

QUEENSLAND RAIL LIMITED

ABN 71 132 181 090

and

[*]**

ABN

**TRAIN OPERATIONS AGREEMENT
(COAL)**

THIS AGREEMENT is made on the _____ day of _____ 20____

BETWEEN QUEENSLAND RAIL LIMITED ABN 71 132 181 090 of Level 15, 295 Ann Street, Brisbane, Queensland ("Queensland Rail")

AND The party specified in Item 1 of the Reference Schedule ("**Operator**")

RECITALS

A Queensland Rail is responsible for the provision of the Network and Train Control.

Deleted: Aurizon Network

B Queensland Rail is a party to one or more Access Agreements under which Queensland Rail has granted Access Rights to end users for the operation of Train Services over the Nominated Network on the terms and conditions of the relevant Access Agreements.

Deleted: Infrastructure

Deleted: Aurizon Network

Deleted: Aurizon Network

C The End User has nominated the Operator in respect of all or part of the End User's Access Rights as reflected in the Train Service Description.

D Queensland Rail has agreed that the Operator may operate Train Services over the Nominated Network and to provide Train Control for those Train Services on the terms and conditions of this Agreement.

Deleted: Aurizon Network

E The Parties may enter into separate agreements for the provision of services by Queensland Rail to the Operator other than the Operational Rights.

Deleted: Aurizon Network

OPERATIVE PROVISIONS

1. In this Agreement words and expressions which are defined in the General Conditions of Contract shall have the same meanings as are respectively assigned to them in the General Conditions of Contract.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement:

(a) Reference Schedule attached to this Agreement as **Schedule A**;

(b) General Conditions of Contract attached to this Agreement as **Schedule B**; and

(c) all Schedules, exhibits and annexures to this Agreement,

and Clause 1.2 of the General Conditions of Contract shall apply to the extent that there is any inconsistency between any of the above documents.

ACCESS RIGHTS

[Delete square bracketed text where End User is paying all Access Charges]

1 Grant of Operational Rights

In consideration of the Operator agreeing to pay the *[Access Charges and other]* payments to be made to Queensland Rail by the Operator, Queensland Rail grants to, and will provide, the Operator Operational Rights in accordance with the Train Service Description for the operation of Train Services on and from the Commitment Date on the terms in, and subject to the conditions of, this Agreement.

Deleted: Aurizon Network

Deleted: Aurizon Network

2 Nature and Scope of Operational Rights

(a) The Operational Rights granted under Clause 1 are non-exclusive contractual rights and do not give the Operator any right, title or interest of any proprietary nature in the Nominated Network.

(b) The Operator must not:

(i) operate on or use any part of the Network that is not specifically included in the Nominated Network; or

Deleted: Infrastructure

(ii) use the Nominated Network for carrying out any provisioning, inspection, testing, maintenance of Rollingstock, any marshalling, shunting or other relocation of Rollingstock or storage of Rollingstock or for any other purpose other than the operation of Train Services,

unless specifically directed by Queensland Rail to do so in accordance with the provisions of this Agreement or as specified in this Agreement.

Deleted: Aurizon Network

- (c) The Parties acknowledge and agree Queensland Rail is required to provide the Operator with certain benefits, rights and services in accordance with Queensland Rail's Access Undertaking, and to the extent that these requirements are relevant to the Operator's Operational Rights it is intended the terms on which they are provided are detailed in this Agreement.

Deleted: Aurizon Network

Deleted: Clause 2.4(e) of, and the definition of "Access" in, Aurizon Network

3 Ancillary Services

In consideration of the Operator agreeing to pay the charges for Ancillary Services, Queensland Rail will provide the Ancillary Services (if any) set out in Schedule 11.

Deleted: Aurizon Network

Deleted: Schedule 1111

Formatted: Font: Bold

Deleted: Schedule 11

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Formatted: Font: Bold, Not All caps

Formatted: Font: Bold

Deleted: Aurizon Network

Deleted: Aurizon Network

4 Renewal

The Operator has no right under this Agreement or in accordance with Queensland Rail's Access Undertaking to seek a renewal of the Term.

5 Effect of the End User's variation of nomination of the Operator

- (a) If at any time:

- (i) the End User notifies or is deemed to have notified Queensland Rail of a variation to the nomination of the Operator by the End User in accordance with an End User Access Agreement; or
- (ii) the End User withdraws or is deemed to have withdrawn the End User's nomination of the Operator in accordance with the End User Access Agreement or this Agreement,

then:

- (iii) Queensland Rail will provide to the Operator:

Deleted: Aurizon Network

- (A) a copy of the End User's notice or, if no such notice has been given, the circumstances supporting the deeming of the giving of such a notice or withdrawal;
- (B) replacement Schedules amended consistent with the End User's notice or deemed notice; and
- (C) the date on which those replacement Schedules take effect; and
- (iv) this Agreement is varied in accordance with those replacement Schedules with effect on and from the date referred to under clause 5(a)(iii)(C).

- (b) The End User is deemed to have withdrawn the End User's nomination of the Operator if the End User Access Agreement is terminated or expires.

6 Further Nomination of Operator

If at anytime after the Commencement Date the End User nominates the Operator in respect of all or part of the End User's Access Rights, in accordance with the End User Access Agreement, then Queensland Rail will provide to the Operator:

Deleted: Aurizon Network

- (a) replacement Schedules amended consistent with that End User's nomination of the Operator; and
- (b) the date on which the Variations take effect,

and this Agreement is varied in accordance with those replacement Schedules with effect on and from the date referred to under clause 6(b).

7 Interaction of rights

- (a) In respect of the Operational Rights relating to the End User:

- (i) the End User has contracted directly with Queensland Rail under the End User Access Agreement for the End User's Access Rights:
- (A) on the basis that the End User's Access Rights will be used by one or more persons (such as the Operator) under agreements (such as this Agreement) for the benefit of the End User; and

Deleted: Aurizon Network

Formatted: Font: 6 pt

- (B) as such, the End User has no direct above rail operational responsibilities in relation to Train Services for that End User (unless it is also the Operator); and
- (ii) the Operator will have above rail operational obligations in respect of the Train Services that will be operated by that Operator for the End User [including the payment of Access Charges (other than for take or pay charges – which shall be paid by the End User)].
- (b) The Operator has no right to renew, transfer (subject to Clauses 22.2 and 22.3 of the General Conditions of Contract), vary or relinquish to Queensland Rail any part of the Operational Rights, whether under this Agreement or Queensland Rail's Access Undertaking. The right to seek a renewal, transfer, variation or relinquishment of Access Rights is only usable by the End User.

Deleted: Aurizon Network
Deleted: Aurizon Network

Formatted: Font: 6 pt

SCHEDULE A
REFERENCE SCHEDULE

REFERENCE SCHEDULE

This Reference Schedule forms part of the Agreement dated the _____ day of _____ 20____ made between Queensland Rail and the Operator listed in Item 1 below.

Deleted: Aurizon Network

Item

1. **Operator:** Name
ACN
Address

2. **Commencement Date:**

3. **Security Amount:**
(General Conditions of Contract Clause 2.4 (a))

Subject to Queensland Rail's reasonable assessment of the creditworthiness of the Operator, the Security Amount (if applicable) will be an amount equivalent to

Deleted: Aurizon Network

[where the End User Access Agreement involves the End User paying all Access Charges] the lesser of twelve (12) weeks Access Charges determined as if the Operator made maximum use of the End User's Access Rights which the Operator is nominated to utilise or the deductible for any one loss as specified in Schedule 7.

Formatted: Font: Bold

Formatted: Font: Bold, Check spelling and grammar, Not All caps

Deleted: Schedule 77

Deleted: Schedule 7

Formatted: Font: Bold

[where the End User Access Agreement involves the End User only paying TOP Charges] the greater of twelve (12) weeks Access Charges determined as if the Operator made maximum use of the End User's Access Rights which the Operator is nominated to utilise or the deductible for any one loss as specified in Schedule 7.

Formatted: Font: Bold

Formatted: Font: Bold, Check spelling and grammar, Not All caps

Deleted: Schedule 77

Formatted: Font: Bold

Deleted: Schedule 7

4. **Date for Completion of Matters prior to the Commencement of Train Services:**
(General Conditions of Contract Clause 4.1(c))

Formatted: Font: 6 pt

SCHEDULE B
GENERAL CONDITIONS OF CONTRACT

CONTENTS

1 DEFINITIONS AND INTERPRETATION 13

1.1 Definitions..... 13

1.2 Interpretation 22

2 CHARGES..... 23

2.1 [Access]Charges 23

2.2 Invoicing 24

2.3 GST 24

2.4 Obligation to Provide Security 25

2.5 Exercise of Security 26

2.6 Return of Security 26

3 WEIGHBRIDGES AND OVERLOAD DETECTORS 26

4 TRAIN SERVICE ENTITLEMENTS 27

4.1 Train Services 27

5 DAY TO DAY TRAIN MOVEMENTS..... 28

5.1 Train Control..... 28

5.2 Train Control Rights and Obligations 28

5.3 Train Control Communications..... 28

6 TRAIN OPERATIONS 28

6.1 Compliance 28

6.2 Compliance with Scheduled Time 30

6.3 Alterations to Train Services..... 30

6.4 Notification 30

6.5 Operator to Supply Information 30

6.6 Performance Levels..... 31

6.7 Interface Coordination Plan 32

6.8 Operation of Trains and Rollingstock 32

6.9 Authorisation of Rollingstock & Rollingstock Configurations 32

6.10 Amendments to System Wide Requirements 32

6.11 Private Facilities..... 32

7 INFRASTRUCTURE MANAGEMENT..... 32

7.1 Management and Control of the Nominated Network 32

7.2 Maintenance of the Nominated Network 32

7.3 Inspection by Operator 33

8 INCIDENT MANAGEMENT 33

8.1 Operator’s Emergency Response Plan 33

8.2 Obstructions 33

8.3 Notification 33

8.4 Management of Incident Response 33

8.5 Investigations 33

9 ENVIRONMENTAL MANAGEMENT AND PROTECTION 33

Deleted: 25
Deleted: 23
Deleted: 25
Deleted: 24
Deleted: 25
Deleted: 24
Deleted: 26
Deleted: 24
Deleted: 26
Deleted: 25
Deleted: 27
Deleted: 25
Deleted: 28
Deleted: 26
Deleted: 28
Deleted: 26
Deleted: 28
Deleted: 27
Deleted: 30
Deleted: 28
Deleted: 30
Deleted: 28
Deleted: 31
Deleted: 29
Deleted: 31
Deleted: 29
Deleted: 31
Deleted: 29
Deleted: 31
Deleted: 30
Deleted: 31
Deleted: 30
Deleted: 31
Deleted: 30
Deleted: 31
Deleted: 30
Deleted: 31
Deleted: 33
Deleted: 31
Deleted: 33
Deleted: 31
Deleted: 34
Deleted: 32
Deleted: 34
Deleted: 32
Deleted: 35
Deleted: 33
Deleted: 35
Deleted: 33
Deleted: 35
Deleted: 33
Deleted: 35
Deleted: 33
Deleted: 36
Deleted: 34
Deleted: 38

