customer's Study Percentage (Base) of the Estimated Study Costs for that Month (as specified in that Commitment Variation Request Notice); and
 - (c) if one or more Termination Events has occurred, the Customer's Study Commitment (Tier) for the Relevant Tier and each Previous Tier (if any) to be or, if applicable, to be varied to be, the amount which is the Commitment Percentage of the Customer's Additional Study Costs for the applicable Tier for that Month (as specified in that Commitment Variation Request Notice).

6.2 Increase in Bank Guarantee Amount

If:

- (a) Aurizon Network gives the Customer a Commitment Variation Request Notice; and
- (b) the Increased Bank Guarantee Amount is greater than the then current Bank Guarantee Amount,

then, the Commitment Variation Request Notice must:

- (c) specify the Increased Bank Guarantee Amount; and
- (d) request the Customer to deliver to Aurizon Network either:
 - (i) a further Bank Guarantee for the amount which is the difference between the Increased Bank Guarantee Amount and the then current Bank Guarantee Amount; or
 - (ii) a replacement Bank Guarantee for the Increased Bank Guarantee Amount.

6.3 Customer response to Commitment Variation Request

- (a) Within five Business Days after Aurizon Network gives the Customer a Commitment Variation Request Notice, the Customer must notify Aurizon Network whether or not it consents to the Commitment Variation Request specified in the Commitment Variation Request Notice.
- (b) If the Customer notifies, or is deemed under **clause 6.4(a)** to have notified, Aurizon Network that it consents to a Commitment Variation Request specified in a Commitment Variation Request Notice, then within ten Business Days after Aurizon Network gives the Customer the Commitment Variation Request Notice, the Customer must, if requested in that Commitment Variation Request Notice, deliver to Aurizon Network an additional or replacement Bank Guarantee as requested in the Commitment Variation Request Notice.

6.4 Consent to Commitment Variation Request

- (a) If:

- (i) Aurizon Network gives the Customer a Commitment Variation Request Notice; and
- (ii) the Customer does not, within the time required by **clause 6.3(a)**, notify Aurizon Network whether or not it consents to the Commitment Variation Request specified in that Commitment Variation Request Notice,

then the Customer will be deemed to have notified Aurizon Network that it consents to the Commitment Variation Request specified in the Commitment Variation Request Notice on the date which is five Business Days after Aurizon Network gave the Customer the Commitment Variation Request Notice.

- (b) If:
 - (i) Aurizon Network gives the Customer a Commitment Variation Request Notice; and
 - (ii) within the applicable time required by **clause 6.3(a)**, the Customer:
 - (A) notifies, or is deemed under **clause 6.4(a)** to have notified, Aurizon Network that it consents to the Commitment Variation Request specified in that Commitment Variation Request Notice; and
 - (B) if applicable, delivers to Aurizon Network an additional or replacement Bank Guarantee as requested in the Commitment Variation Request Notice,

then:

- (iii) the Customer's Study Budget;
- (iv) the Customer's Study Commitment (Base); and
- (v) the Customer's Study Commitment (Tier) for the Relevant Tier and each Previous Tier (if any),

will be varied to be the applicable amount specified in the Commitment Variation Request Notice with effect on the later of the date that the Customer:

- (vi) notifies, or is deemed under **clause 6.4(a)** to have notified, Aurizon Network that it consents to that Commitment Variation Request; and
 - (vii) if applicable, delivers to Aurizon Network the additional or replacement Bank Guarantee as requested in that Commitment Variation Request Notice.
- (c) If **clause 6.4(b)** applies, the Bank Guarantee Amount will be taken to be the Increased Bank Guarantee Amount specified in the Commitment Request Variation Notice with effect on the same date that the variations take effect under **clause 6.4(b)**.

6.5 Failure to consent to Commitment Variation Request

- (a) If:
 - (i) Aurizon Network gives the Customer a Commitment Variation Request Notice; and
 - (ii) within the applicable time required by **clause 6.3(a)**, the Customer:
 - (A) notifies Aurizon Network that it does not consent to the Commitment Variation Request specified in that Commitment Variation Request Notice; or
 - (B) notifies, or is deemed under **clause 6.4(a)** to have notified, Aurizon Network that it consents to the Commitment Variation Request specified in the Commitment Variation Request Notice but does not deliver to Aurizon Network an additional or replacement Bank Guarantee as requested in that Commitment Variation Request Notice,

then this Agreement will immediately terminate without the need for either Party to give notice of termination to the other Party.
- (b) If this Agreement terminates under **clause 6.5(a)**, then:
 - (i) Aurizon Network must notify each Other Customer that this Agreement has terminated under **clause 6.5(a)**;
 - (ii) despite the termination of this Agreement and without limiting **clause 23.1, clauses 5, 10, 11, 13 and 15** will survive the termination of this Agreement, and will continue to apply, as if this Agreement had not been terminated (but in the case of **clause 15**, only in respect of Disputes referred to in **clause 10**);
 - (iii) the Customer's Study Commitment will be the Customer's Study Commitment as at the date of termination of this Agreement; and
 - (iv) for the purposes of **clause 10**, if the Scope of Works, Target Date and/or Target Study Costs are varied under clause 8 of an Other Funding Agreement, they will also be taken to be varied to be the same under this Agreement.
- (c) If an Other Funding Agreement terminates under clause 6.5(a) of the Other Funding Agreement, then:
 - (i) Aurizon Network must notify the Customer that the Other Funding Agreement has terminated under clause 6.5(a) of that Other Funding Agreement; and
 - (ii) for the purposes of this Agreement (other than **clauses 5.3, 5.4 and 15.9 and schedule 7**), on and from the date of termination of that Other Funding Agreement:
 - (A) that Other Funding Agreement will cease to be an Other Funding Agreement; and

- (B) the Other Customer under that Other Funding Agreement will cease to be an Other Customer.

7 Rail Study

7.1 Conduct of Rail Study

Aurizon Network must carry out, or procure the carrying out of, the Rail Study.

7.2 Target Study Cost and Target Date

Aurizon Network must ensure that:

- (a) the Study Costs for the Rail Study do not exceed the Target Study Cost; and
- (b) the Rail Study is completed by the Target Date.

7.3 Monthly Progress Report

As soon as reasonably practicable after the end of each Month, Aurizon Network must give the Customer a report (**Progress Report**) specifying reasonable details of the progress in relation to the carrying out of the Rail Study as at the end of that Month.

7.4 Provision of Rail Study Report

- (a) Subject to **clause 7.4(b)**, Aurizon Network will prepare, and deliver to the Customer a copy of, the Rail Study Report.
- (b) Aurizon Network may delete from the copy of the Rail Study Report which Aurizon Network is required to deliver to the Customer under **clause 7.4(a)** any information which, if disclosed to the Customer, would give rise to a breach of an obligation or duty of confidence by Aurizon Network.

7.5 Intellectual Property Rights

- (a) The Customer acknowledges and agrees that the Intellectual Property Rights in any information or materials which are created by or for Aurizon Network in the conduct of the Rail Study will not be owned by the Customer.
- (b) Except as provided under **clause 5.4(b)** and **7.5(c)**, nothing under this Agreement grants to the Customer a licence to, or transfers to the Customer, any Intellectual Property Rights.
- (c) Disclosure of any information or materials in which Intellectual Property Rights exist does not constitute a licence for the recipient of the information or materials to use such information or materials for any purpose other than the sole purpose for which the information or materials was disclosed and, subject to **clause 5.4(b)**, the right of the recipient to use such information or materials for the purpose for which the information or materials was disclosed will cease upon the termination of this Agreement.

7.6 No obligation to construct Rail Study Works

- (a) For the avoidance of doubt, nothing in this Agreement or the exercise of rights or performance of obligations in accordance with this Agreement obliges Aurizon Network to proceed with, or requires the Customer to agree to proceed with, the Rail Study Works.
- (b) For the avoidance of doubt, nothing in this Agreement or the exercise of rights or performance of obligations in accordance with this Agreement obliges Aurizon Network or the Customer to enter into any Feasibility Study Agreement.

7.7 No restriction on Aurizon Network's business activities

Nothing in this Agreement limits, restricts or fetters Aurizon Network's ability to undertake its business activities as it sees fit including its ability:

- (a) to enter into agreements with third parties;
- (b) to grant access rights to third parties to operate train services on the Railway Network; or
- (c) to undertake infrastructure enhancements and upgrades on the Railway Network.

8 Variations to Scope of Works

8.1 Variation to Scope of Works initiated by Aurizon Network

If Aurizon Network proposes to vary the Scope of Works, then Aurizon Network may, by notice to each Funding Customer (**Variation Notice**), request the consent of each Funding Customer to vary the Scope of Works as proposed in the Variation Notice.