9.1 Environmental Management 33

9.2 Environmental Management System..... 33

9.3 Carriage of Dangerous Goods on Train Services 33

9.4 Noise Management during Train Services 33

9.5 Spillage of Contaminating Materials..... 33

9.6 Community Liaison and Environmental Complaint Procedures 33

9.7 Audit and Review of Environmental Investigation and Risk Management Report..... 33

9.8 Notification 33

10 ACCREDITATION 33

11 OPERATOR’S STAFF 33

11.1 Safety of Staff 33

11.2 Qualifications of Operator's Staff..... 33

11.3 Entry onto Land 33

12 INTERFACE RISK MANAGEMENT 33

13 INSPECTION AND AUDIT RIGHTS 33

13.1 Rights of Inspection and Audit..... 33

13.2 Inspection of Trains and Rollingstock..... 33

13.3 Notice of Inspection or Audit..... 34

13.4 Conduct of Inspection or Audit..... 34

13.5 Cooperation by the Parties 34

13.6 Costs of Inspection or Audit..... 35

13.7 Copies of Reports..... 35

13.8 Consequences of Inspection or Audit..... 35

13.9 Parties’ Obligations..... 35

14 INSURANCE BY OPERATOR 35

14.1 Maintain Insurance Policies 35

14.2 Required Insurance Policies 35

14.3 Disclosure of Insurance Policies 35

14.4 Failure to Disclose Insurance Policies..... 35

14.5 Minimum Terms of Policies..... 36

14.6 Operator Not to Render Policy Void..... 36

14.7 Compliance 36

14.8 Notice of Potential Claims 36

14.9 Operator to pay all excess/deductibles 36

14.10 Settlement of Claims 36

15 INDEMNITIES AND LIABILITIES 36

15.1 Indemnity by Operator 36

15.2 Indemnity by Queensland Rail..... 36

15.3 Liability to Third Parties 36

15.4 Liability from Network Standard 37

Deleted: 42

Deleted: 40

Deleted: 43

Deleted: 42

Deleted: 44

Deleted: 42

Deleted: 44

Deleted: 42

Deleted: 44

Deleted: 43

Deleted: 43

Deleted: 45

Deleted: 43

Deleted: 45

Deleted: 43

Deleted: 46

Deleted: 44

Deleted: 46

Deleted: 45

Deleted: 47

Deleted: 45

Deleted: 47

Deleted: 45

Deleted: 47

Deleted: 45

Deleted: 47

Deleted: 45

Deleted: 47

Deleted: 45

Deleted: 49

Deleted: 47

Deleted: 49

Deleted: 47

Deleted: 49

Deleted: 47

Deleted: 49

Deleted: 47

Deleted: 48

Deleted: 50

Deleted: 48

Deleted: 51

Deleted: 49

Deleted: 51

Deleted: 49

Deleted: 51

Deleted: 49

Deleted: 51

Deleted: 49

Deleted: 51

Deleted: 49

Deleted: 51

Deleted: 49

Deleted: 51

15.5	Defence of Claims.....	37	Deleted: 53
15.6	Continuation of Indemnities and liabilities	37	Deleted: 51
15.7	Determination of Liability.....	37	Deleted: 53
15.8	Loss Adjuster	37	Deleted: 51
15.9	Costs.....	38	Deleted: 53
16	LIMITATION OF LIABILITY	38	Deleted: 51
16.1	No Liability for Consequential Loss	38	Deleted: 54
16.2	Limitation on Claims.....	38	Deleted: 52
16.3	Claims in respect of non-provision of Access	38	Deleted: 54
16.4	Claims in respect of delays to Train Movements	39	Deleted: 52
17	MATERIAL CHANGE	39	Deleted: 54
17.1	Meaning of Material Change.....	39	Deleted: 52
17.2	Adjustment for a Material Change	39	Deleted: 54
17.3	Parties Obligations	40	Deleted: 52
18	DISPUTES.....	40	Deleted: 55
18.1	Method	40	Deleted: 53
18.2	Chief Executive Resolution.....	40	Deleted: 55
18.3	Expert.....	40	Deleted: 53
18.4	Arbitration.....	41	Deleted: 55
18.5	Determination by Court.....	41	Deleted: 53
18.6	Queensland Competition Authority (QCA).....	41	Deleted: 56
19	FORCE MAJEURE	41	Deleted: 54
19.1	Claim of Force Majeure	41	Deleted: 56
19.2	Suspension of obligations.....	41	Deleted: 54
19.3	Duty to Mitigate	42	Deleted: 56
19.4	End of period of Force Majeure	42	Deleted: 54
19.5	Termination for Loss or Damage to Nominated Network.....	42	Deleted: 56
19.6	Termination after extended Force Majeure Event.....	42	Deleted: 54
20	SUSPENSION	43	Deleted: 57
20.1	Right of Suspension	43	Deleted: 55
20.2	Details of Suspension	44	Deleted: 57
20.3	Effect of Suspension	44	Deleted: 55
21	TERMINATION.....	45	Deleted: 57
21.1	Termination by <u>Queensland Rail</u>	45	Deleted: 55
21.2	Termination by the Operator	46	Deleted: 58
21.3	Grounds for Termination to be specified.....	46	Deleted: 56
21.4	Obligations and other rights upon termination or expiration.....	46	Deleted: 58
21.5	Removal of Rollingstock following termination	46	Deleted: 56
22	ASSIGNMENT.....	47	Deleted: 58
22.1	Assignment by <u>Queensland Rail</u>	47	Deleted: 56
22.2	Assignment by the Operator.....	47	Deleted: 58

22.3 Charging..... 47

23 RELATIONSHIP WITH END USER ACCESS AGREEMENTS..... 48

23.1 Disputes..... 48

23.2 Notice to an Operator 48

24 GENERAL..... 49

24.1 Variation/Amendment 49

24.2 Confidentiality 49

24.3 Intellectual Property 49

24.4 Entire Agreement 49

24.5 Non-merger 49

24.6 Authority to enter into Agreement 49

24.7 Interpretation not to disadvantage a Party 50

24.8 Relationship 50

24.9 Notices 50

24.10 Certificate..... 50

24.11 Costs..... 51

24.12 Stamp Duty 51

24.13 Waiver and Exercise of Rights..... 51

24.14 Computation of Time 51

24.15 Severance of invalid or illegal terms 51

24.16 Rights Cumulative..... 51

24.17 Approvals and Consents..... 51

24.18 Ownership of Land..... 51

24.19 Implementation of Agreement 52

24.20 Schedules 52

24.21 Governing Law and Jurisdiction 52

24.22 Most Favoured Nation Status 52

SCHEDULES

SCHEDULE 1 TRAIN SERVICE ENTITLEMENTS 55

SCHEDULE 2 NOMINATED NETWORK..... 57

SCHEDULE 3 CALCULATION OF ACCESS AND OTHER CHARGES 58

SCHEDULE 4 AUTHORISED ROLLINGSTOCK AND ROLLINGSTOCK CONFIGURATIONS 63

SCHEDULE 5 PERFORMANCE LEVELS 64

SCHEDULE 6 SAFeworking PROCEDURES, SAFETY STANDARDS, EMERGENCY PROCEDURES & ENVIRONMENTAL STANDARDS..... 65

SCHEDULE 7 INSURANCE..... 66

SCHEDULE 8 AURIZON NETWORK'S INVESTIGATION PROCEDURES 67

SCHEDULE 9 ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT REPORT & INTERFACE RISK MANAGEMENT PLAN..... 69

SCHEDULE 10 INTERFACE COORDINATION PLAN 70

Deleted: 65
Deleted: 62
Deleted: 65
Deleted: 62
Deleted: 65
Deleted: 62
Deleted: 66
Deleted: 63
Deleted: 66
Deleted: 63
Deleted: 66
Deleted: 63
Deleted: 66
Deleted: 63
Deleted: 67
Deleted: 64
Deleted: 67
Deleted: 64
Deleted: 67
Deleted: 64
Deleted: 67
Deleted: 64
Deleted: 67
Deleted: 64
Deleted: 67
Deleted: 64
Deleted: 67
Deleted: 64
Deleted: 68
Deleted: 65
Deleted: 68
Deleted: 65
Deleted: 68
Deleted: 65
Deleted: 68
Deleted: 65
Deleted: 69
Deleted: 66
Deleted: 69
Deleted: 66
Deleted: 69
Deleted: 66
Deleted: 69
Deleted: 66
Deleted: 69
Deleted: 66
Deleted: 69
Deleted: 66
Deleted: 69
Deleted: 67
Deleted: 70
Deleted: 67

SCHEDULE 11	ANCILLARY SERVICES AND OTHER CHARGES	73	Deleted: 106
SCHEDULE 12	CONFIDENTIALITY DEED	74	Deleted: 102
SCHEDULE 13	PRO FORMA SECURITY	75	Deleted: 107
			Deleted: 103
			Deleted: 108
			Deleted: 104

GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract form part of the Agreement dated the _____ day of _____ 20 ____ made between Queensland Rail and the Operator.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless inconsistent with the context, the following words and expressions shall have the respective following meanings:

“Access Charges” means the charges determined in accordance with

[where End User is paying all Access Charges] Schedule 3 of the End User Access Agreement payable to Queensland Rail for the Access Rights and any interest payable in relation to such charges pursuant to that agreement;

[where End User is only paying TOP Charges] **Schedule 3** payable to Queensland Rail by the Operator for the Operational Rights and any interest payable in relation to such charges pursuant to this Agreement;

“Access Rights”, in relation to the End User, has the meaning given to that term under the End User Access Agreement;

“Accreditation” means accreditation in accordance with Part 5 of the *Transport (Rail Safety) Act 2010* (Qld) and “Accredited” means to have Accreditation;

“Agreement” or “this Agreement” means the Agreement, Reference Schedule and General Conditions of Contract between Queensland Rail and the Operator and includes all annexures, Schedules and exhibits to this Agreement;

“Allowable Threshold” means [a % agreed between the Parties] of the total number of Train Services scheduled for a Billing Period;

“Ancillary Services” means those services (if any) in addition to Operational Rights which Queensland Rail has agreed to supply to the Operator and which are set out in Schedule 11;

“Assign” means to assign, novate, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber, and “Assignment” and “Assignee” shall have comparable meanings;

“Authority” means the Crown, a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such that lawfully exercise jurisdiction over Queensland Rail (but excluding any holding company of Queensland Rail);

“Average Below Rail Transit Time Factor” means for each group of Train Services referred to in Table 1.4 of Schedule 1, the sum of all actual Below Rail Transit Times for all Train Services operated divided by the sum of the Sectional Running Times for all of those relevant Train Services in the relevant year;

[delete definition where End User is paying all Access Charges] “Base Access Charges” means the Base Access Charges specified in Schedule 3 and incorporates the elements thereof;

“Below Rail Transit Time” means, for the relevant Train Service travelling from Origin to Destination or from Destination to Origin, the sum of:

- (i) the relevant Sectional Running Times;
- (ii) delays to the Train Service from its scheduled Train path in the DTP, where that delay can be attributed directly to Queensland Rail but excluding:
 - (A) cancellations;
 - (B) delays resulting from compliance with a Passenger Priority Obligation; and
 - (C) delays resulting from a Force Majeure Event;
- (iii) the time taken in crossing other Trains (to the extent that such time is not contributed to by a Railway Operator or Force Majeure Events and is not otherwise included in paragraph (i) of this definition); and
- (iv) delays due to Operational Constraints directly caused by the activities of Queensland Rail in maintaining the Network or due to a fault or deficiency in the Network provided such delays are not contributed to by a Railway Operator or Force Majeure Events and are not otherwise included in paragraph (ii) or (iii) of this definition;

- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 1111
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Formatted: Font: Bold
- Deleted: Schedule 11
- Deleted: “Aurizon Network Cause” means where Aurizon Network is unable to make Infrastructure available for the operation of Train services in accordance with a Railway Operator’s access rights under an access agreement for the operation of Train services on the Infrastructure, as a result of:¶
(i) Planned Possessions, Emergency Possessions or Urgent Possessions; ¶
(ii) a Force Majeure Event; or¶
(iii) any other action by Aurizon Network which directly resulted in the Infrastructure not being so available, ¶
provided that the above reasons are not in any way attributable to a Railway Operator; ¶
“Aurizon Network Commander” means a member of Aurizon Network’s Staff who has been delegated responsibility for the direction and coordination of Aurizon Network’s and the Operator’s resources in the performance of their respective roles and tasks at the site of an Incident, ...
- Formatted: Not Highlight
- Formatted: Not Highlight
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: 1.4
- Deleted: 1.4
- Formatted: Font: Bold
- Formatted
- Deleted: Schedule 1
- Formatted: Font: Bold
- Deleted: Schedule 1
- Formatted: Not Highlight
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 3
- Deleted: Schedule 3
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Infrastructure
- Deleted: Infrastructure
- Formatted: Font: 6 pt

“**Billing Period**” means the period of a Month;

“**Board of Inquiry**” means a board of inquiry established under the *Transport (Rail Safety) Act 2010 Act* (Qld);

“**Business Day**” means a day which is not a Saturday, Sunday or bank, special or public holiday in Brisbane or, if and to the extent that this Agreement expressly refers to another place, in that other place;

“**Change in Control**” means:

- (a) a change in the entity that controls the End User;
- (b) an entity that controls the End User ceases to control the End User;
- (c) if the End User is not controlled, another entity acquires control of the End User, except where:
 - (d) the End User is listed on the Australian Securities Exchange before, and remains listed after, the relevant change;
 - (e) the relevant change relates directly to the initial listing of the Operator on the Australian Securities Exchange; or
 - (f) for paragraphs (a) and (b), the ultimate holding company of the Operator remains the same following the relevant change.