8.2 Variation to Scope of Works due to Scope Change Event

If Aurizon Network considers, acting reasonably, that it is necessary to vary the Scope of Works as a result of a Scope Change Event, then Aurizon Network:

- (a) may, by notice to each Funding Customer (also a **Variation Notice**), vary the Scope of Works as a result of the Scope Change Event as specified in the Variation Notice; and
- (b) must, if Aurizon Network gives a Variation Notice under **clause 8.2(a)**, provide in that Variation Notice reasonable details of the Scope Change Event and the effect of the Scope Change Event on the Scope of Works.

8.3 Consequential variations to Target Date and Target Study Cost

If Aurizon Network considers that a proposed variation or a variation (as applicable) to the Scope of Works under **clauses 8.1** or **8.2** requires a consequential variation to the Target Date and/or the Target Study Cost, the applicable Variation Notice may also request the consent of each Funding Customer to vary the Target Date and/or the Target Study Cost (as applicable) as proposed in the Variation Notice.

8.4 Consent of Customer

- (a) Within ten Business Days after Aurizon Network gives the Funding Customers a Variation Notice which proposes any variation(s) to the Scope of Works, Target Date and/or Target Study Cost (as applicable), the Customer must notify Aurizon Network whether or not it consents to the variation(s) proposed in the Variation Notice.
- (b) If the Customer does not notify Aurizon Network under, and within the time required by, **clause 8.4(a)**, then the Customer will be deemed to have consented to the variation(s) proposed in the Variation Notice.

8.5 Variations arising under a Variation Notice given under clause 8.1

- (a) If each Funding Customer consents (or is deemed to have consented under this Agreement or an Other Funding Agreement) to a variation to the Scope of Works proposed in a Variation Notice given under **clause 8.1**, then:
 - (i) the Scope of Works will be taken to be varied as proposed in that Variation Notice with effect on the date on which the last of such consent is obtained or deemed to be obtained; and
 - (ii) Aurizon Network must notify the Funding Customers of the variation to the Scope of Works.
- (b) If **clause 8.5(a)** applies and each Funding Customer also consents (or is deemed to have consented under this Agreement or an Other Funding Agreement) to a variation to the Target Date and/or Target Study Cost (as applicable) proposed in the Variation Notice given under **clause 8.1**, then:
 - (i) the Target Date and/or Target Study Cost (as applicable) will be taken to be varied as proposed in the Variation Notice with effect on the date on which the last such consent is obtained or deemed to be obtained; and
 - (ii) Aurizon Network must notify the Funding Customers of the variation to the Target Date and/or Target Study Cost (as applicable).
- (c) If any Funding Customer does not consent to a variation to the Scope of Works proposed in a Variation Notice given under **clause 8.1**, the Scope of Works and, if applicable, the Target Date and/or Target Study Cost will not be varied as proposed in the Variation Notice.

8.6 Expert determination if Target Date and/or Target Study Cost not agreed

If the Scope of Works is varied under **clauses 8.2** or **8.5(a)** but the Funding Customers do not all consent to a variation to the Target Date and/or Target Study Cost (as applicable) proposed in the applicable Variation Notice, then:

- (a) Aurizon Network may, within 30 Business Days after Aurizon Network gives each Funding Customer the Variation Notice, refer the matter to an Expert to determine whether Aurizon Network's proposed variation to the Target Date and/or Target Study Cost (as applicable) proposed in the Variation Notice is reasonable as a result of the variation to the Scope of Works; and
- (b) if the Expert determines that the variation to the Target Date and/or Target Study Cost (as applicable) proposed in the Variation Notice:
 - (i) is reasonable as a result of the variation to the Scope of Works, the Target Date and/or Target Study Cost (as applicable) will be taken to be varied as proposed in the Variation Notice with effect on the date the Expert notifies the Parties of their determination; or
 - (ii) is not reasonable as a result of the variation to the Scope of Works:
 - (A) the Expert must determine the variation to the Target Date and/or Target Study Cost (as applicable) which is or are reasonable as a result of the variation to the Scope of Works; and
 - (B) the Target Date and/or Target Cost (as applicable) will be taken to be varied as determined by the Expert with effect on the date the Expert notifies the Parties of their determination.

8.7 Variations to Scope of Works requested by Customer

- (a) The Customer may, by notice to Aurizon Network, request Aurizon Network to propose variations to the Scope of Works under **clause 8.1**.
- (b) Aurizon Network must consult with the Customer in respect of such a request and must act reasonably in considering whether or not Aurizon Network should propose to vary the Scope of Works under **clause 8.1** as requested.
- (c) For the purposes of **clause 8.7(b)**, it will be reasonable for Aurizon Network to consider, amongst other matters, the impact of the proposed variation on Aurizon Network's other existing or proposed customers and its own commercial interests.

9 Variations to Target Date and Target Study Cost

9.1 Variations due to Adjustment Event

- (a) If an Adjustment Event occurs, then Aurizon Network:
 - (i) must notify each Funding Customer of the Adjustment Event as soon as reasonably practicable after Aurizon Network becomes aware of the occurrence of the Adjustment Event, such notice to include details of the Adjustment Event as are known by Aurizon Network at the time of the notice; and

- (ii) may, by notice to each Funding Customer, given as soon as reasonably practicable after the full effects of the Adjustment Event have been determined by Aurizon Network, acting reasonably:
 - (A) vary the Target Date by extending it by the period that Aurizon Network considers is reasonable as a result of the Adjustment Event; and/or
 - (B) vary the Target Study Cost by increasing it by the amount that Aurizon Network considers is reasonable as a result of the Adjustment Event,
 with effect from the date of the notice.
- (b) A notice given under **clause 9.1(a)(ii)** must include reasonable details of:
 - (i) the Adjustment Event; and
 - (ii) why Aurizon Network considers that the variation(s) is or are (as applicable) reasonable as a result of the Adjustment Event.

9.2 Expert determination

- (a) The Customer may, within 20 Business Days after Aurizon Network gives a notice under **clause 9.1(a)(ii)**, give Aurizon Network a Dispute Notice which Disputes a variation to the Target Date and/or Target Study Cost (as applicable) specified in the notice given by Aurizon Network under **clause 9.1(a)(ii)**.
- (b) If a Dispute referred to in **clause 9.2(a)** is not resolved in accordance with **clause 15.2**:
 - (i) the Customer may refer the Dispute to an Expert to determine whether the variation to the Target Date and/or Target Study Cost (as applicable) is reasonable as a result of the Adjustment Event; and
 - (ii) if the Dispute is referred to an Expert and the Expert determines that the variation to the Target Date and/or Target Study Cost (as applicable):
 - (A) is reasonable as a result of the Adjustment Event, then the Target Date and/or Target Study Cost (as applicable) will be taken to be varied as specified in the notice given under **clause 9.1(a)(ii)** with effect on the date the notice is given; or
 - (B) is not reasonable as a result of the Adjustment Event then:
 - (1) the Expert must determine the variation (extension) to the Target Date and/or variation (increase) to the Target Study Cost (as applicable) which is reasonable as a result of the Adjustment Event; and

- (2) the Target Date and/or Target Study Cost (as applicable) will be taken to be varied as determined by the Expert with effect on the date that the Expert notifies the Parties of their determination.
- (c) If the Customer does not give Aurizon Network a Dispute Notice referred to in **clause 9.2(a)** within the time referred to in **clause 9.2(a)**, then:
 - (i) the Customer must not give Aurizon Network a Dispute Notice Disputing the variation to the Target Date and/or Target Study Cost (as applicable) specified in the notice given by Aurizon Network under **clause 9.1(a)(ii)**; and
 - (ii) any such Dispute Notice which is given by the Customer will be taken to be of no effect.

10 Allocation, records and Audit

10.1 When costs and expenses Incurred

- (a) A cost or expense will be taken to be **Incurred** by Aurizon Network:
 - (i) in the case of a cost or expense payable by the Aurizon Network to a third party (other than a Related Body Corporate of Aurizon Network), when the cost or expense is paid by Aurizon Network; and
 - (ii) in any other case, when Aurizon Network becomes liable to pay the relevant cost or expense.
- (b) In the case of a margin specified in the definition of Internal Costs, External Costs and Additional Costs, the margin is taken to be **Incurred** by Aurizon Network when the relevant cost or expense, in respect of which the margin is calculated, is taken to be Incurred under **clause 10.1(a)**.

10.2 Keeping of records

- (a) Aurizon Network must maintain complete books of account and records of and relating to the Study Costs.
- (b) Aurizon Network must preserve and maintain the books of account and records referred to in **clause 10.2(a)** for five years following the expiration or termination of this Agreement.

10.3 Audit of Study Costs

- (a) When required under **clause 10.3(d)**, Aurizon Network must appoint an independent firm of accountants nominated by it (**Auditor**) to carry out an audit in order to verify:
 - (i) the amount of the Study Costs Incurred by Aurizon Network;
 - (ii) the Drawdown Amounts specified in Drawdown Notices; and/or

- (iii) the Provisional Project Management Fee, the Project Management Fee and the Adjustment Amount (if any) specified in a notice given under **clause 12.1**,
(Audit).
- (b) Aurizon Network must:
 - (i) give the Auditor reasonable access during normal business hours to the books, accounts and records of Aurizon Network relevant to an Audit; and
 - (ii) otherwise provide reasonable assistance and co-operation to the Auditor in relation to the conduct of the Audit.
- (c) Aurizon Network must provide a copy of the Auditor's report of the results of an Audit conducted in accordance with **clause 10.3(a)** to the Customer (excluding any confidential information of Aurizon Network or any Other Customers which will be redacted from the Auditor's report).
- (d) Aurizon Network will cause an Audit to be conducted in accordance with **clause 10.3(a)**:
 - (i) within 20 Business Days after the date that Aurizon Network determines, acting reasonably, that no further Study Costs will be Incurred;
 - (ii) if this Agreement and each Other Funding Agreement is terminated, within 40 Business Days after the date of termination of this Agreement and each Other Funding Agreement; and
 - (iii) if an Audit has not otherwise been conducted in accordance with this **clause 10.3**, then at least once in every twelve month period during the term of this Agreement.

10.4 Disputes about Drawdown Amounts

- (a) In the event of a Dispute between the Parties about the Drawdown Amount for a Month, the Customer may give Aurizon Network a Dispute Notice under **clause 15.1**.
- (b) If a Dispute referred to in **clause 10.4(a)** is not resolved in accordance with **clause 15.2**, either Party may refer the Dispute to an Expert to determine the Drawdown Amount for that Month.
- (c) If the Dispute arises prior to the due date for payment of the Drawdown Amount for that Month then, despite the Dispute, the Customer must nevertheless pay, by the due date for payment of the Drawdown Amount for that Month, the undisputed portion of the Drawdown Amount for that Month plus 50% of the disputed portion of the Drawdown Amount for that Month.
- (d) Upon resolution of a Dispute referred to in **clause 10.4(a)**, if the Drawdown Amount for that Month as agreed or determined under the Dispute Resolution Process is:

- (i) more than the amount that was paid by the Customer for that Month, then the amount of the difference must be paid by the Customer to Aurizon Network within five Business Days after the resolution of the Dispute; or
 - (ii) less than the amount that was paid by the Customer, then the amount of the difference must be repaid by Aurizon Network to the Customer within five Business Days after the resolution of the Dispute.
- (e) If the Customer does not give a Dispute Notice in respect of a Dispute about the Drawdown Amount for a Month within ten Business Days after Aurizon Network gives the Customer, in accordance with **clause 10.3(c)**, a copy of the Auditor's report in respect of an Audit of the Drawdown Amount for that Month:
- (i) the Customer must not give Aurizon Network such a Dispute Notice;
 - (ii) any such Dispute Notice which is given by the Customer will be taken to be of no effect; and
 - (iii) the Customer will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.
- (f) For the avoidance of doubt, if Aurizon Network repays an amount to the Customer under **clause 10.4(d)(ii)**, the Loaned Amount will be reduced by the amount of the repayment to the Customer under **clause 10.4(d)(ii)**.

11 Bank Guarantee

11.1 Requirements of Bank Guarantee

A Bank Guarantee required to be provided under this Agreement must:

- (a) be an unconditional and irrevocable bank guarantee in favour of Aurizon Network;
- (b) be issued by an authorised deposit-taking institution under the *Banking Act 1959* (Cth) which holds a long-term credit rating by Standard & Poors Rating Services of at least BBB (or the equivalent rating by another internationally recognised ratings agency) (**Issuer**);
- (c) require the Issuer to pay on demand by Aurizon Network, without recourse to the Customer or any other person, an amount or amounts up to the amount specified in the Bank Guarantee;
- (d) have no expiry date, or have an expiry date no earlier than 12 Months after the date of issue of the Bank Guarantee;
- (e) state that it is assignable by Aurizon Network to an assignee from Aurizon Network under **clause 18** (subject to the relevant authorised

deposit-taking institution and the Customer being given notice of the identity of the assignee); and

- (f) otherwise be in a form, and upon terms, acceptable to Aurizon Network (acting reasonably).

11.2 Recourse to Bank Guarantee

Aurizon Network may only draw on the Bank Guarantee in circumstances where:

- (a) the Customer fails to pay any amount that is payable by the Customer to Aurizon Network under this Agreement; or
- (b) where this Agreement otherwise gives Aurizon Network the express right to draw on the Bank Guarantee.

11.3 Decrease in Bank Guarantee Amount

- (a) Within ten Business Days after the end of each Quarter (other than any Month in which Aurizon Network gives the Customer a Commitment Variation Request Notice), Aurizon Network must:
 - (i) determine if the then current Bank Guarantee Amount exceeds the amount which is:
 - (A) the Customer's Study Commitment as at the end of that Quarter; less
 - (B) the Loaned Amount as at the end of that Quarter, **(Reviewed Amount)**; and
 - (ii) if the then current Bank Guarantee Amount exceeds the Reviewed Amount, by notice to the Customer, decrease the amount of the Bank Guarantee required to be given by the Customer to the Reviewed Amount.
- (b) If Aurizon Network gives a notice decreasing the amount of the Bank Guarantee required to be given by the Customer under **clause 11.3(a)(ii)**, then the Customer may deliver to Aurizon Network a replacement Bank Guarantee for the Reviewed Amount in exchange for the existing Bank Guarantee.

11.4 Replacement Bank Guarantee

- (a) If a Bank Guarantee has an expiry date, the Customer must, at least 20 Business Days prior to the expiry of that Bank Guarantee, deliver to Aurizon Network a replacement Bank Guarantee in exchange for the existing Bank Guarantee.
- (b) If the Customer fails to provide a replacement Bank Guarantee as required by **clause 11.4(a)**, then:
 - (i) Aurizon Network may draw down on the existing Bank Guarantee prior to its expiry, and hold the cash drawn down as a cash security in place of the Bank Guarantee; and

- (ii) the provisions of this **clause 11** will apply to the cash security with any necessary amendments.
- (c) The Customer will be entitled to recover from Aurizon Network the amount of the cash security held by Aurizon Network under **clause 11.4(b)** at any time upon delivery to Aurizon Network of a Bank Guarantee for the then current Bank Guarantee Amount.

11.5 Return of Bank Guarantee

Aurizon Network must, subject to its rights of recourse to the Bank Guarantee under this **clause 11**, return the Bank Guarantee to the Customer:

- (a) if this Agreement is terminated under **clause 2.3(a)**, promptly after it is terminated;
- (b) if this Agreement is terminated by Aurizon Network under **clause 6.5**, promptly after the Customer has lent to Aurizon Network under this Agreement the maximum aggregate amount that the Customer is obliged to lend to Aurizon Network under this Agreement; or
- (c) otherwise, within two months after the date Aurizon Network provides the Rail Study Report to the Customer under **clause 7.4**.

12 Project Management Fee

12.1 Statement

Within ten Business Days after the date that Aurizon Network determines, acting reasonably, that no further Study Costs will be Incurred, Aurizon Network must give the Customer a notice setting out:

- (a) the Provisional Project Management Fee, the Project Management Fee and the Adjustment Amount (if any); and
- (b) reasonable details of the calculation the Provisional Project Management Fee, Project Management Fee and Adjustment Amount (if any).

12.2 Dispute

- (a) The Customer may, within ten Business Days after Aurizon Network gives the Customer, in accordance with **clause 10.3(c)**, a copy of the Auditor's report in respect of the Audit, give Aurizon Network a Dispute Notice which Disputes the amount of the Provisional Project Management Fee, the Project Management Fee and/or the Adjustment Amount (as applicable) specified in the notice given by Aurizon Network under **clause 12.1**.
- (b) If a Dispute referred to in **clause 12.2(a)** is not resolved in accordance with **clause 15.2** the Customer may refer the Dispute to an Expert to determine the Provisional Project Management Fee, the Project Management Fee and/or the Adjustment Amount (as applicable).

- (c) If the Customer does not give Aurizon Network a Dispute Notice referred to in **clause 12.2(a)** within the time referred to in **clause 12.2(a)**, then:
 - (i) the Customer must not give Aurizon Network a Dispute Notice Disputing the Provisional Project Management Fee, the Project Management Fee or the Adjustment Amount; and
 - (ii) any such Dispute Notice which is given by the Customer will be taken to be of no effect; and
 - (iii) the Customer will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

12.3 Repayment of Adjustment Amount

- (a) Within:
 - (i) 20 Business Days after Aurizon Network gives the Customer a copy of the Auditor's report referred to in **clause 12.2(a)**; or
 - (ii) if the Customer gives Aurizon Network a Dispute Notice referred to in **clause 12.2(a)**, ten Business Days after that Dispute is resolved accordance with the Dispute Resolution Process,

Aurizon Network must repay the Adjustment Amount (if any), in cleared funds, to the Customer.
- (b) For the avoidance of doubt, if Aurizon Network repays the Adjustment Amount to the Customer under **clause 12.3(a)**, the Loaned Amount will be reduced by the Adjustment Amount.