For the purposes of this definition “control”, “controls”, “controlled” and “ultimate holding company” have the meaning given to those terms in the Corporations Act.

[delete definition where End User is paying all Access Charges] “**Change in Law**” means:

- (a) any amendment, repeal, modification or enactment of any Law;
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority;
- (c) the making of any new directive, or any change in an existing directive, of any Authority;
- (d) the imposition of a requirement for authorisations not required as at the date of this Agreement;
- (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or
- (f) any such authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation;

[delete definition where End User is paying all Access Charges] “**Change in Relevant Taxes**” means:

- (a) the imposition of a new Relevant Tax;
- (b) an increase in the rate of a Relevant Tax; or
- (c) a change in the basis of calculation of a Relevant Tax;

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

“**Commencement Date**” means the date of execution of this Agreement as specified in Item 2 of the Reference Schedule;

“**Commitment Date**” means, in respect of any Operational Rights, the date on which those Operational Rights will be available to the Operator as specified in Schedule 1;

“**Consequential Loss**” means, subject to paragraph (v) and (vi) below:

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

but **Consequential Loss** does not include:

- (v) a loss (including a loss arising out of a Claim by a Third Party) in respect of:

Deleted: “Central Queensland Coal Region” means the rail corridors:¶
 <#>from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine, Hail Creek mine and the junction with the Gladstone to Gregory mine corridor;¶
 <#>from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory, Rolleston and Minerva mines;¶
 <#>from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine and the loading facility for Baralaba mine in the vicinity of Moura mine;¶
 <#>from the port of Abbot Point to Newlands mine; and¶
 (e) all branch lines directly connecting coal mine loading facilities to the abovementioned corridors.¶

Formatted: Font: Italic

Deleted: Schedule 1

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 1

Formatted: Font: Bold, Not All caps

Formatted: Font: Bold

Formatted: Font: 6 pt

- (A) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or
- (B) personal injury to or death of any person; or
- (vi) in respect of any personal injury claim, special loss or economic loss as those terms are used in the context of personal injury claims;

“**Contaminating Material**” means any material, substance, gas, liquid, chemical, biological substance, mineral or other physical matter which is toxic, flammable or inflammable, harmful to the environment (including any life form) or may cause pollution, contamination or otherwise cause damage;

“**Corporation**” has the meaning assigned to it by the Corporations Act;

“**Corporations Act**” means the *Corporations Act 2001* (Cwth);

“**Daily Train Plan**” or “**DTP**” means that document detailing the scheduled times for all Train services operating on the Network and any Planned Possessions, Urgent Possessions and Emergency Possessions on a particular day on a specified part of the Network;

“**Dangerous Goods**” means any substance or article prescribed as Dangerous Goods under the Dangerous Goods Code;

“**Dangerous Goods Code**” means the following codes prepared by the Federal Office of Road Safety of the Commonwealth Department of Transport and Communications as amended or varied from time to time or any other codes developed to replace or supplement them:

- (a) the Australian Code for the Transport of Dangerous Goods by Road and Rail;
- (b) the Australian Code for the Transport of Explosives by Road and Rail; and
- (c) the Code of Practice for the Safe Transport of Radioactive Material;

“**Default Rate**” means the Commonwealth Bank of Australia’s reference rate being the “Reference Rate” quoted by the Commonwealth Bank of Australia (or any successor bank) for borrowers with overdrafts of \$100,000 or more on any relevant date as published in the Australian Financial Review (or in the event that such a rate is not so quoted or published at or in respect of any relevant date, such other similar rate to the “Reference Rate” specified by a major commercial bank agreed between the Parties) plus 2%;

“**Destination**” means the destination or destinations described in Schedule 1;

“**Discount Rate**” means the allowable rate of return utilised in the determination of Reference Tariffs from time to time;

“**Emergency Possession**” is similar to a Planned Possession except that this possession is required to rectify a serious fault with the Network that is considered dangerous to either a Railway Operator’s and/or Queensland Rail’s Staff, or where severe speed restrictions have been imposed affecting the scheduled Train services of Railway Operators. Such possession must be carried out less than seven (7) days from the detection of the problem;

“**End User**” means [insert], being a party to the End User Access Agreement which nominated the Operator in respect of the utilisation of all or part of that person’s Access Rights;

“**End User Access Agreement**” means the agreement between Queensland Rail and the End User, who is a party to a rail haulage agreement with the Operator, granting rights to that person for the non- exclusive utilisation of a specified section of the Nominated Network for the purposes of operating Train Services but where that person cannot directly use those rights and can only receive the benefit of the use of those rights indirectly by nominating an Accredited Railway Operator in respect of those rights (provided that agreement has scheduled or annexed to it a pro forma agreement for use with any Accredited Railway Operators who the End User may so nominate and which, in Queensland Rail’s opinion (acting reasonably), is on substantially the same terms as this Agreement);

“**Enhancement**” means the improvement, upgrading or other variation of the whole or any part of the Network which affects the capabilities of the Network and any major replacement programme for elements of the Network;

“**Environmental Harm**” means serious or material environmental harm or environmental nuisance as defined in the *Environmental Protection Act 1994* (Qld);

“**Environmental Investigation and Risk Management Report**” means the environmental investigation and risk management report referred to in the ORM and included in Part 1 of Schedule 2;

Deleted: Infrastructure

Deleted: Infrastructure

Formatted: Not Highlight

Deleted: Schedule 1

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 1

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Infrastructure

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Infrastructure

Deleted: Infrastructure

Deleted: Infrastructure

Deleted: “Environmental Authorities” means:

Deleted: ¶
<#>a development approval or registration certificate for a chapter 4 activity or an environmental authority, as those terms are defined under the *Environmental Protection Act 1994* (Qld); or¶
<#>any authority which has effect under section 619 of the *Environmental Protection Act 1994* (Qld);¶

Deleted: Clause 9.1(a)

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 99

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Formatted: Font: Bold

Deleted: Schedule 9

Deleted: ¶
“**Environmental Laws**” means all planning, environmental, health, toxic, contaminating materials and dangerous goods, waste disposal or pollution laws, environmental protection policies, guidelines, regulations and relevant approved codes of practice and the conditions of all licences, notices, directions, approvals, consents, permissions or permits issued thereunder or amended from time to time;

Deleted: “**Environmental Management System**” means an environmental management system or plan of management to address all environmental risks and to ensure compliance with all Environmental Laws and licences;

Formatted: Font: 6 pt

“**Environmental Protection Agency**” means the State department administering the *Environmental Protection Act 1994* (Qld);

[delete definition where End User is paying all Access Charges] “**Escalation Date**” means the dates on which the Access Charges and other charges payable by the Operator to Queensland Rail under this Agreement are to be escalated in accordance with Schedule 3;

[delete definition where End User is paying all Access Charges] “**First Escalation Date**” means the Escalation Date (if any) identified as the First Escalation Date in Clause 1.2 of Schedule 3 for each Train Service type;

“**Force Majeure Event**” means any cause, event or circumstance or combination of causes, events or circumstances which:

- (a) is beyond the reasonable control of the affected Party; and
- (b) by the exercise of due diligence the affected Party was not reasonably able to prevent or is not reasonably able to overcome,

and includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that requirement, order, demand or direction results from any act or omission of the affected Party;
- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the Parties are a party to industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) act of God;
- (f) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (h) malicious damage or sabotage;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (j) failure of electricity supply from the electricity grid;
- (k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (l) fire, flood, earthquake, washaway, landslide, explosion or other catastrophe, epidemic and quarantine restriction; and
- (m) delay of a supplier due to any of the foregoing whether any such cause of delay exists before, at the time, or after the date of this Agreement;

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

“**GST**” has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cwth);

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

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

Where:

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

“**Incident**” means any Network Incident involving the activities of the Operator;

“**Network Service Providers**” means those parties who provide maintenance, construction and other related services in respect of the Network;

“**Insolvency Event**” means the happening of any of the following events in relation to a Party:

- Deleted: Aurizon Network
- Deleted: Schedule 3
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 3
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: 1.2
- Deleted: 1.2
- Deleted: Schedule 3
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 3
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps

- Deleted: “**Infrastructure**” means all rail transport infrastructure (as defined in the Transport Infrastructure Act) for which Aurizon Network is the owner, lessee, or operator, the use of which is declared, pursuant to section 250(1)(a) of the Queensland Competition Authority Act 1997 (Qld) for the purposes of Part 5 of the Queensland Competition Authority Act 1997 (Qld);¶
- Deleted: Infrastructure
- Deleted: Infrastructure
- Formatted: Font: 6 pt

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within fourteen (14) days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within one Month;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within fourteen (14) days after it is made; or
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

“Interface Risk Assessment” means an assessment that identifies and evaluates the Interface Risks within a risk management framework and which will identify all reasonably foreseeable hazards related to the Interface Risks, assess the risks of such hazards occurring and the implications of such hazards occurring as well as nominating suitable control mechanisms to manage the Interface Risks;

“Interface Risk Management Plan” means an interface risk management plan identifying the Interface Risks associated with the Operator’s proposed operations and outlining both the control mechanisms agreed between Queensland Rail and an Operator to ensure those Interface Risks are managed to an acceptable level, and the parties responsible for implementing those controls and ensuring they remain effective and, once agreed or determined in accordance with the process outlined in the ORM, that interface risk management plan is included in Part 2 of Schedule 9;

“Interface Risks” means all the risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Operator’s operations and:

- (i) the Network;
- (ii) existing operations on the Network, (including other Train services); and
- (iii) Queensland Rail’s Staff, other Railway Operators’ staff (including employees, contractors, invitees and agents of another Railway Operator and any other person under the control or supervision of another Railway Operator) or Queensland Rail’s or other Railway Operators’ interfaces with members of the public;

“Investigation” means an investigation conducted in accordance with Schedule 8;

“Land” means the land on which the Nominated Network is situated and which is:

- (a) land owned or controlled by Queensland Rail; or
- (b) land in respect of which entry is required to be given by Queensland Rail as part of the definition of “Access” in Queensland Rail’s Access Undertaking (as that provision is amended, varied or replaced from time to time);

“Landowner” has the meaning given to that term in Clause 19.18;

“Law” or **“Laws”** includes:

- (a) the provisions of any statute, rule, regulation, code, proclamation, ordinance or by-law, present or future, whether State, Commonwealth or otherwise; and
- (b) any requirement, condition, notice, consent, accreditation, order or direction or similar thing of any statutory, public or other competent authority (including the State in any of its regulatory capacities), present or future, given or imposed pursuant to anything specified in paragraph (a) of this definition;

[Delete definition where End User is paying all Access Charges] **“Like Train Service”** has the meaning given in clause 19.22(a)(i);

“Load Variation Table” means a table published by Queensland Rail in respect to the relevant Reference Train Service or Train Service type identifying allowable overloads for Wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads;

“Major Periodic Maintenance” means activities that renovate the Network to retain it in a functional condition. It is completed on Track sections at intervals of more than one year and includes activities such as re-railing, rail grinding, resurfacing, re-signalling, communications upgrades, renovating structures, ballast cleaning and re-sleeping;

- Deleted:** “Interface Coordination Plan” means the plan detailed in Schedule 10 as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party, in respect of all regular operational interfaces between the Parties that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Agreement other than those specified in the Network Management Principles;
- Formatted:** Not Highlight
- Deleted:** ¶
- Formatted:** Font: Italic
- Deleted:** Aurizon Network
- Deleted:** Clause 12
- Formatted:** Font: Bold
- Formatted:** Font: Bold, Not All caps
- Deleted:** Schedule 99
- Formatted:** Font: Bold
- Formatted:** Font: Bold, Not All caps
- Formatted:** Font: Bold
- Deleted:** Schedule 9
- Deleted:** Infrastructure
- Deleted:** Infrastructure
- Deleted:** Aurizon Network’s
- Deleted:** Aurizon Network’s
- Deleted:** “Intermediate Train Plan” or “ITP” means a plan that details the scheduled times for all Train services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Infrastructure on each day of the relevant period;¶
- Formatted:** Font: Bold
- Formatted:** Font: Bold, Not All caps
- Deleted:** Schedule 88
- Formatted:** Font: Bold
- Formatted:** Font: Bold, Not All caps
- Formatted:** Font: Bold
- Deleted:** Schedule 8
- Deleted:**
- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** 19.18
- Deleted:** 24.18
- Deleted:** 19.22(a)(i)
- Deleted:** 24.22(a)(i)
- Deleted:** Aurizon Network
- Deleted:** Infrastructure
- Formatted:** Font: 6 pt

“Maintenance Work” means any work involving repairs to, renewal, replacement and associated alterations or removal of, the whole or any part of the Network (other than Enhancements) and includes any inspections or investigations of the Network;

“Master Train Plan” or “MTP” means that document detailing the scheduled times as advised by Queensland Rail from time to time for all Train services and any Planned Possessions on a specified part of the Network (where such scheduled times remain unchanged from week to week);

[delete definition where End User is paying all Access Charges] “Material Change” has the meaning given to that term in Clause 12.1(a);

“Maximum Allowable Gross Tonnage” means the maximum allowable gross tonnage for a Wagon, Wagon bogie or Train as specified in Schedule 4;

“Maximum Desirable Gross Tonnage” means the maximum desirable gross tonnage for a Wagon as specified in Schedule 4;

“Month” means calendar month and “Monthly” has a corresponding meaning;

“Network” means the rail transport infrastructure (as defined in the TIA) the use of which is taken pursuant to section 250(1)(b) of the QCA Act, to be a service declared under Part 5, Division 2 of the QCA Act (but excluding any rail transport infrastructure (as defined in the TIA) use of which is referred to in section 249(2) of the QCA Act).