13 Payments

13.1 Method of payment

All payments to be made under or in connection with this Agreement must be paid in Australian currency, without set-off or deduction (subject to **clause 13.2**), by:

- (a) electronic payment to an account nominated by the Party entitled to receive the payment; or
- (b) such other method as the Party entitled to receive the payment may reasonably require from time to time.

13.2 Aurizon Network's right of set off

Aurizon Network may deduct from any amounts which are due and payable by Aurizon Network to Customer under this Agreement any amounts which are due and payable by the Customer to Aurizon Network under this Agreement.

13.3 Interest on overdue payments

- (a) If, for any reason, a Party does not pay an amount payable under or in connection with this Agreement on or before the due date for payment, it

must pay interest to the other Party (who is entitled to receive the payment).

- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.

14 Force majeure

- (a) If Aurizon Network is prevented or hindered by a Force Majeure Event from fully or partly complying with any obligation (except for an obligation to pay money) under this Agreement, that obligation is suspended for so long as Aurizon Network is prevented or hindered by that Force Majeure Event from complying with that obligation.
- (b) On the occurrence of any Force Majeure Event, Aurizon Network must:
 - (i) give written notice of the event to the Customer as soon as reasonably practicable;
 - (ii) use all reasonable endeavours to mitigate the effect of the Force Majeure Event upon the fulfilment of its obligations under this Agreement; and
 - (iii) resume full performance of its obligations under this Agreement as soon as possible, and notify the Customer when it does so.

15 Disputes

15.1 Notification of Disputes

- (a) If any Claim, dispute or question (**Dispute**) arises between the Parties under this Agreement, a Party may give to the other Party a notice in writing (**Dispute Notice**) specifying the Dispute and referring it for resolution in accordance with this **clause 15**.
- (b) Unless otherwise expressly provided to the contrary in this Agreement, a Dispute must be resolved in accordance with this **clause 15**.

15.2 Chief executive officer resolution

- (a) Within ten Business Days after the giving of a Dispute Notice any Dispute must be referred in the first instance to the chief executive officer of Aurizon Network (or their nominee) and the chief executive officer of the Customer (or their nominee) for the purposes of this **clause 15.2** for resolution.
- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 15.2(a)** or in the event that any chief executive officer

appoints a nominee that is unacceptable to the other Party, then the relevant Dispute:

- (i) must, where this Agreement expressly requires referral to an expert; and
- (ii) may, by agreement of the Parties in any other case, be referred for resolution by an expert (**Expert**) in accordance with **clause 15.3**.

15.3 Expert determination

Where any matter is referred to an Expert pursuant to **clause 15.2** or otherwise in accordance with the terms of this Agreement then the following provisions of this **clause 15.3** will apply:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within ten Business Days after the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at any Party's request by:
 - (i) where the Parties agree the Dispute is purely of a technical nature, the President for the time being of the Institute of Arbitrators and Mediators Australia;
 - (ii) where the Parties agree the Dispute is purely of a financial or accounting nature, the President for the time being of The Institute of Chartered Accountants in Australia; and
 - (iii) in any other case, the President for the time being of the Queensland Law Society, Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 15.3(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the Expert; and
 - (iii) the process specified in **clause 15.3(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
- (c) subject to **clause 15.3(b)**, if the Expert is to be nominated by a person referred to in **clause 15.3(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 15.3(a)**;

- (d) if the Expert is to be nominated by a person referred to in **clause 15.3(a)** 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;
- (e) 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 the appointment as an Expert;
- (f) the Expert must:
 - (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with their function as Expert, he or she being required to fully disclose any such interest or duty by notice to the Parties before their appointment;
 - (iii) not be, or have been in the last five years, an employee of Aurizon Network or the Customer or a Related Body Corporate of Aurizon Network or the Customer;
 - (iv) not be permitted to act until he or she has given notice to the Parties that he or she is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Agreement and consider all submissions (including oral submissions by a Party provided that such oral submissions are made in the presence of the other Parties), supporting documentation, information and data with respect to the matter submitted by the Parties;
 - (vi) provide all Parties with a copy of their determination in the form of a report setting out reasonable details of the reasons for the Expert's determination within a reasonable time after their appointment;
 - (vii) be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties (including, if required by a Party, by entering into a confidentiality agreement in favour of the Parties); and
 - (viii) be deemed to be and act as an expert and not an arbitrator and the law relating to arbitration (including, without limitation, the *Commercial Arbitration Act 1990* (Qld)), will not apply to him or her or the determination or the procedures by which he or she may reach a determination; and

- (g) if the determination of a matter referred to the Expert would require the Expert to be provided with any Sensitive Information by Aurizon Network, the Expert must enter into a confidentiality agreement in favour of Aurizon Network requiring the Expert to keep the Sensitive Information confidential.

15.4 Parties to assist Expert

The Parties must do everything reasonably requested by the Expert to assist the Expert in determining the Dispute including producing information and materials requested by the Expert and attending any hearing convened by the Expert.

15.5 Decision of Expert

In the absence of manifest error, the decision of the Expert is final and binding upon the Parties.

15.6 Costs

- (a) The costs of the Expert and any advisers engaged by the Expert will be borne:
 - (i) by the Parties in the proportions determined by the Expert having regard the respective merit of the positions taken by the parties in the Dispute; or
 - (ii) if the Expert does not make a determination under **clause 15.6(a)(i)**, equally by the parties to the Dispute.
- (b) Each Party to the Dispute will bear its own legal costs and the costs of any advisers to it in respect of the Dispute Resolution Process under this **clause 15**.

15.7 Determination by court

- (a) If any Dispute is not otherwise resolved in accordance with this **clause 15**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.
- (b) Each Party irrevocably and unconditionally:
 - (i) agrees that the courts of the State, 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 hereafter 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 will be final and binding upon such Party and may be enforced in the courts of any other jurisdiction.

15.8 Injunctive relief

Nothing in this Agreement will prevent a Party from seeking urgent injunctive relief from a court.

15.9 Disputes involving Customers under Other Funding Agreements

If:

- (a) a Dispute which arises under this Agreement, or the outcome or consequences of that Dispute, may be relevant to Aurizon Network, the Customer and/or an Other Customer under an Other Funding Agreement; or
- (b) a “Dispute” (as defined under an Other Funding Agreement) which arises under the Other Funding Agreement, or the outcome or consequences of that Dispute, may be relevant to the Aurizon Network and/or the Customer under this Agreement,

then:

- (c) as applicable:
 - (i) Aurizon Network may join all (for the avoidance of doubt, not only some) of the Other Customers to the dispute resolution process under this Agreement; or
 - (ii) Aurizon Network may join the Customer and all (for the avoidance of doubt, not only some) of the Other Customers to the dispute resolution process under the Other Funding Agreement; and
- (d) Aurizon Network, the Customer and each Other Customer joined to participate in the dispute resolution process under this Agreement or an Other Funding Agreement (as applicable) will be bound by the outcome of the resolution of the Dispute irrespective of whether or not Aurizon Network, the Customer or the Other Customers (as applicable) choose to actively participate in the dispute resolution process.

15.10 Time bar

If a Party does not give a Dispute Notice under **clause 15.1(a)** in respect of a Dispute within 12 Months after the date it becomes aware or ought reasonably to have become aware of the occurrence of the event or circumstance giving rise to the Dispute:

- (a) the Party must not give the other Party such a Dispute Notice;
- (b) any such Dispute Notice which is given by the Party will be taken to be of no effect; and
- (c) the Party will not have, and must not make, any Claim against the other Party in respect of the Dispute.

16 Termination

16.1 No other rights of termination

Despite any rule of law or equity to the contrary, no Party may terminate, rescind or treat as repudiated, or obtain any order with the effect of terminating or rescinding, this Agreement other than as expressly provided for in this Agreement.

16.2 No prejudice as to right to damages

Subject to **clause 17**, nothing in this **clause 16** prejudices in any way a Party's right to Claim and recover damages for any breach of this Agreement by the other Party.

17 Liability

17.1 Consequence of Target Study Cost being exceeded or Target Date not being met

- (a) The Customer acknowledges and agrees that a failure by Aurizon Network to comply with **clause 7.2** will reduce (potentially to zero) the amount of the Project Management Fee payable by the Customer to Aurizon Network under this Agreement.
- (b) Aurizon Network will have no other liability to the Customer (except for the consequence referred to in **clause 17.1(a)**) arising out of, or in any way related to, a failure by Aurizon Network to comply with **clause 7.2**.

17.2 Limitation of Aurizon Network's liability

Subject to **clauses 17.1** and **17.3**, except the extent:

- (a) that Aurizon Network has committed fraud in connection with this Agreement or Gross Negligence or Wilful Default; or
- (b) otherwise prohibited by law,

Aurizon Network's liability to the Customer in respect of a Claim arising out of, or in any way related to, this Agreement (excluding a Claim in respect of the non-payment by Aurizon Network of an amount that it is expressly required to pay under this terms of this Agreement) is limited to, and will in no event exceed, the total amount of \$1.00.

17.3 Exclusion of Consequential Loss

A Party will not be liable to the other Party for any Consequential Loss suffered by or Claimed against another Party arising out of, or in any way related to, this Agreement.

17.4 Scope of Claim, liability or loss

For the avoidance of doubt, references in this **clause 17** to a Claim, liability or loss include:

- (a) a Claim for, or liability or loss arising from, breach of contract, tort (including negligence), breach of equitable duty, breach of statutory duty, breach of the *Competition and Consumer Act 2010* (Cth) or otherwise; and
- (b) a Claim, liability or loss arising out of the performance or non-performance of any obligation under this Agreement, or arising out of the termination of this Agreement for any reason (including breach, repudiation or otherwise).

17.5 Claims against Aurizon Network

The Customer will not have, and must not make, any Claim against Aurizon Network in relation to, or arising out of, the entry into or the performance or non-performance of this Agreement, or give a Dispute Notice to Aurizon Network in respect of such a Claim under **clause 15.1**, unless:

- (a) the Customer first provides Aurizon Network with a notice of the purported Claim and allows Aurizon Network a reasonable period to rectify the relevant default; and
- (b) Aurizon Network fails to rectify that default within that reasonable period.

18 Assignment

18.1 Assignment

Subject to **clauses 18.2** and **18.3**, a Party must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or obligations under this Agreement (or procure or permit any of those things) without the prior consent of the other Party.

18.2 Assignment by Aurizon Network

- (a) Aurizon Network may assign or transfer (**Assign**) the whole or any part of its rights and obligations under this Agreement without the prior consent of the Customer on notice to the Customer advising it of the effective date of the Assignment.
- (b) Upon the assignee covenanting with the Customer to be bound by and to perform the obligations of Aurizon Network under this Agreement to the extent of the rights and obligations Assigned to the assignee, Aurizon Network will be 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.

18.3 Assignment by the Customer

- (a) The Customer may, provided it is not in breach of any of its obligations under this Agreement, Assign the whole of its rights and obligations under this Agreement to a third party (**Assignee**) with the prior written consent of Aurizon Network, provided that such consent will not be withheld if:

- (i) Aurizon Network, acting reasonably, is satisfied that the Assignee is financially sound and is otherwise capable of performing the obligations of the Customer under this Agreement;
 - (ii) the Assignee provides to Aurizon Network a Bank Guarantee for the Bank Guarantee Amount; and
 - (iii) the Assignee covenants with Aurizon Network by deed in a form acceptable to Aurizon Network (acting reasonably), to be bound by and to perform all of the obligations of the Customer under this Agreement.
- (b) Any Assignment by the Customer of its rights and obligations under **18.3(a)** will be conditional upon, and will not take effect until, the requirements of **clause 18.3(a)** have been satisfied.

19 Confidentiality

19.1 Confidentiality obligations

A Party (**Recipient**):

- (a) may use Confidential Information of the other Party (**Disclosing Party**) only for the purposes of this Agreement; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 19.2**.

19.2 Disclosure of Confidential Information

A Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to any person, where the Disclosing Party has consented in writing to such disclosure (such consent not to be unreasonably withheld or delayed, and may be given subject to reasonable conditions, such as the signing of an appropriate confidentiality undertaking);
- (b) to the extent necessary to progress negotiations with any other person relevant to matters contemplated in this Agreement who executes a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (c) to the extent necessary to effect the administration or enforcement of this Agreement, or further negotiations pursuant to this Agreement, by employees, professional advisers (including legal advisers) and consultants of the Recipient;
- (d) to any Related Body Corporate of the Recipient to the extent necessary for reporting purposes within a relevant group of companies, governance and oversight of the relevant group of companies and obtaining any approval or consent (whether or not directly from that Related Body Corporate) in relation to the Recipient entering into this Agreement;
- (e) to potential purchasers, assignees or transferees of the shares in the Recipient or a Related Body Corporate of it or of the rights or obligations

of the Recipient under this Agreement who execute a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;

- (f) to a bank or other financial institution (and its professional advisers and any security trustee or agent for it) in connection with and for the purpose of any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;
- (g) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information;
- (h) to any officers or employees of the Recipient or a Related Body Corporate of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;
- (i) if, and to the extent that, the Recipient is required to do so by law (other than by section 275 of the *Personal Property Securities Act 2009* (Cth)), any taxation authority or by any rules or regulations of a recognised stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);
- (j) to any Authority to the extent required by law;
- (k) if disclosure is lawfully required by the Access Regulator, or in accordance with the Access Undertaking; or
- (l) to an Auditor or Expert or an "Auditor" or "Expert" (as defined in an Other Funding Agreement).

19.3 Conditions of disclosure

If a Recipient discloses Confidential Information of a Disclosing Party to a person under **clause 19.2 (Disclosee)**, the Recipient must:

- (a) ensure that the Disclosee is aware that the Confidential Information is confidential information of the Disclosing Party; and
- (b) use reasonable endeavours to ensure that the Disclosee does not improperly disclose or improperly use the Confidential Information.

20 Notices

20.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this Agreement must be in writing in English and may be given by an agent of the sender.

20.2 How to give 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 business 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;
- (d) sent by fax to the Party's current fax number for Notices; or
- (e) in the case of a Notice to the Customer referred to in **clause 20.6(a)**, emailed to the Customer's current email address for Notices.

20.3 Particulars for giving of Notices

- (a) Each Party's particulars for the giving of Notices are initially the particulars set out in **item 6 of schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by Notice to each other Party.
- (c) A Notice given to a Party which is signed is evidence that the Notice has been signed by a person duly authorised by the sender and that Party is entitled to rely on that Notice without further inquiry or investigation.

20.4 Notices by post

Subject to **clause 20.6**, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

20.5 Notices by fax

Subject to **clause 20.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

20.6 Notices by email

- (a) A Monthly Notice (unless the Monthly Notice includes a Commitment Variation Request) or a Progress Report may be given by Aurizon Network to the Customer by email to the Customer's email address for Notices.

- (b) A Notice specified in **clause 20.6(a)** is given by email, on the next Business Day after being sent (as recorded on the device from which Aurizon Network sent the email) unless Aurizon Network receives an automated message that the email has not been delivered.

20.7 After hours Notices

If a Notice is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or public holiday in that place.

20.8 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 20** or in accordance with any applicable law.

21 Warranties

21.1 Warranties

Each Party warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Agreement are enforceable in accordance with their terms;
- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it which would have a material adverse effect on its ability to observe its obligations under this Agreement; and
- (f) 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.

21.2 Reliance

Each Party acknowledges that the other Party has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 21.1**.

22 GST

22.1 Construction

In this **clause 22**:

- (a) words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law;
- (b) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); and
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member and the GST joint venture operator of any GST joint venture of which the entity is a participant.

22.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.

22.3 Payment of GST

If GST is payable 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 will pay to the Supplier an amount equal to the GST payable on the supply.

22.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 22.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

22.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 22.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

22.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 22.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

22.7 Reimbursements

Where a Party is required under this Agreement to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

23 General

23.1 Survival

This **clause 23** and **clauses 7.5, 7.6, 10, 11, 13, 15, 17, 19, 20, 22** and **24** survive the termination of this Agreement.

23.2 Applicable law

This Agreement will be governed by and construed in accordance with the laws applicable in the State.

23.3 Waiver

- (a) Waiver of any right arising from a breach of this Agreement or any right arising from a default under 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 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.

23.4 Duty

- (a) As between the Parties, the Customer is liable for and must pay all duty (including any fine or penalty except where it arises from default by the Aurizon Network) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If the Aurizon Network pays any duty (including any fine or penalty) which the Customer is liable to pay under **clause 23.4(a)**, the Customer must pay that amount to the Aurizon Network on demand.

23.5 Legal costs

Except as expressly stated otherwise in this Agreement, each Party must pay its own legal costs and expenses of the drafting, negotiating and execution of this Agreement.

23.6 Amendments to be in writing

Except where this Agreement expressly provides a process for amendment or variation, an amendment or variation of this Agreement will only be effective if it is in writing and executed by both Parties to this Agreement.

23.7 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.

23.8 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

23.9 Further assistance

Each Party must promptly sign, execute and complete all additional documents which may be necessary and do whatever else is reasonably required to effect, perfect, or complete the provisions of this Agreement and to perform its obligations under it.

23.10 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

23.11 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. Neither Party is liable to the other Party in respect of those matters.
- (c) No oral explanation or information provided by a Party to the other Party:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between the Parties.

23.12 Relationship of Parties

This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

23.13 Severability

- (a) Subject to **clause 23.13(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 23.13(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or
 - (B) relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

23.14 Survival of representations and warranties

All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.