“Network Management Principles” means the principles for the provision of Train Control and scheduling as specified in Schedule B to Queensland Rail’s Access Undertaking;

“Nominated Annual Train Services” means the number of Train Services that the Operator is entitled to operate during any one (1) year for each Train Service type as specified in Schedule 1 or as varied in accordance with this Agreement;

“Nominated Monthly Train Services” means the number of Train Services that the Operator is entitled to operate during any one (1) month period for each Train Service type as specified in Schedule 1 or as varied in accordance with this Agreement;

“Nominated Network” means that part of the Network detailed in Part 1 of Schedule 2;

“Nominated Weekly Train Services” means the number of Train Services that the Operator is entitled to operate during any one (1) week period as specified in Schedule 1 or as varied in accordance with this Agreement;

“Obstruction” means any circumstance relating to the whole or any part of the Network or private siding, including debris or other objects on the Network, which has the potential to cause a disruption to or cancellation by Queensland Rail of Train services or Train Movements and includes any Network Incident but does not include an Operational Constraint imposed by Queensland Rail;

“One Way Train Service” means a Train Service operating in one direction only on the Nominated Network either from Origin to Destination or from Destination to Origin as the case may be;

“Operational Constraint” means any restriction on the use of any part of the Network which impacts adversely on Train Services, including but not limited to speed restrictions, load restrictions, Planned Possessions, Emergency Possessions, Urgent Possessions or signalling or overhead restrictions;

“Operational Rights” means the rights of access to the Nominated Network granted pursuant to this Agreement;

“Operator” means the party specified in Item 1 of the Reference Schedule, its successors and permitted assigns;

“Operator Performance Level” means the Operator Performance Level specified in Part 1 of Schedule 5;

“Operator’s Controller” means the person for the time being nominated in that position pursuant to Schedule 10;

“Operator’s Emergency Response Plan” means the plan as defined in the ORM;

“Operator’s Incident Response Coordinator” means the person appointed pursuant to Schedule 10;

“Operator’s Recovery Team Leader” means the person appointed pursuant to Schedule 10;

- Deleted: Infrastructure...etwork (othe...
- Deleted: Aurizon Network...ueenslan...
- Deleted: 12.1(a)
- Deleted: 17.1(a)
- Deleted: “Material Environmental ...
- Formatted ...
- Formatted ...
- Deleted: Schedule 4
- Formatted ...
- Deleted: Schedule 4
- Formatted ...
- Formatted ...
- Deleted: Schedule 4
- Deleted: Schedule 4
- Formatted ...
- Deleted: “Network Incident” means ...
- Deleted: Part 1 of Schedule 10;
- Deleted: “Noise Planning Levels” me...
- Formatted ...
- Deleted: Schedule 1
- Formatted ...
- Deleted: Schedule 1
- Formatted ...
- Deleted: Schedule 1
- Formatted ...
- Deleted: Schedule 1
- Deleted: Infrastructure
- Formatted ...
- Deleted: Schedule 2
- Deleted: Schedule 2
- Formatted ...
- Formatted ...
- Deleted: Schedule 1
- Formatted ...
- Deleted: Schedule 1
- Deleted: Infrastructure ...etwork or
- Deleted: Infrastructure
- Formatted ...
- Deleted: Schedule 5
- Formatted ...
- Deleted: Schedule 5
- Formatted ...
- Deleted: Schedule 1010
- Formatted ...
- Deleted: Schedule 10
- Deleted: Clause 8.1(a)
- Deleted: paragraph 4.1 of Part 4 of
- Formatted ...
- Deleted: Schedule 1010
- Formatted ...
- Deleted: Schedule 10
- Deleted: “Operator’s Proposal” has ...
- Deleted: paragraph 4.2 of Part 4 of
- Formatted ...
- Deleted: Schedule 1010
- Formatted ...
- Formatted ...

“Operator’s Representative” means the person for the time being appointed pursuant to Schedule 10;

Deleted: paragraph 3.2 of Part 3 of

“Operating Requirements Manual” or “ORM” means the document entitled “Operating Requirements Manual” as last submitted by Queensland Rail to the QCA on or prior to the Approval Date, as amended from time to time in accordance with the Queensland Rail Access Undertaking.

Formatted: Font: Bold

Deleted: Schedule 1010

Formatted: Font: Bold

“Operator’s Safety Management System” means the system referred to in the ORM;

Formatted: Font: Bold

Deleted: Schedule 10

“Operator’s Staff” means employees, contractors, volunteers and agents of the Operator and any other person under the control or supervision of the Operator who is involved in any activity associated with the Train Services;

Deleted: Clause 12(a)(iii)

“Origin” means the origin or origins described in Schedule 1;

Formatted: Font: Bold

“Other Dwell Times” means, for any other designated activity, the time period from when a Train Service arrives at a specified point until it has completed all relevant activities, is ready to depart from that point and has advised the relevant Queensland Rail Train Controller accordingly;

Formatted: Font: Bold, Not All caps

Deleted: Schedule 1

Formatted: Font: Bold

“Overload Charge” means the charge determined in accordance with Part 6 of Schedule 3;

Formatted: Font: Bold, Not All caps

“Overload Detector” means a weighing mechanism other than a Weighbridge agreed upon for use by the Parties and specified in Part 6B of Schedule 2;

Deleted: Schedule 1

“Party” means a party to this Agreement and “Parties” means the parties to this Agreement;

Deleted: Aurizon Network

“Passenger Priority Obligations” means the obligations of a Rail Transport Operator pursuant to sections 265 and 266 of the Transport Network Act;

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

“Performance Levels” means the Queensland Rail Performance Level and the Operator Performance Level;

Deleted: Schedule 3

“Planned Dwell Times” means any of Time at Mine, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule;

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

“Planned Possession” means the temporary closure and/or occupation by Queensland Rail of a part of the Network including, but not limited to, closure of Track or isolation of any electrical overhead traction system for the purpose of carrying out Maintenance Work, Enhancement or other work on or in the proximity of the Network which may affect the safety of any person or property where such closure, occupation or isolation is entered into the MTP and adversely impacts upon the operation of Train services;

Deleted: Schedule 3

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

“Possession Protocols” means the protocols developed and advised by Queensland Rail from time to time (as varied in accordance with the ORM) for managing and scheduling track possessions of the Infrastructure;

Deleted: Schedule 2

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

“Private Facilities” means sidings, loading and unloading facilities and any other facilities of any kind which are required by the Operator to operate the Train Services and which do not form part of the Nominated Network;

Deleted: Schedule 2

Deleted: Infrastructure

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Infrastructure

“Private Facilities Agreement” has the meaning given to that term in Clause 5.8;

Deleted: Infrastructure

“Quarter” means each period of three (3) consecutive Months commencing 1 January, 1 April, 1 July or 1 October in each year, and “Quarterly” has a corresponding meaning;

Deleted: Aurizon Network

Deleted: this Agreement

“Queensland Competition Authority” or “QCA” means the authority established under the Queensland Competition Authority Act 1997 (Qld);

Deleted: 5.8

“Queensland Rail Cause” means where Queensland Rail is unable to make Network available for the operation of Train services in accordance with a Railway Operator’s access rights under an access agreement for the operation of Train services on the Network, as a result of:

Deleted: 6.11

(i) Planned Possessions, Emergency Possessions or Urgent Possessions;

(ii) a Force Majeure Event; or

(iii) any other action by Queensland Rail which directly resulted in the Network not being so available.

provided that the above reasons are not in any way attributable to a Railway Operator;

“Queensland Rail Commander” means a member of Queensland Rail’s Staff who has been delegated responsibility for the direction and coordination of Queensland Rail’s and the Operator’s resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with external agencies;

“Queensland Rail Emergency Procedures” means the procedures developed and advised by Queensland Rail from time to time (as varied by Queensland Rail in accordance with this

Formatted: Font: 6 pt

Agreement) for dealing with a Network Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;

“Queensland Rail Performance Level” means the Queensland Rail Performance Level specified in Part 1 of Schedule 5;

Formatted: Not Highlight

“Queensland Rail Representative” means the Queensland Rail officer specified in SCHEDULE 10;

Formatted: All caps

Deleted: Schedule 1010

“Queensland Rail Train Control Direction” means any instruction or direction (whether given orally or in writing, by means of signal or other similar device) issued by Queensland Rail or on behalf of Queensland Rail relating to Train Movements;

Formatted: All caps

Deleted: Schedule 9Schedule 10

“Queensland Rail Train Controller” means the person nominated by Queensland Rail as the supervisor of Train Movements on the relevant part of the Nominated Network and whose details are specified in Schedule 10;

Formatted: Font: Not Bold, All caps

Formatted: All caps

Formatted: Font: Not Bold, All caps

Formatted: Font: Not Bold, All caps

“Queensland Rail’s Access Undertaking” means the access undertaking submitted by Queensland Rail to the Queensland Competition Authority and approved by the Queensland Competition Authority under the Queensland Competition Authority Act 1997 (Qld) from time to time;

Formatted: Not Highlight

Formatted: Not Highlight

Field Code Changed

Deleted: Schedule 1010

Formatted: Font: Bold

“Queensland Rail’s Staff” means the employees, contractors and agents of Queensland Rail and any other person under the control or supervision of Queensland Rail involved in the provision of Operational Rights;

Deleted: “Queensland Rail’s Right of Way” means the strip of property on which earthworks, traction wiring equipment, tunnels, bridges, fences and track are constructed for the operation of Rollingstock. Where the at grade boundaries for the Right of Way are not readily identifiable they will be regarded as being at least ten (10) metres from the centre line of the track;

Deleted: “Rail Safety Accreditation Unit” or “RSAU” means the Rail Safety Accreditation Unit of the Department of Transport and Main Roads for the State;

Deleted: ¶

“Rail Transport Operator” has the meaning given to that term in the Transport (Rail Safety) Act 2010 (Qld);

“Railway Operator” means, as the context allows:

(a) any party that holds rights of access to all or any part of the Network, whether or not that party is an Accredited railway operator; and

(b) any Accredited rail transport operator;

and including, but not limited to, the Operator;

“Recovery” means action to be taken in respect of any derailed, malfunctioning or immobilised Rollingstock for which the Operator is responsible to enable prompt recommencement of Train Movements, including the subsequent retrieval of any such Rollingstock;

“Reference Tariff” means an access charge applicable to a specified Reference Train Service over a specified part of the Network as specified in Queensland Rail’s Access Undertaking;

Deleted: Infrastructure

Deleted: (including any system premium)

“Reference Tariff Schedule” means the schedule attached to Queensland Rail’s Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service;

Deleted: Infrastructure

Deleted: Aurizon Network

“Reference Train Service” means a notional Train service identified in respect of a Reference Tariff and conforming to certain criteria, including carrying a specified commodity type, operating between specified geographical areas and conforming to specified technical characteristics, operational characteristics and contract terms and conditions;

Deleted: Aurizon Network

“Reimbursable Item” means an item of expense incurred by either Party in respect of which that Party is entitled under this Agreement to be reimbursed by the other Party;

“Related Body Corporate” has the meaning given to that term in the Corporations Act;

[delete definition where End User is paying all Access Charges] **“Relevant Escalation Date”** means the Escalation Date occurring immediately prior to the last day of the Billing Period for which the invoice for the Access Charges payable in respect of that Billing Period is being prepared;

“Relevant Rollingstock” means any Rollingstock of the Operator with a minimum value of ONE MILLION DOLLARS (\$1,000,000) and which has been nominated as Relevant Rollingstock in Part 3 of Schedule 4;

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

[delete definition where End User is paying all Access Charges] **“Relevant Tax”** means any tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on Queensland Rail by, or payable by Queensland Rail to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes;

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

“Removal Expert” means the person for the time being holding the position of Safety Regulator or such other person as agreed between the Parties;

Deleted: Aurizon Network

Deleted: Aurizon Network

“Restoration” means the removal of any Obstruction, the rectification of any Incident and the prompt recommencement of Train Movements including all requisite repairs to the Network but does not include Recovery;

Deleted: Infrastructure

Formatted: Font: 6 pt

[delete definition where End User is paying all Access Charges] **“Review Date”** means the date determined as the Review Date pursuant to Clause 3.1.2 of [Schedule 3](#);

“Rollingstock” means locomotives, carriages, Wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicles which operate on or use a Track and where used in respect of the Operator’s Rollingstock includes Rollingstock which is owned, hired or leased by the Operator, supplied by a contractor of the Operator or is otherwise in the possession or control of the Operator;

“Rollingstock Configuration” means the description of the combinations of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

“Rollingstock Interface Standards” means the minimum standards relating to the interface between Rollingstock and the [Network](#) with which the Rollingstock and Rollingstock Configurations must comply in order for them to be able to be operated on the relevant parts of the [Network](#) agreed pursuant to the [ORM](#);

(c)

“Safety Standards” means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or [Queensland Rail](#) policies as specified in [the ORM](#) or as varied in accordance with [the ORM](#), and all standards relating to safety, including occupational health and safety, prescribed by any Laws; **“Safeworking Procedures”** means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the [Network](#) as specified in [the ORM](#), or as varied in accordance with [the ORM](#); **“Schedule”** means a schedule to this Agreement and any other schedule which amends, replaces or substitutes a schedule to this Agreement issued from time to time by [Queensland Rail](#) pursuant to Clause [19.20](#);

“Scheduled Time” means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as detailed in the Train Schedule or as amended or altered by [Queensland Rail](#) from time to time on the day of operation pursuant to the Network Management Principles provided that such amendments or alterations do not result in a notice for cancellation by the Operator pursuant to Clause [5.3\(d\)](#);

“Sectional Running Times” means the time period measured from the time a Train Service passes the signal controlling entry into a track section between two relevant specified locations on the Nominated Network to the time the Train Service arrives at the signal controlling entry into the next track section between two relevant specified locations on the Nominated Network, and does not include an allowance for Planned Dwell Times;

“Security Amount” means an amount equal to:

- (a) initially, the amount specified in Item 5 of the Reference Schedule; and
- (b) thereafter, as increased or decreased in accordance with Clause 2.4;

“Security” has the meaning given to that term in Clause 2.4(a);

“Security Interest Rate” means the “Cash Rate: average 11am rate” as published in the Australian Financial Review (or in the event that such a rate is not so quoted or published at or in respect of any relevant date, such other similar rate included in another publication agreed between the Parties) less 0.5%;

“Serious Environmental Harm” means serious environmental harm as defined in the *Environmental Protection Act 1994* (Qld);

“State” means the State of Queensland;

“Stowage” means the short-term storage of Trains on the Nominated Network at locations specified by [Queensland Rail](#) but does not include storage of individual items of Rollingstock or the long-term storage of Trains;

“Tax Invoice” has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth);

“Term” means the term of this Agreement, commencing on the Commencement Date and ending on the Termination Date;

“Termination Date” means the date upon which this Agreement is terminated pursuant to the provisions of this Agreement;

“Third Party” means a person other than the Operator or [Queensland Rail](#);

- Formatted: Font: Bold
- Deleted: Schedule 3
- Formatted: Font: Bold, Not All caps
- Formatted: Font: Bold
- Deleted: Schedule 3
- Formatted: Font: Bold, Not All caps
- Deleted: Infrastructure
- Deleted: Infrastructure
- Deleted: as part of the
- Deleted: Interface Risk Assessment and included in the Interface Risk Management Plan;
- Deleted: “Safety Regulator” means the Chief Executive of the Department of Transport and Main Roads (or his or her delegate) operating in accordance with the *Transport (Rail Safety) Act 2010* (Qld);
- Deleted: ¶
- Deleted: “Safety Related Work” means safety activity in one or more of the following: ¶ <#>driving and operation of Trains;¶ <#>control of the movement of Trains;¶ <#>the design, construction, repair, maintenance, upgrading, inspection and/or testing of Track, Rollingstock, civil and electric traction infrastructure, Signalling and/or Telecommunications Equipment; and¶ any other duties prescribed by Aurizon Network as safety related work;
- Deleted: Aurizon Network
- Deleted: Schedule 6
- Deleted: Clause 6.10 of this Agreement
- Deleted: ;
- Deleted: ¶
- Deleted: Infrastructure
- Deleted: Part 1 of Schedule 6
- Deleted: Clause 6.10 of this Agreement;
- Deleted: ¶
- Deleted: Aurizon Network
- Deleted: 19.20
- Deleted: 24.20
- Formatted: Not Highlight
- Deleted: Aurizon Network
- Formatted: Not Highlight
- Deleted: 5.3(d)
- Deleted: 6.3(d)
- Deleted: “Signalling and Telecommunications Equipment” means all electronic, electrical and other equipment, including signalling systems, safety devices and communications ...
- Deleted: ¶
- Deleted: Aurizon Network
- Deleted: “System Wide Requirement” ...
- Deleted: ¶
- Deleted: Aurizon Network
- Formatted: Font: 6 pt

“**Time at Depot**” means the period from when a Train Service arrives at the entry signal to the depot until it has completed all activities at the depot, is ready to depart the depot and has advised the relevant Queensland Rail Train Controller accordingly;

“**Time at Mine**” means the time period from when a Train Service arrives at the entry signal to the specified mine loading facility until it has completed loading, has presented at the exit signal, is ready to depart the facility and has advised the relevant Queensland Rail Train Controller accordingly;

“**Time at Unloading Facility**” means the time period from when a Train Service arrives at the entry signal to the specified unloading facility until it has completed unloading, presented at the exit signal, is ready to depart the facility and has advised the relevant Queensland Rail Train Controller accordingly;

“**Track**” means the part of the Network comprising the rail, ballast, sleepers and associated fittings;

“**Train**” means any configuration of Rollingstock operating as a unit on Track;

“**Train Control**” means the management and monitoring of all Train Movements and of all other operation of Rollingstock on the Network and of any activities affecting or potentially affecting such Train Movements or Rollingstock operation including:

- (a) recording Train running times on Train diagrams and in Queensland Rail's information systems;
- (b) reporting of Incidents occurring on the Network;
- (c) managing Incidents occurring on the Network from within a Train Control centre;
- (d) field Incident management;
- (e) yard control services; and
- (f) exchanging information with Railway Operators;

“**Train Control Contact Details**” means the contact details specified in Schedule 10, as updated from time to time which identifies the responsible officers from each Party, in respect of all regular operational interfaces between the Parties that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Agreement ;

“**Train Movement**” means the operation of a Train on the Network by the Operator, Queensland Rail or any Railway Operator;

“**Train Schedule**” means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by Queensland Rail prior to the day of operation in accordance with the NMP, showing the programmed times of arrival or departure for Train Movements at specified locations on the Network;

“**Train Service**” means the running of a Train between specified origins and destinations by the Operator (including any Stowage) in accordance with a Train Service Description;

“**Train Service Description**” means the description of a Train Service detailed in Part 1 of Schedule 1;

“**Train Service Levels**” means collectively the Nominated Weekly Train Services, the Nominated Monthly Train Services and the Nominated Annual Train Services specified in Schedule 1;

“**Transport Infrastructure Act**” means the *Transport Infrastructure Act 1994* (Qld);

“**Unloading Facilities**” means the unloading facility identified in Part 1 of Schedule 1;

“**Urgent Possession**” is similar to a Planned Possession, except that such a possession is required to correct problems that are considered potentially dangerous and as a result, the possession must be carried out between seven (7) days and three (3) Months from the detection of the problem;

“**Wagon**” means any Rollingstock designed to carry any load other than passengers;

Network, “**Weighbridge**” means a weighbridge or weightometer verified under the *National Measurement Act 1960* (Cth), as specified in Part 6A of Schedule 2;

“**West Moreton System**” means that part of the Network comprising the rail corridor from Rosewood to Miles, excluding all branch lines not directly connecting coal mine loading facilities to that rail corridor.

1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Infrastructure

Deleted: Infrastructure

Deleted: Aurizon Network

Deleted: Infrastructure

Deleted: Infrastructure

Formatted ...

Formatted ...

Formatted ...

Deleted: Schedule 1010

Formatted ...

Formatted ...

Formatted ...

Deleted: “Train List” means the

Deleted: Infrastructure

Deleted: Aurizon Network

Deleted: Aurizon Network

Formatted ...

Deleted: Interface Coordination Plan

Deleted: Infrastructure

Formatted ...

Formatted ...

Deleted: Schedule 1

Formatted ...

Formatted ...

Deleted: Schedule 1

Deleted: Schedule 1

Formatted ...

Formatted ...

Deleted: Schedule 1

Formatted ...

Formatted ...

Formatted ...

Deleted: Schedule 1

Formatted ...

Formatted ...

Deleted: Schedule 1

Formatted ...

Formatted ...

Deleted: “Weekly Train Plan” or

Deleted: on each day of the relevant

Deleted: ¶

Formatted ...

Formatted ...

Deleted: Schedule 2

Formatted ...

Formatted ...

Deleted: Schedule 2

Formatted ...

- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation or other entity, government or statutory body and conversely;
 - (ii) a person includes its legal personal representative, successors and assigns;
 - (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
 - (iv) conduct includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
 - (vii) time is to local time in Queensland;
 - (viii) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;
 - (ix) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time and notwithstanding any changes in the identity of the Parties;
 - (x) any thing (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (xi) a Clause is to a clause of the General Conditions of Contract to this Agreement;
 - (xii) a Schedule is to a schedule to this Agreement (as amended from time to time in accordance with this Agreement);
 - (xiii) any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it; and
 - (xiv) any Authority, association or body whether statutory or otherwise shall, in the event of any such Authority, association or body ceasing to exist or being re-constituted, re-named or replaced or the powers or functions thereof being transferred to any other Authority, association or body, be deemed to refer respectively to the Authority, association or body established or constituted in lieu thereof or as nearly as may be succeeding to the powers or functions thereof; and
- (e) if there is any inconsistency between matters contained in a Schedule and any other provisions of the Agreement, the other provisions of the Agreement prevail. If there is any inconsistency between matters contained in Queensland Rail's Access Undertaking and this Agreement, the provisions of this Agreement prevail.

Deleted: Aurizon Network

2 CHARGES

[If the End User Access Agreement provides for the End User to pay all Access Charges, square bracketed text should be deleted from this clause, except where noted below]

2.1 [Access] Charges

The Operator must pay to Queensland Rail:

Deleted: Aurizon Network

- (a) *[the Access Charges at the times and in the manner set out in this Agreement;]*
- (b) the charges for Ancillary Services (if any) calculated and payable in the manner set out in this Agreement;
- (c) any other charges or amounts payable in accordance with this Agreement; and
- (d) on demand and without prejudice to the rights, powers and remedies of Queensland Rail under this Agreement or otherwise at Law, interest at the Default Rate calculated on daily balances and payable daily on any amount outstanding in respect of an invoice, including any disputed amount which is subsequently determined to be payable to

Deleted: Aurizon Network

Formatted: Font: 6 pt

Queensland Rail, from the day after the invoice is due to be paid until the date that the amount outstanding is paid in full, and all interest payable but unpaid at the end of each Month shall be capitalised by Queensland Rail and such capitalised amount shall itself bear interest at the Default Rate.

Deleted: Aurizon Network

Deleted: Aurizon Network

2.2 Invoicing

Unless agreed otherwise between the Parties:

(a) Queensland Rail will provide to the Operator an invoice for [the Access Charges,] charges for Ancillary Services (if any) and any other charges or amounts payable by the Operator under this Agreement as soon as practicable after the end of each Billing Period [in which any such amount is payable]. [1st square bracketed text should be deleted where End User will pay Access Charges. 2nd square bracketed text should be deleted where Operator will pay Access Charges]

Deleted: Aurizon Network

(b) The first Billing Period will commence on the Commitment Date and end on the last day of the Month in which the Commitment Date falls, and each subsequent Billing Period during the Term will commence on the day following the last day of the immediately preceding Billing Period.