23.15 Enurement

The provisions of this Agreement will, subject as otherwise provided in this Agreement, enure for the benefit of and be binding on the Parties and their respective successors and permitted novatees and assigns.

23.16 Merger

The obligations contained in this Agreement will continue until satisfied in full.

23.17 Powers of attorney

An attorney by executing this Agreement declares that he or she has received no notice of revocation of the power of attorney pursuant to which he or she executes this Agreement.

23.18 Indemnity

It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity conferred by this Agreement.

24 JV Participants and liability

24.1 Applicability

This **clause 24** only applies if **item 1.2** of **schedule 1** states that it applies.

24.2 Warranty

The Customer warrants that it enters into this Agreement as agent for the JV Participants in their respective percentage interests in the Joint Venture from time to time.

24.3 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified in writing by the Customer to Aurizon Network from time to time.

- (b) As at the date of this Agreement, the respective percentage interests of the JV Participants in the Joint Venture are as specified in **item 1.4 of schedule 1**.

24.4 Liability of JV Participants

- (a) The liability of each JV Participant under this Agreement will, subject to **clause 24.4(c)**, be several in respect of Financial Obligations in proportion to their respective percentage interests.
- (b) Each JV Participant will be jointly and severally liable in respect of the performance of any obligations under this Agreement that are not Financial Obligations.
- (c) If a JV Participant is in default of a Financial Obligation, and the Customer has not given notice to Aurizon Network identifying the defaulting JV Participant within five Business Days after the date of Aurizon Network giving a notice to the Customer identifying the default, all JV Participants will be jointly and severally liable for the performance of the Financial Obligation.
- (d) Any notice given by the Customer under **clause 24.4(c)** is conclusive evidence that the JV Participant specified in the notice is the JV Participant that is in default and the notice binds all JV Participants.

Executed as an agreement.

Executed by Aurizon Network Pty Ltd in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director (print)

.....
Name of Director (print)

Date: / /

Executed by [insert name of Customer] in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director (print)

.....
Name of Director (print)

Date: / /

Schedule 1

Agreement details

1 Customer

1.1 Details

Name	[insert]
ACN/ABN	[insert]
Address	[insert]

1.2 Application of clause 24

Does clause 24 apply?	[Yes / No]
-----------------------	------------

1.3 Joint Venture

Name of Joint Venture	[insert name of Joint Venture or "Not Applicable" if no Joint Venture]
-----------------------	--

1.4 JV Participants and percentage interests

Name of JV Participant	Percentage interest
[insert Name, or if no JV then insert "not applicable"]	[insert]

2 Conditions precedent

Condition number	Condition	Conditions Date
1	Aurizon Network obtains all internal governance authorisations required by Aurizon Network for the performance by Aurizon Network of this Agreement in accordance with its terms.	20 Business Days after the Commencement Date.
2	The Customer delivers to Aurizon Network a Bank Guarantee for the Bank Guarantee Amount.	20 Business Days after the Commencement Date.

Condition number	Condition	Conditions Date
3	<p>The Customer's Study Commitment is equal to or greater than:</p> $(CSP(B) / ACCSP(B)) \times TSC$ <p>where:</p> <p>CSP(B) = Customer's Study Percentage (Base)</p> <p>ACCSP(B) = All Continuing Customers' Study Percentage (Base)</p> <p>TSC = Target Study Cost.</p>	25 Business Days after the Commencement Date.

3 Bank Guarantee Amount

Bank Guarantee Amount as at the Commencement Date	<p>#[insert]</p> <p>[Drafting note: The Bank Guarantee Amount will be the amount of the Customer's Study Commitment as at the Commencement Date.]</p>
---	--

4 Target Study Cost and Target Date

Target Study Cost	#[insert]
Target Date	#[insert]

5 Commitment Percentage

Commitment Percentage	#[115]%
-----------------------	---------

6 Particulars for notices

6.1 Aurizon Network

Business address	Level 5 192 Ann Street BRISBANE QLD 4000
Postal address	GPO Box 456 BRISBANE QLD 4001
Facsimile No.	#[insert]
Attention	#[insert]

6.2 Customer

Business address	[insert]
Postal address	[insert]
Facsimile No.	[insert]
Email	[insert]
Attention	[insert]

Schedule 2

Expansion details

[insert]

[Drafting note: A high level output oriented description of the Expansion to be included. For example: “The enhancement to the rail infrastructure on the Alpha and Beta Systems in order to facilitate the transportation of coal to the approximately 25 Mtpa proposed coal terminal at Zenith.” A description or diagram clearly identifying the Expansion should be included on a transaction-by-transaction basis.]

Schedule 3

Scope of Works

[Drafting note: The Scope of Works for the Rail Study to be included in this schedule.]

Schedule 4

Funding details

Row / column number	1	2	3	4	5
	Entity	Estimated Study Costs ¹	Study Percentage (Base)	Study Budget ²	Study Commitment (Base) ³
1	Customer	\$[insert]	[insert]%	[\$insert]	[\$insert]
2	[Other Customer – [insert name]]		[insert]%	[\$insert]	[\$insert]
3	[Other Customer – [insert name]]		[insert]%	[\$insert]	[\$insert]
4	[Other Customer – [insert name]]		[insert]%	[\$insert]	[\$insert]
5	[Other Customer – [insert name]]		[insert]%	[\$insert]	[\$insert]
6	[Other Customer – [insert name]]		[insert]%	[\$insert]	[\$insert]
7	[Other Customer – [insert name]]		[insert]%	[\$insert]	[\$insert]

[Drafting note: The Customer’s Study Percentage (Base) will be determined by Aurizon Network before the execution of this Agreement based on the number of train paths required by the Customer (calculated by dividing the annual tonnage of coal that the Customer wishes to rail by the nominal

¹ As at the Commencement Date. Included for information purposes only.
² For the Customer, this is the Estimated Study Costs multiplied by the Customer’s Study Percentage (Base).
³ For the Customer, this is 125% of the Customer’s Study Budget as at the Commencement Date.

payload of the Reference Train Service for the relevant Coal system) as a proportion of the total number of train paths required for all customers (including the Customer) who will be funding the prefeasibility study.]

Schedule 5

Study Costs and Allocation Principles

1 Definitions

In this **schedule 5**:

Additional Costs means:

- (a) costs and expenses, other than Internal Costs and External Costs, to the extent Incurred by Aurizon Network (whether before or after the date of this Agreement) in connection with the Rail Study:
 - (i) including those specified in **item 3.1** of this **schedule 5**; but
 - (ii) excluding those specified in **item 3.2** of this **schedule 5**; **plus**
- (b) a margin of 8% on the amount of any costs and expenses referred to in **paragraph (a)** of this definition.

Billable Personnel means Employees and Internal Contractors, other than Support Personnel and Management Personnel, within Aurizon Network's project delivery unit.

Billable Personnel Class means a class of Billable Personnel, as determined by Aurizon Network, acting reasonably, having regard to the functions of the Billable Personnel.

Employees means employees of Aurizon Network, or a Related Body Corporate of it, working within Aurizon Network's project study function (including employees providing Support Services and Management Services).

Estimated Billable Hours for Billable Personnel in a Billable Personnel Class for a Period means the total number of Remunerated Hours which Aurizon Network reasonably estimates, as at the start of that Period, those Billable Personnel will be available to perform the project study activities during that Period (and, for the avoidance of doubt, does not include any Remunerated Hours which Aurizon Network reasonably estimates, as at the start of that Period, in which those Billable Personnel will not be available to perform the project study activities during that Period due to holiday leave, other leave (including sick leave), statutory holidays, safety training and other mandatory requirements).

External Costs means:

- (a) amounts paid or payable by Aurizon Network (whether before or after the date of this Agreement) to Study Contractors to the extent in connection with the carrying out of any part of the Rail Study:

- (i) after netting off the amount of any deductions, set-offs, rebates or counterclaims recovered by Aurizon Network but adding on the amount of any costs incurred by Aurizon Network in recovering or enforcing the benefit of those deductions, set-offs, rebates or counterclaims; and
 - (ii) excluding the GST component of any amounts which would otherwise be External Costs under **paragraph (a)** of this definition to the extent that Aurizon Network (or the representative member of the GST group of which Aurizon Network is part) is entitled to claim an input tax credit in respect of such amounts); **plus**
- (b) a margin of 1% on amounts referred to in **paragraph (a)** of this definition.

Internal Contractors means contractors engaged by Aurizon Network on a dedicated basis within Aurizon Network's project study function (including contractors providing Support Services).

Manage means supervision and management of Billable Personnel within Aurizon Network's project study function.

Management Personnel means Employees, other than Billable Personnel and Support Personnel, that Manage Billable Personnel within Aurizon Network's project study function.

Management Services means general management within Aurizon Network's project study function.

Internal Costs for a Period means:

- (a) the amount calculated under **item 2.4** of this **schedule 5** for that Period; **plus**
- (b) a margin of 8% on the amount of any costs and expenses referred to in **paragraph (a)** of this definition.