(c) Subject to Clause 2.2(d), the Operator must pay to Queensland Rail the amount of the invoice referred to in Clause 2.2(a) within fourteen (14) days after receipt of the invoice.

Deleted: Aurizon Network

(d) Where the Operator bona fide disputes an amount or amounts claimed in an invoice it shall give notice of that dispute (setting out in detail the grounds for its objection) to Queensland Rail within fourteen (14) days after receipt of the invoice. Notwithstanding the Operator's objection to any amounts claimed in an invoice, the Operator must pay to Queensland Rail the undisputed portion of the amount or amounts claimed in the relevant invoice together with 50% of the disputed portion within fourteen (14) days after receipt of the invoice.

Deleted: Aurizon Network

Deleted: Aurizon Network

(e) Any dispute as to the amount claimed in an invoice shall be resolved by an expert in accordance with Clause ~~13.3~~. Upon resolution of such dispute in accordance with Clause ~~13.3~~:

Deleted: 13.3

Deleted: 18.3

(i) the Operator must pay to Queensland Rail the amount (if any) determined to be payable by the Operator to Queensland Rail together with the interest on that amount calculated in accordance with Clause 2.1(d) within fourteen (14) days after being notified of the expert's determination; or

Deleted: 13.3

Deleted: 18.3

Deleted: Aurizon Network

(ii) Queensland Rail must credit to the Operator in the form of a deduction from the invoice for [Access Charges and other] charges for the Billing Period immediately following a resolution in accordance with Clause ~~13.3~~ any amount found to have been overpaid by the Operator together with interest on that amount at the Default Rate calculated on daily balances from the date of payment of the amount overpaid to the date of such credit. Such interest payable but unpaid at the end of each Month shall be capitalised and such capitalised amount shall itself bear interest at the Default Rate.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: 13.3

Deleted: 18.3

2.3 GST

(a) Unless otherwise stated, all amounts payable or other consideration to be provided under this Agreement are exclusive of GST.

(b) If a Party is required to pay GST on any amount payable or other consideration to be provided under this Agreement, then the other Party must pay to that Party an amount equal to the GST payable on the same date as the payment giving rise to the GST.

(c) If the supply of a Reimbursable Item under this Agreement is subject to GST, then a Party must pay the other Party in respect of that Reimbursable Item the GST Inclusive Reimbursement.

(d) Each invoice prepared pursuant to Clause 2.2(a) shall take the form of a Tax Invoice.

(e) If the amount of GST paid or payable by a Party ('the supplier') on any supply under this Agreement differs from the amount on account of GST paid by the other Party ('recipient'), because the Commissioner of Taxation lawfully adjusts the value of taxable supply for the purpose of calculating GST, then the amount paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or the supplier to the recipient, as the case requires.

Formatted: Font: 6 pt

2.4 Obligation to Provide Security

- (a) The Operator must deliver to Queensland Rail, prior to the operation of Train Services, and maintain during the Term security for the performance of the Operator's obligations under this Agreement in the form of:
- (i) an unconditional and irrevocable bank guarantee (or equivalent), for the Security Amount, in favour of Queensland Rail issued by a bank holding a current Australian banking licence and with a credit rating acceptable to Queensland Rail and in the form set out in Schedule 13 or such other form as is reasonably acceptable to Queensland Rail; or
 - (ii) any other security reasonably acceptable to Queensland Rail.
- (the "Security"). Queensland Rail shall not unreasonably withhold or delay its acceptance of any security delivered by the Operator for the purposes of this Clause 2.4(a).
- (b) Where the Operator has delivered a Security to Queensland Rail in the form of cash, Queensland Rail will pay interest to the Operator annually at the Security Interest Rate published on the day the Security is provided. The Security Interest Rate shall be reset on the first Business Day of each Month ("Reset Date") for that Month. Such interest shall be capitalised at each Reset Date and such capitalised interest shall itself bear interest at the Security Interest Rate.
- (c) The Operator may, with Queensland Rail's consent, replace any Security provided by the Operator in accordance with this Clause 2.4 with replacement Security. If the Operator replaces any existing Security with a replacement Security then Queensland Rail will release the existing Security in accordance with Clause 2.6(b).
- (d) The provision and continuance of the Security (or of any additional or replacement Security provided by the Operator in accordance with Clause 2.4(c) or Clause 2.4(f)) is a condition of the performance by Queensland Rail of its obligations under this Agreement.
- (e) If at any time during the Term the Operator is not required to give Queensland Rail a Security in accordance with this Agreement and Queensland Rail does not hold a Security from the Operator, the Operator must provide a Security within fourteen (14) days after receipt of a notice from Queensland Rail where:
- (i) an event of default by the Operator in regard to payment of any amount due under this Agreement has occurred, that event of default is not the subject of a bona fide dispute between the Parties and such default continues for seven (7) days after notice of such default from Queensland Rail; or
 - (ii) in the event of an Assignment or at any time during the Term, if Queensland Rail is reasonably of the opinion that the Operator is:
 - (A) no longer financially sound;
 - (B) no longer able to meet its debts as and when they fall due; or
 - (C) not otherwise capable of performing its obligations under this Agreement.
- (f) If at any time during the Term the Security held by Queensland Rail is less than the Security Amount (including for reasons that Queensland Rail has drawn on or applied the Security in accordance with Clause 2.5), the Operator must increase the Security by the amount determined by Queensland Rail as required to ensure that the Security is for the Security Amount, and deliver to Queensland Rail an additional or replacement Security to reflect the change within fourteen (14) days after receipt of notice from Queensland Rail.
- (g) If the Operator considers its financial circumstances have changed such that a Security would no longer be required, the Operator may request Queensland Rail in writing (but not more than once in any twelve (12) Month Period) to review the creditworthiness of the Operator and Queensland Rail will undertake such a review.
- (h) To the extent that the End User has exercised its right to provide Security on behalf of the Operator in accordance with clause 3.7 of the End User Access Agreement and the Security provided by the End User meets the requirements of this Clause 2.4, Queensland Rail agrees that provision of such Security will be treated as satisfying the Operator's obligation to provide Security pursuant to this Clause 2.4.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Formatted: Font: 6 pt

2.5 Exercise of Security

A Security may be called upon by Queensland Rail in any circumstances where Queensland Rail suffers direct loss or damage as a result of default by the Operator under this Agreement and is entitled to be compensated for such loss or damage under this Agreement.

Deleted: Aurizon Network
Deleted: Aurizon Network

2.6 Return of Security

Subject to Clause 3.7(c) of the End User Access Agreement, Queensland Rail must repay or return to the Operator (and where appropriate provide to the Operator any necessary releases in relation to) any Security provided by the Operator under Clause 2.4:

Deleted: Aurizon Network

- (a) subject to Queensland Rail's rights of recourse to the Security in Clause 2.5, promptly after the Termination Date;
- (b) on receipt of an additional or replacement Security provided by the Operator in accordance with Clause 2.4(c) or 2.4(f); or
- (c) following a review pursuant to Clause 2.4(g), Queensland Rail, acting reasonably, finds that it is not necessary for the Operator to provide Queensland Rail with a Security.

Deleted: Aurizon Network

Deleted: Aurizon Network
Deleted: Aurizon Network

3 WEIGHBRIDGES AND OVERLOAD DETECTORS

- (a) Where an operational Weighbridge or Overload Detector is located en route between Origin and Destination the Operator must use reasonable endeavours to operate its Trains over such Weighbridge or Overload Detector in a manner to facilitate weighing.
- (b) Where a Weighbridge or Overload Detector is located en route between Origin and Destination, the Party responsible for that Weighbridge or Overload Detector (as specified in Part 6 of Schedule 2) must use reasonable endeavours to ensure that:
 - (i) such Weighbridge or Overload Detector is available; and
 - (ii) Trains are operated in a manner that the Weighbridge or Overload Detector weighs the Operator's Trains.
- (c) Queensland Rail may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Operator.
- (d) The Operator must use reasonable endeavours to ensure that the mass of any Wagon or Train operated by it under this Agreement does not exceed the relevant Maximum Allowable Gross Tonnage.
- (e) In the event that any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Allowable Gross Tonnage, the Operator must reduce the gross mass to a level below the relevant Maximum Allowable Gross Tonnage. Queensland Rail may direct a Train to a specific siding or location to allow such reduction and the Operator shall comply with such direction.

Formatted: Font: Bold
Formatted: Font: Bold, Not All caps
Deleted: Schedule 2
Formatted: Font: Bold
Formatted: Font: Bold, Not All caps
Deleted: Schedule 2
Deleted: Aurizon Network
Deleted: Aurizon Network
Formatted: Font: Bold, Italic
Formatted: Font: Bold, Italic, Not All caps
Deleted: Schedule 3
Formatted: Font: Bold, Italic
Formatted: Font: Bold, Italic, Not All caps
Deleted: Schedule 3

[Bracketed text in (f) and (g) to be deleted where the End User is paying all Access Charges]

- (f) In the event that any Wagon operated by the Operator is determined to be in excess of the relevant Maximum Desirable Gross Tonnage, Queensland Rail may:
 - (i) *[charge the Operator (and the Operator must pay) an Overload Charge (in accordance with Part 6 of Schedule 3) in respect of that Wagon; and]*
 - (ii) impose any Operational Constraints which Queensland Rail considers to be reasonable in the circumstances.

Deleted: Aurizon Network
Deleted: Aurizon Network
Deleted: Aurizon Network
Formatted: Font: Bold, Italic
Formatted: Font: Bold, Italic, Not All caps
Deleted: Schedule 2

[Queensland Rail will include the Overload Charge in the invoice for Access Charges for the Billing Period immediately following such determination for payment by the Operator.]

Formatted: Font: Bold, Italic
Formatted: Font: Bold, Italic, Not All caps

- (g) *[The Weighbridges to be used by Queensland Rail in the calculation of Access Charges are those specified in Part 6A of Schedule 2.]*
- (h) Where the Operator's Trains are weighed by an operational Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in Part 6B of Schedule 2 must use reasonable endeavours to:
 - (i) keep a record of the gross mass of each loaded Wagon and Train (and the Operator must use reasonable endeavours to ensure such information is obtained from the operator of the Weighbridge or Overload Detector where

Deleted: Schedule 2
Formatted: Font: Bold, Italic
Formatted: Font: Bold, Italic, Not All caps
Deleted: Schedule 2
Formatted: Font: Bold
Formatted: Font: Bold, Not All caps
Deleted: Schedule 2
Formatted: Font: Bold
Formatted: Font: Bold, Not All caps
Deleted: Schedule 2
Formatted: Font: 6 pt

the Weighbridge or Overload Detector is not owned or controlled by Queensland Rail;

- (ii) provide such record to the party loading the Trains; and
- (iii) provide such record to the other Party within fourteen (14) days of the end of each Month.

(i) If either Party reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the accuracy of such Weighbridge or Overload Detector to be tested, and the Weighbridge or Overload Detector shall be deemed to have malfunctioned from the date of such notice until such testing has been carried out and/or the Weighbridge or Overload Detector has been recalibrated and the mass will be determined in accordance with [Part 2 of Schedule 3 of the End User Access Agreement/Part 2 of Schedule 3]. Testing will be carried out in accordance with the following procedure:

- (i) As soon as reasonably practicable the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of Schedule 2, must ensure that a suitably qualified person conducts a test of the calibration of the Weighbridge or Overload Detector and makes any adjustments required to correct the calibration.
- (ii) Except in the case of manifest error or fraud, the determination of the person conducting the test will be final and binding on the Parties.
- (iii) Where the person conducting the test determines that the Weighbridge or Overload Detector is measuring within the tolerances specified in Part 6 of Schedule 2, the Weighbridge or Overload Detector will be treated as having been measuring accurately from the date on which the relevant notice was given pursuant to this Clause 3(i) and the Access Charges (including any Overload Charge) will be determined from that date according to [Part 5 of Schedule 3 of the End User Access Agreement/Part 5 of Schedule 3]. The invoice for Access Charges [issued under the End User Access Agreement] in respect of the Billing Period following such determination will be adjusted to appropriately account for the difference in payment of Access Charges arising from having treated the Weighbridge or Overload Detector as malfunctioning pursuant to this Clause 3(i).

- (iv) The cost of conducting such test shall be met by:
 - (A) the Party responsible for the Weighbridge or Overload Detector as specified in Part 6 of Schedule 2, in the event that the Weighbridge or Overload Detector is determined to be not measuring within the tolerances specified in Part 6 of Schedule 2; or
 - (B) the Party giving notice under this Clause 3(i) in the event that the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in Part 6 of Schedule 2.

(j) Notwithstanding any other provision in this Agreement, neither Party will be liable to the other for any damage, loss, cost or expense that the other may suffer or incur as a result of that Party, in good faith, acting on the basis of any mass determined in accordance with this Agreement or the End User Access Agreement.

(k) Notwithstanding any other provision in this Agreement, neither Party shall have any Claim against the other Party as a result of or arising from any delay to or cancellation of Train Services as a result of the operation of Clause 3(i) or Clause 3.8(c) of the End User Access Agreement.

4 TRAIN SERVICE ENTITLEMENTS

4.1 Train Services

(a) Without limiting any other provision of this Agreement, the Operator must not commence any Train Services (including any new or varied Train Services) unless and until the Operator has done each of the following in respect to those Train Services(or, as applicable, those new or varied Train Services):

- (i) satisfied Queensland Rail (acting reasonably) that the Operator has complied with all of its obligations under the Operating Requirements Manual;
- (ii) provided to Queensland Rail a certificate of compliance for all of the Operator's Rollingstock and Rollingstock Configurations in accordance with

- Deleted: Aurizon Network
- Deleted: Schedule 3
- Formatted: Font: Bold, Italic, Not All caps
- Deleted: Schedule 3
- Formatted: Font: Bold, Italic
- Formatted: Font: Bold, Italic
- Formatted: Font: Bold, Italic, Not All caps
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 2
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 2
- Formatted: Font: Bold, Check spelling and grammar, Not All caps
- Deleted: Schedule 2
- Formatted: Font: Bold
- Deleted: Schedule 2
- Formatted: Font: Bold
- Formatted: Font: Bold, Italic
- Formatted: Font: Bold, Italic, Not All caps
- Deleted: Schedule 3
- Formatted: Font: Bold, Italic
- Formatted
- Deleted: Schedule 3
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 2
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 2
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 2
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 2
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 2
- Deleted: 3(i)
- Deleted: 3(i)
- Deleted: Aurizon Network
- Deleted: Clause 6.9
- Formatted: Font: 6 pt

~~the ORM~~ and ~~Queensland Rail~~ has authorised such Rollingstock and Rollingstock Configurations;

(iii) demonstrated to ~~Queensland Rail~~ that the Operator has entered into agreements in respect of the Private Facilities as required by Clause ~~5.8~~ (if applicable);

(iv) provided to ~~Queensland Rail~~ a copy of the Operator’s Emergency Response Plan which must be compatible with the ~~Queensland Rail~~ Emergency Procedures;

(v) provided to ~~Queensland Rail~~ an acceptable Environmental Investigation and Risk Management Report in accordance with ~~the ORM~~;

(vi) implemented those elements of the Environmental Investigation and Risk Management Report, if applicable, which are to be implemented prior to the commencement of Train Services;

(vii) complied with the community liaison requirements referred to in ~~the ORM~~;

(viii) provided to ~~Queensland Rail~~ evidence of its Accreditation as required by Clause ~~7(a)~~; and

(ix) conducted an Interface Risk Assessment in accordance with ~~the ORM~~;

(x) devised in collaboration with ~~Queensland Rail~~ an Interface Risk Management Plan and implemented the elements of such plan required to be implemented prior to the commencement of Train Services;

(xi) ~~Completed the Train Control Contact Details in Schedule 9 of this Agreement;~~

(xii) developed the Operator’s Safety Management System and incorporated into that system the elements and process referred to in ~~the ORM~~; and

(xiii) taken out the insurances required under Clause ~~9~~ and provided to ~~Queensland Rail~~ evidence of that insurance as required by Clause ~~9.3~~;

provided that, in addition to the above matters, the conditions in ~~Clauses 3(d)(viii), 5.1(k), 5.7(g), 8(a)(iii) and 8(h) of the ORM~~, have been satisfied, to the extent those provisions apply in relation to or in connection with the relevant Train Service.

(b) ~~Queensland Rail~~ will use all reasonable endeavours to cooperate with the Operator to facilitate the Operator’s completion or compliance with Clause 4.1(a).

(c) If the Operator has not done each of the acts, matters or things specified in Clause 4.1(a) for its initial Train Services by:

(i) the date specified in Item 3 of the Reference Schedule and ~~Queensland Rail~~ has no reasonable expectation that the Operator can commence the operation of Train Services by the Commitment Date; or

(ii) the Commitment Date,

then ~~Queensland Rail~~ may, provided that ~~Queensland Rail~~ has complied with Clause 4.1(b), notify the Operator and End User in writing of its intention to terminate this Agreement and if the Operator has not complied with all the requirements of Clause 4.1(a) by a date which is thirty (30) days after the date of the notice, ~~Queensland Rail~~ may terminate this Agreement by further written notice to the Operator and the End User.

(d) The Operator must operate Train Services only in accordance with the Train Service Description and this Agreement. Unless acting under a ~~Queensland Rail~~ Train Control Direction, the Operator must not operate Train Services which do not comply with the Train Service Description without the prior written approval of ~~Queensland Rail~~, which approval may specify terms in addition to or varying the terms of this Agreement in respect of those Train Services, including the Access Charges applicable [under the End User Access Agreement]. The Operator [or Access Holder (as applicable)] must comply with such terms in operating the Train Services.

(e) Prior to operating a Train Service, the Operator must notify ~~Queensland Rail~~ of the End User for whom the Operator will operate that Train Service.

5 TRAIN OPERATIONS

5.1 Compliance

(a) To the extent relevant to the performance of its obligations under this Agreement the Operator must observe and comply with:

- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** 5.8
- Deleted:** 6.11
- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** Clause 9.1
- Deleted:** Clause 9.6(a)
- Deleted:** Aurizon Network
- Deleted:** 7(a)
- Deleted:** 10(a)
- Deleted:** Clause 12(a)
- Deleted:** Aurizon Network
- Deleted:** Clause 12(a)(iii)
- Deleted:** 9
- Deleted:** 14
- Deleted:** Aurizon Network
- Deleted:** 9.3
- Deleted:** 14.3
- Deleted:** Clauses 6.9(d)(viii), 9.1(k), 9.7(g), 12(a)(ii) and 12(h)
- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** Aurizon Network
- Deleted:** <#>DAY TO DAY TRAIN MOVEMENTS¶<#>Train Control¶<#>Aurizon Network will provide and will have exclusive responsibility for Train Control in respect of the Nominated Network.¶<#>Train Control Rights and Obligations¶<#>Aurizon Network must exercise Train Control by the issue of Aurizon Network Train Control Directions to the Operator and the Operator’s Staff consistent with the Network Management Principles.¶<#>In exercising Train Control Aurizon Network shall have regard to the safe conduct of rail operations on the Infrastructure and:¶<#>may delay, alter or add a Train Service;¶<#>may cancel, re-route or re-schedule a Train Service;¶<#>may alter the Scheduled Times for Train Services in the Train Schedule; and¶<#>may impose any Operational Constraint on the Nominated Network consistent with Clause 7.2.¶<#>The Operator must:¶<#>comply with Aurizon Network Train Control Directions;¶<#>ensure the Operator’s Staff comply with Aurizon Network Train Control Directio...
- Formatted:** Font: 6 pt

- (i) all applicable Laws;
- ~~(ii) the conditions of its Accreditation;~~
- (iii) ~~the Operating Requirements Manual;~~
- (iv) the lawful requirements of relevant Authorities;
- (v) the Rollingstock and Rollingstock Configurations authorised in accordance with ~~the ORM;~~
- (vi) the Train Service Description (subject to the Network Management Principles);
- (vii) the description of the relevant Reference Train Service except as otherwise specified in this Agreement;
- (viii) ~~Queensland Rail~~ Train Control Directions;
- (ix) the Safeworking Procedures and Safety Standards;
- (x) the Network Management Principles;
- (xi) ~~to the extent applicable, the Queensland Rail~~ Emergency Procedures;
- (xii) ~~the Environmental Investigation and Risk Management Report;~~
- (xiii) subject to the provision of reasonable notice specifying relevant requirements, the relevant requirements of the Environmental Authorities held by ~~Queensland Rail~~ from time to time and the permits, approvals and licences in respect of facilities to which access is provided by ~~Queensland Rail~~ to the Operator;
- (xiv) the Interface Risk Management Plan (including the Rollingstock Interface Standards);
- (xv) subject to the provision of reasonable notice specifying relevant licences and permits and their applicability to the Operator, to the extent applicable to the Operator, all licences and permits affecting the operations of ~~Queensland Rail~~; and
- (xvi) to the extent applicable to the Operator, the terms of ~~Queensland Rail's~~ Access Undertaking (including the ring fencing obligations) in effect from time to time.

Deleted: Clause 6.9

Deleted: Aurizon Network

Deleted: <#>the Interface Coordination Plan;¶

Deleted: Aurizon Network

Deleted: <#>the Operator's Emergency Response Plan;¶

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network's

(b) To the extent relevant to the performance of its obligations under this Agreement, ~~Queensland Rail~~ must observe and comply with:

Deleted: Aurizon Network

- (i) all applicable Laws;
- ~~(ii) the conditions of its Accreditation;~~
- (iii) ~~the Operating Requirements Manual;~~
- (iv) the lawful requirements of relevant Authorities;
- (v) to the extent applicable, ~~Queensland Rail~~ Train Control Directions;
- (vi) the Safeworking Procedures and Safety Standards;
- (vii) to the extent applicable, the Train Service Description (subject to the Network Management Principles);
- (viii) the Network Management Principles;
- (ix) ~~Queensland Rail's~~ Emergency Procedures;
- (x) the Interface Risk Management Plan;
- (xi) all licences and permits affecting the operations of ~~Queensland Rail~~; and
- (xii) the terms of ~~Queensland Rail's~~ Access Undertaking (including the ring fencing obligations) in effect from time to time.

Deleted: <#>the Interface Coordination Plan;¶
Aurizon Network's

Deleted: Aurizon Network

Deleted: Aurizon Network's

(c) ~~Queensland Rail~~ must ensure that as far as practicable:

Deleted: Aurizon Network

- (i) the Network Management Principles; ~~the Safeworking Procedures and Safety Standards; and~~
- (ii) ~~Queensland Rail's~~ Emergency Procedures,

Deleted: ¶

Deleted: Aurizon Network's

will be applied consistently for all Railway Operators on the Nominated Network.

Formatted: Font: 6 pt

5.2 Compliance with Scheduled Time

- (a) The Parties must use reasonable endeavours to:
 - (i) operate Train Services in accordance with the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles, varied in the circumstances specified in this Agreement or otherwise agreed between the Parties (such agreement not to be unreasonably withheld); and
 - (ii) otherwise comply with all other Scheduled Times.
- (b) A Train Service shall be deemed to operate in accordance with its Scheduled Time if it does not vary more than three (3) minutes from the Scheduled Time.

5.3 Alterations to Train Services

- (a) If the Operator does not propose to operate a Train Service the Operator must, prior to the scheduled operation of the Train Service, advise Queensland Rail of the cancellation of such Train Service the reason for such cancellation and specify the End User for that Train Service.
- (b) In the event that a Train Service is unable to operate in accordance with its Scheduled Time then, provided that the Operator has complied with Clause 5.2(a), Queensland Rail will use its reasonable endeavours to provide an alternative Scheduled Time for the relevant Train Service provided that:
 - (i) Queensland Rail will be under no obligation to alter the scheduled times for other Train Movements; and
 - (ii) Queensland Rail has no obligation to the Operator to provide an alternative Scheduled Time where the End User has nominated another Accredited Railway Operator to operate the relevant Train Service.
- (c) In the event that for any reason the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule or at any other Scheduled Time advised by Queensland Rail in accordance with Clause 5.3(b), Queensland Rail may authorise the operation of another Train Movement at that Scheduled Time.
- (d) In the event that a Train Service is for any reason unable to commence to operate in accordance with its Scheduled Time and following bona fide consultation between the Parties it is not possible for Queensland Rail to provide an alternative Scheduled Time reasonably acceptable to both Parties, such Train Service may be cancelled by either Party giving notice to the other Party as soon as practicable.