Period means each one year period commencing on 1 July (and, if the Commencement Date is other than 1 July, includes the shorter period commencing on the Commencement Date and ending on the next 30 June).

Personnel Costs for a Period means:

- (a) for an Employee, the aggregate of all costs and liabilities to be Incurred by Aurizon Network in respect of the Employee during that Period, including:
 - (i) salaries and wages (including overtime);
 - (ii) the cost of annual leave, sick leave, long service leave and other allowances;
 - (iii) payroll tax and other governmental taxes, levies and charges;
 - (iv) personal expenses, where these are payable or reimbursable;
 - (v) fringe benefits;

- (vi) worker's compensation insurance; and
- (vii) the cost of providing employee benefits including:
 - (A) superannuation; and
 - (B) employee's group life insurance, hospital benefit, pension, retirement and other similar benefit plans,

calculated, in the case of the costs and liabilities referred to in **paragraphs (a)(ii) to (vii)** of this definition, on a "percentage assessment" basis of the costs and liabilities referred to in **paragraph (a)(i)** of this definition;

- (b) for an Internal Contractor, the aggregate of all fees to be paid by Aurizon Network to the Internal Contractor during that Period; and
- (c) the indirect costs of Employees and Internal Contractors referred to in **paragraphs (a) and (b)** of this definition, including:
 - (i) uniforms, personal protective equipment and training;
 - (ii) Brisbane office occupancy costs (including, for example, rent, information technology, communications, office equipment, stationery and utilities); and
 - (iii) non project-related travel, accommodation and meals,

but excluding the GST component of any costs or liabilities Incurred by Aurizon Network which would otherwise be Personnel Costs under this definition to the extent that Aurizon Network (or the representative member of the GST group of which Aurizon Network is part) is entitled to claim an input tax credit in respect of such costs or liabilities.

Remunerated Hours means:

- (a) for an Employee, the paid hours of that Employee; and
- (b) for an Internal Contractor, the billed hours of that Internal Contractor.

Study Consultancy means a contract between Aurizon Network and a third party under which the third party is engaged to carry out all or any part of the Rail Study.

Study Consultant means a contractor engaged by Aurizon Network under a Study Consultancy, but does not include an Internal Contractor.

Support Personnel means Employees and Internal Contractors, other than Billable Personnel and Management Personnel, that provide Support Services for Billable Personnel within Aurizon Network's project study function.

Support Services means corporate, clerical, administrative and other support services.

Unit Cost Rate for a Billable Personnel Class for a Period means the hourly rate (expressed as dollars per hour) calculated for that Billable Personnel Class for that Period in accordance with **item 2.3** of this **schedule 5**.

2 Internal Costs

2.1 Unit Cost Rates table

Aurizon Network must:

- (a) for the first Period – promptly after this Agreement becomes unconditional; and
- (b) for each subsequent Period – prior to the start of that Period, prepare a document which specifies for that Period:
- (c) each Billable Personnel Class; and
- (d) the Unit Cost Rate for each Billable Personnel Class, for the purposes of calculating Internal Costs during that Period.

2.2 Billable Personnel Classification Table

Promptly after this Agreement becomes unconditional, Aurizon Network must prepare, and must vary so that it remains up-to-date, a document (**Billable Personnel Classification Table**) which sets out, in respect of each person who is Billable Personnel utilised by Aurizon Network in connection with the provision of the Services or the performance of its obligations under this Agreement, the Billable Personnel Class to which that Billable Personnel belongs, for the purposes of calculating Internal Costs.

2.3 Unit Cost Rates

The Unit Cost Rate for each person who is Billable Personnel Class for each Period will be calculated in accordance with the following formula:

$$UCR = \frac{PC}{EBH}$$

where:

- UCR = the Unit Cost Rate for the relevant Billable Personnel Class for the relevant Period (expressed as dollars per hour).
- PC = Aurizon Network's reasonable estimate, as at the start of the relevant Period, of the sum of:
- (a) the Personnel Costs for each person who is Billable Personnel in the relevant Billable Personnel Class, as at the start of the relevant Period, for the relevant Period;
 - (b) the Personnel Costs for each person who is Support Personnel that provides Support Services to Billable Personnel in the relevant Billable Personnel Class (but only to the extent they will provide Support Services to Billable Personnel in the relevant Billable Personnel Class, as

reasonably estimated by Aurizon Network), as at the start of the relevant Period, for the relevant Period; and

- (c) the Personnel Costs for each person who is Management Personnel that Manage Billable Personnel in the relevant Billable Personnel Class (but only to the extent they Manage Billable Personnel in the relevant Billable Personnel Class, as reasonably estimated by Aurizon Network), as at the start of the relevant Period, for the relevant Period.

EBH = Aurizon Network's reasonable estimate, as at the start of the relevant Period, of the sum of the Estimated Billable Hours for all Billable Personnel in the relevant Billable Personnel Class, as at the start of the relevant Period, for the relevant Period (applying, for the purpose of making such estimate, the then standard internal management accounting practices generally adopted by Aurizon Network).

2.4 Calculation of Internal Costs

The Internal Costs for a Period is the sum of the amount for each person who is Billable Personnel equal to the product of:

- (a) the number of hours during which that Billable Personnel was utilised by Aurizon Network in the performance of its obligations under this Agreement during that Period; and
- (b) the Unit Rate Cost for the Period during which that Period occurs for the Billable Personnel Class to which that Billable Personnel belongs.

2.5 No double claims

For the avoidance of doubt, Aurizon Network is only entitled to categorise an Employee or Internal Contractor as either a Billable Personnel, Support Personnel or Management Personnel and accordingly is only entitled to seek the recovery of the costs in respect of that person in any one such category.

3 Additional Costs

3.1 Costs and expenses that are Additional Costs

Additional Costs include costs and expenses, other than Internal Costs and External Costs, in connection with the following:

- (a) identifying and designing the Rail Study Works (including amounts paid to contractors, suppliers of materials, legal costs, statutory fees and

charges, insurance premiums and any insurance excess or deductible payable on insurance);

- (b) compliance with:
 - (i) any law;
 - (ii) any Approvals; and
 - (iii) the conditions of any cultural heritage management plans or agreements,
to the extent they relate to the Rail Study;
- (c) organising, chairing, participating in and funding of any meetings to the extent that they relate to the Rail Study;
- (d) travel and accommodation costs to the extent that they relate to the Rail Study;
- (e) the preparation, negotiation and execution of any agreements (including this Agreement and Other Funding Agreements) entered into with any person to the extent that they relate to the Rail Study;
- (f) identifying any land required for the purpose of the carrying out the Rail Study or completing the Rail Study Works;
- (g) entering into or proceeding with, any acquisition, lease, sublease or licence of any land required for the purpose of the carrying out the Rail Study or completing the Rail Study Works (provided that the acquisition, lease, sublease or licence has first been approved by Funding Customers which, at the time of such approval, in aggregate have “Customer’s Study Commitments” (in the case of an Other Customer, as defined in the Other Customer’s Other Funding Agreement) which exceed 60% of the aggregate “Customer’s Study Commitments” (in the case of an Other Customer, as defined in the Other Customer’s Other Funding Agreement) of all Funding Customers at that time);
- (h) the appointment of an Auditor and the conduct of an Audit; and
- (i) internal and overhead costs or expenses Incurred by Aurizon Network to the extent that they relate to the Rail Study.

3.2 Costs and expenses that are not Additional Costs

Additional Costs do not include the GST component of any costs or expenses Incurred by Aurizon Network which, but for this **item 3.2** of this **schedule 5**, would otherwise be Additional Costs to the extent that the Aurizon Network (or the representative member of the GST group of which Aurizon Network is part) is entitled to claim an input tax credit in respect of such costs or expenses.

4 Allocation Principles

- (a) Where costs or expenses relate to:

- (i) two or more Segments; and/or
- (ii) the Rail Study and other works,

and those costs or expenses are reasonably attributable to a Segment and/or the other works (as applicable), then those costs or expenses will be allocated by Aurizon Network to the applicable Segment and/or other works (as applicable) to which they are reasonably attributable.

(b) Where:

- (i) costs or expenses relate to:
 - (A) two or more Segments; and/or
 - (B) the Expansion and other works; and

(ii) **paragraph 4(a)** of this **item 4** of this **schedule 5** does not apply, then Aurizon Network must allocate those costs or expenses to each applicable Segment and/or the other works (as applicable) on a pro-rata basis based on the proportion that the budgeted costs and expenses for that Segment (as at the date of this Agreement) and/or the budgeted costs and expenses for other works (as applicable) bears to the total of the budgeted costs and expenses for each applicable Segment (as at the date of this Agreement) and/or the budgeted costs and expenses for the other works (as applicable).

Schedule 6

Calculation of Customer's Additional Study Costs

1 Definitions

In this **schedule 6** and **schedule 7**:

Previous Tier means:

- (a) for Tier 1, nil;
- (b) for Tier 2, Tier 1; and
- (c) for Tier **[n]**, Tier **[n - 1]** and each previous Tier until (and including) Tier 1.

Relevant Tier means the highest numbered Tier that applies.

Tier means each of:

- (a) Tier 1;
- (b) Tier 2; and
- (c) Tier **[n]**.

Tier 1 means where one (but not more) Termination Event has occurred.

Tier 2 means where two (but not more) Termination Events have occurred.

Tier **[n]** means where **[n]** (but not more) Termination Events have occurred.

Terminated Other Customer for a Tier means a person that is a Terminated Other Customer (for the avoidance of doubt, as defined in **clause 1.1**) that became a Terminated Other Customer due to the occurrence of a Termination Event for that Tier.

Termination Event for a Tier means:

- (a) for Tier 1, the first Termination Event to occur;
- (b) for Tier 2, the second Termination Event to occur; and
- (c) for Tier **[n]**, the **[n]**th Termination Event to occur.

2 Calculation of Customer's Additional Study Costs

The **Customer's Additional Study Costs** for a Tier for a Month is the amount which is the Customer's Study Percentage (Tier) of the Additional Study Costs for that Tier for that Month.

3 Calculation of Customer's Study Percentage (Tier)

The **Customer's Study Percentage (Tier)** for a Tier is the percentage calculated in accordance with the following formula:

$$\frac{\text{CSP(B)}}{\text{ACCSP(B)}}$$

where:

CSP(B) = The Customer's Study Percentage (Base)

ACCSP(B) = All Continuing Customers' Study Percentage (Base).

4 Calculation of Additional Study Costs

The **Additional Study Costs** for a Tier for a Month is the amount which is the sum of, for each Terminated Other Customer for that Tier, the amount calculated in accordance with the following formula:

$$\text{TC CSP(B)} \times \text{ESC} - \text{TCCSC(B)}$$

where:

TC CSP(B) = The "Customer's Study Percentage (Base)" for the relevant Terminated Other Customer (as defined in the relevant Terminated Other Customer's Other Funding Agreement)

ESC = The Estimated Study Costs for that Month

TCCSC(B) = The "Customer's Study Commitment (Base)" for the relevant Terminated Other Customer as at the time of the termination of its Other Funding Agreement (as defined in that Other Funding Agreement),

plus, if the relevant Tier is not Tier 1, the amount which is the sum of, for each Terminated Other Customer for that Tier, the amount calculated in accordance with the following formula:

$$\sum_{t=2}^n [\text{TCCSP } T_{(t-1)} \times T_{(t-1)} \text{ASC} - \text{TCCSC } T_{(t-1)}]$$

where:

$\text{TCCSP } T_{(t-1)}$ = The "Customer's Study Percentage (Tier)" for Tier (t-1) for the relevant Terminated Other Customer (as defined in the relevant Terminated Other Customer's Other Funding Agreement)

$T_{(t-1)} \text{ASC}$ = The Additional Study Costs for Tier (t-1) for that Month

$TCCSCT_{(t-1)}$ = The “Customer’s Study Commitment (Tier)” for Tier (t-1) for the relevant Terminated Other Customer as at the time of the termination of the relevant Terminated Other Customer’s Other Funding Agreement (as defined in that Other Funding Agreement)

n = the Relevant Tier

t = the Tier for the iteration,

provided that if that amount is a negative number, then the Additional Study Costs for that Tier for that Month will be taken to be zero.

Schedule 7

Calculation of Drawdown Amount

1 Calculation of Drawdown Amount where there are no Terminated Other Customers

The **Drawdown Amount** for a Month where there are no Terminated Other Customers is calculated in accordance with the following formula:

$$\text{CSP(B)} \times \text{SC}$$

where:

CSP(B) = The Customer's Study Percentage (Base)

SC = The Study Costs for that Month.

2 Calculation of Drawdown Amount where there are Terminated Other Customers

2.1 Definitions

In this **item 2** of **schedule 7**:

Base Study Costs means all Study Costs up to the Maximum Base Study Costs.

Maximum Base Study Costs means:

$$A / B$$

where:

A = Tier 1 Terminated Other Customer's "Customer's Study Commitment (Base)" under their Other Funding Agreement

B = Tier 1 Terminated Other Customer's "Customer's Study Percentage (Base)" under their Other Funding Agreement.

Maximum Tier 1 Study Costs means:

$$(A / B) + (C / D)$$

where:

A = Tier 2 Terminated Other Customer's "Customer's Study Commitment (Base)" under

- their Other Funding Agreement
- B = Tier 2 Terminated Other Customer's "Customer's Study Percentage (Base)" under their Other Funding Agreement
- C = Tier 2 Terminated Other Customer's "Customer's Study Commitment (Tier 1)" under their Other Funding Agreement
- D = Tier 2 Terminated Other Customer's "Customer's Study Percentage (Tier 1)" under their Other Funding Agreement.

Maximum Tier (n-1) Study Costs means:

$$(A / B) + \sum_{t=1}^{n-1} (Ct / Dt)$$

where:

- A = Tier (n) Terminated Other Customer's "Customer's Study Commitment (Base)" under their Other Funding Agreement
- B = Tier (n) Terminated Other Customer's "Customer's Study Percentage (Base)" under their Other Funding Agreement
- Ct = Tier (n) Terminated Other Customer's "Customer's Study Commitment (Tier t)" under their Other Funding Agreement
- Dt = Tier (n) Terminated Other Customer's "Customer's Study Percentage (Tier t)" under their Other Funding Agreement
- t = the Tier for the iteration
- n = the Relevant Tier.

Tier 1 Study Costs means all Study Costs from the Maximum Base Study Costs up to Maximum Tier 1 Study Costs.

Tier n Study Costs means all Study Costs from the Maximum Tier (n-1) Study Costs up to:

$$(A / B) + \sum_{t=1}^n (Ct / Dt)$$

where:

- A = Tier (n+1) Terminated Other Customer's "Customer's Study Commitment (Base)" under their Other Funding Agreement
- B = Tier (n+1) Terminated Other Customer's "Customer's Study Percentage (Base)" under

		their Other Funding Agreement
Ct	=	Tier (n+1) Terminated Other Customer's "Customer's Study Commitment (Tier t)" under their Other Funding Agreement
Dt	=	Tier (n+1) Terminated Other Customer's "Customer's Study Percentage (Tier t)" under their Other Funding Agreement
t	=	the Tier for the iteration
n	=	the Relevant Tier.

2.2 Calculation of Drawdown Amount

The **Drawdown Amount** for a Month where there is one or more Terminated Other Customers is calculated in accordance with the following formula:

$$(BSC \times CSP(B)) + \sum_{t=1}^n (TtSC \times CSPTt)$$

where:

BSC	=	Base Study Costs for that Month
CSP(B)	=	Customer's Study Percentage (Base)
TtSC	=	Tier t Study Costs for that Month
CSPTt	=	Customer's Study Percentage (Tier t)
t	=	the Tier for the iteration
n	=	the Relevant Tier.

Schedule 8

Calculation of Project Management Fee

1 Adjustment Amount

Adjustment Amount means:

- (a) if the Provisional Project Management Fee is greater than the Project Management Fee, the amount which is the difference between the Provisional Project Management Fee and the Project Management Fee; and
- (b) if the Project Management Fee is greater than or equal to the Provisional Project Management Fee, zero.

2 Calculation of Provisional Project Management Fee

The Provisional Project Management Fee is the amount of that part of the Study Costs referred to in **paragraph (a)(iv)** of the definition of Study Costs which are loaned to Aurizon Network under this Agreement.

3 Calculation of Project Management Fee

- (a) In this **item 3** of **schedule 8**:

Final Cost Measure or **FCM** means the amount (expressed as a percentage) calculated in accordance with the following formula:

$$\frac{\text{FSC}}{\text{TSC}}$$

where:

- FSC = the total Study Costs for the Rail Study
- TSC = the Target Study Cost.

Final Time Measure or **FTM** means:

- (a) if Rail Study is completed on or before the Target Date – zero;
- (b) if the Rail Study is completed later than the Target Date – the number of whole months after the Target Date that the Rail Study is completed.

PMF Percentage is the percentage specified in the cell in the following table located in the row in which the FTM occurs and the column in which the FCM occurs:

FTM (whole months)	FCM (%)			
	≤ 100	[#] to [#]	[#] to [#]	≥ [#]
< 1	[#]	[#]	[#]	[#]
[#] to [#]	[#]	[#]	[#]	[#]
[#] to [#]	[#]	[#]	[#]	[#]
≥ [#]	[#]	[#]	[#]	[#]

- (b) The Project Management Fee is that part of the Study Costs referred to in **paragraph (a)(iv)** of the definition of Study Costs which would have been required to be loaned to Aurizon Network under this Agreement if the percentage specified in **paragraph (a)(iv)** of the definition of Study Costs was always the PMF Percentage.