Deleted: Aurizon Network

Deleted: 5.2(a)

Deleted: 6.2(a)

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: 5.3(b)

Deleted: 6.3(b)

Deleted: Aurizon Network

Deleted: Aurizon Network

5.4 Notification

- (a) Queensland Rail must notify the Operator's Controller (such notification to include where relevant the anticipated effect on the relevant Train Service) as soon as reasonably practicable after Queensland Rail discovers or becomes aware of any circumstances including Obstructions (other than those circumstances of which the Operator is aware or ought to have been aware) which:
 - (i) have materially affected, or could potentially materially affect, the ability of any Train Service to comply with its Scheduled Time; or
 - (ii) have affected, or could potentially affect, the security or safety of a Train Service or the Operator's Staff.
- (b) Queensland Rail must at the earliest possible time after becoming aware of the relevant changes advise the Operator's Controller from time to time of changes to advices previously provided pursuant to Clause 5.4(a).
- (c) The Operator must inform Queensland Rail of any failure to comply with:
 - (i) any applicable Laws relevant to the Operator's Train Services;
 - (ii) Queensland Rail Train Control Directions; and
 - (iii) the Rollingstock and Rollingstock Configurations authorised in the ORM.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: 5.4(a)

Deleted: 6.4(a)

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Schedule 4.

Deleted: Aurizon Network

Deleted: Aurizon Network's

Deleted: Aurizon Network's

Deleted:

Deleted: Aurizon Network

Deleted: paragraph 2.1 of Part 2 of Schedule 10

Deleted: Aurizon Network's

Formatted: Font: 6 pt

5.5 Operator to Supply Information

The Operator must provide to Queensland Rail and at all times maintain operable all necessary software, hardware and associated communication links to establish, to Queensland Rail's reasonable satisfaction, an interface with Queensland Rail's information systems and must provide information to Queensland Rail in relation to each Train Service prior to operation on the Nominated Network in accordance with the ORM. The interface with Queensland Rail's

information systems will be subject to any controls specified by Queensland Rail to protect the integrity and confidentiality of the systems and the information contained therein.

5.6 Performance Levels

- (a) The Performance Levels which apply to the performance by the respective Parties of their obligations under this Agreement are set out in Part 1 of Schedule 5. A failure by either Party to achieve the relevant Performance Level will not constitute a breach of this Agreement and the only consequences of such failure as between the Parties shall be the consequences set out in this Clause 5.6.
- (b) If the Operator does not comply with the Operator Performance Level then the Operator must pay to Queensland Rail the amount determined in accordance with Schedule 5 as part of the invoice issued by Queensland Rail for charges for the Billing Period immediately following Queensland Rail becoming entitled to that amount. Where there is no next Billing Period, the Operator must pay such amount to Queensland Rail within fourteen (14) days after receipt of a Tax Invoice from Queensland Rail.
- (c) If Queensland Rail does not comply with the Queensland Rail Performance Level then Queensland Rail will credit to the Operator the amount determined in accordance with Schedule 5 by way of a deduction from the invoice issued by Queensland Rail for Access Charges and other charges for the Billing Period immediately following the Operator becoming entitled to that amount. Where there is no next Billing Period, Queensland Rail must pay such amount to the Operator within fourteen (14) days after receipt of a Tax Invoice from the Operator.
- (d) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six (6) Months after the Commitment Date or any previous review of the Performance Levels. If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties may, but only with the written consent of the relevant End User, agree on varied Performance Levels and any associated variations to the Agreement including [the Base Access Charges and] the Train Service Description. If the Parties and the End User are unable to agree to such variations then the existing Performance Levels shall continue to apply unless varied by Queensland Rail in accordance with the provisions of Clause 5.6(e). [Bracketed text is only included where Operator pays non-TOP Access Charges]
- (e) In the event that the Operator
 - (i) does not comply in any material respect with the Train Service Description; and
 - (ii) the Operator fails to demonstrate to the reasonable satisfaction of Queensland Rail when requested to do so, that the Operator will consistently comply with the Train Service Description for the remainder of the Term,
 then, if following satisfaction by Queensland Rail of the requirements of Clauses 5(a) and 5(b) of the End User Access Agreement, Queensland Rail continues to not be reasonably satisfied that the Operator will consistently comply with the Train Service Description for the remainder of the Term, Queensland Rail will be entitled to:
 - (iii) vary the Train Service Description to a level it reasonably expects to be achievable by the Operator for the remainder of the Term having regard to the extent of previous compliance with the Train Service Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator (other than the End User) or to Queensland Rail); and
 - (iv) vary the Agreement (including, without limitation, the Operator Performance Level [and the Base Access Charges]) to reflect the impact of the change in the Train Service Description. [Bracketed text is only included where Operator pays non-TOP Access Charges]
- (f) The Operator shall be entitled to dispute any variation proposed by Queensland Rail pursuant to Clause 5.6(e), and such dispute will be notified to an End User by the Operator pursuant to Clause 23.1 and referred to an expert for resolution in accordance with Clause 13.3.
- (g) If any variations under this Clause 5.6 affect the Train Service Description or should, in Queensland Rail's opinion, result in the amounts payable by the End User under the End User Access Agreement being varied, then the commencement of those variations is subject to and conditional upon the Operator being notified by Queensland Rail that all necessary amendments (if any) to the End User Access Agreements (including variations to the amounts payable by the End User) have been made in respect of such matters and

Deleted:

Deleted: Aurizon Network

Deleted: Schedule 5

Formatted ...

Formatted ...

Deleted: Schedule 5

Formatted ...

Formatted ...

Deleted: 5.6

Deleted: 6.6

Deleted: Aurizon Network

Formatted ...

Formatted ...

Deleted: Schedule 5

Formatted ...

Formatted ...

Deleted: Schedule 5

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Formatted ...

Formatted ...

Deleted: Schedule 5

Formatted ...

Formatted ...

Deleted: Schedule 5

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: 5.6(e)

Deleted: 6.6(e)

Deleted: Aurizon Network

Deleted: by Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: 5.6(e)

Deleted: 6.6(e)

Deleted: 13.3

Deleted: 18.3

Deleted: 5.6

Deleted: 6.6

Deleted: Aurizon Network's

Deleted: Aurizon Network

Formatted ...

any relevant nomination of the Operator by the End User in accordance with the End User Access Agreement has, if necessary, been varied.

5.7 **Operation of Trains and Rollingstock**

The Operator is responsible for the safe operation of its Rollingstock on the Nominated Network and must ensure that at all times whilst operating on the Nominated Network:

- (a) its Rollingstock and Rollingstock Configurations comply with the Interface Risk Management Plan (including the Rollingstock Interface Standards);
- (b) it operates only authorised Rollingstock and Rollingstock Configurations as specified in Schedule 4; and
- (c) all loading and unloading of its Rollingstock is undertaken in a manner that:
 - (i) is consistent with the requirements of Schedule 4 and the Rollingstock Interface Standards;
 - (ii) does not affect the safe operation of the Rollingstock; and
 - (iii) ensures that all items on or in the Operator’s Rollingstock remain secured in position during transit.

5.8 **Private Facilities**

Prior to the commencement of any Train Services, the Operator must demonstrate to the reasonable satisfaction of Queensland Rail that the Operator has entered into agreements with the owners or operators of the Private Facilities to enable the Operator to operate Train Services in the manner contemplated in this Agreement (“**Private Facilities Agreements**”). The Operator must use reasonable endeavours to maintain the Private Facilities Agreements in full force and effect for the period the Private Facilities are required for the operation of Train Services.

6 **INFRASTRUCTURE MANAGEMENT**

6.1 **Management and Control of the Nominated Network**

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

6.2 **Maintenance of the Nominated Network**

- (a) Queensland Rail must carry out Maintenance Work on the Nominated Network such that, subject to any agreed criteria and the Network Management Principles:
 - (i) the Network is consistent with the Rollingstock Interface Standards; and the Operator can operate Train Services in accordance with their Scheduled Times.
- (b) Queensland Rail may impose either temporarily or permanently such Operational Constraints as it considers necessary for the protection of any person or any property (including the Network) or to facilitate the performance of Maintenance Work or Enhancements provided that in exercising its rights under this Clause 6.2(b), Queensland Rail must:
 - (i) use its reasonable endeavours to minimise disruption to Train Services (including giving as much notice as possible and, where possible, providing alternate Scheduled Times having regard to the reasonable requirements of the Operator); and
 - (ii) comply with the relevant procedures specified in the NMP.
- (c) Except to the extent that an Operational Constraint resulted from a breach by Queensland Rail of this Agreement or the End User Access Agreement, any delays or cancellations of Train Services caused by or resulting from Operational Constraints shall not constitute a default by Queensland Rail of its obligations under this Agreement and Queensland Rail will not be liable for any Claims suffered or incurred by or made or brought by or against the Operator as a result of or arising from the imposition of such an Operational Constraint.
- (d) The Operator must notify Queensland Rail as soon as is reasonably practicable of any damage to or disrepair or failure in operation or function of any part of the Network of which the Operator becomes aware.
- (e) The Operator must provide reasonable cooperation to Queensland Rail in relation to the timetabling of Planned Possessions provided that any such Planned Possessions are

Deleted: <#>Interface Coordination Plan¶

<#>Aurizon Network and the Operator agree to comply with the Interface Coordination Plan in exercising their rights and performing their obligations under this Agreement.¶

<#>Aurizon Network will provide the Operator with that information identified in paragraph 3(f) of Part 1 of **Schedule 10** relevant to the Operator’s operation of Train Services.¶

Formatted: Not Highlight

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Not Highlight

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Formatted: Not Highlight

Deleted: <#>Authorisation of Rollingstock & Rollingstock Configurations¶

<#>Prior to the operation of any Train Services the Operator must:¶

<#>implement the control measures devised in the Interface Risk Management Plan relevant to assessing the compatibility of the Operator’s Rollingstock and Rollingstock Configurations with the Nominated Network; and¶

Formatted: Heading 2

Deleted: <#>Aurizon Network may, ...

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Infrastructure

Deleted: ¶

Deleted: Aurizon Network

Deleted: Infrastructure

Deleted: 6.2(b)

Deleted: 7.2(b)

Deleted: Aurizon Network

Deleted: Interface Coordination Plan.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Infrastructure

Deleted: Aurizon Network

Formatted: Font: 6 pt

consistent with the Network Management Principles, and implemented in accordance with the possession protocols specified in the ORM.

Deleted:

Deleted: P

Deleted: P

6.3 Inspection by Operator

(a) Subject to Clause 6.3(b), the Operator may, prior to the initial commencement of Train Services, at its cost and risk, inspect the Network and circumstances surrounding the Network comprising the Nominated Network including, but not limited to, fencing and level crossing protection in order to satisfy itself as to the standard of the Network and assess the operational, environmental and safety risks associated with operation of Train Services on the Network.

Deleted: 6.3(b)

Deleted: 7.3(b)

Deleted: Infrastructure

Deleted: Infrastructure

Deleted: Infrastructure

Deleted: Infrastructure

(b) Any inspection by the Operator under Clause 6.3(a) shall be subject to:

(i) the Operator providing reasonable written notice to Queensland Rail of its requirement to inspect the Network and conducting that inspection at reasonable times;

Deleted: 6.3(a)

Deleted: 7.3(a)

(ii) any such inspection being conducted in the presence of a representative of Queensland Rail; and

Deleted: Aurizon Network

Deleted: Infrastructure

(iii) such other reasonable conditions as may be imposed by Queensland Rail on such inspection including, but not limited to, compliance with Queensland Rail's Safeworking Procedures and Safety Standards,

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network's

and shall be conducted in such a manner as to not cause any disruption to any Train Movements or to the undertaking of Maintenance Work or Enhancements.

7 ACCREDITATION

(a) The Operator must on or before the commencement of any Train Services provide to Queensland Rail evidence of its Accreditation (including all conditions and/or variations).

Deleted: <#>INCIDENT MANAGEMENT¶ <#>Operator's Emergency Response Plan¶

<#>Prior to the commencement of any Train Services (including any new or varied Train Services) the Operator must develop and submit to Aurizon Network a plan (the "Operator's Emergency Response Plan") which:¶

<#>contains the set of procedures developed by the Operator which are adequate for dealing with an Incident including all actions to be taken to minimise or alleviate any threat or danger to any person or property;¶

Deleted: Aurizon Network

(b) Each Party must have and maintain Accreditation to the extent required to perform its obligations under this Agreement and, if requested to do so in writing by the other Party, provide to the other Party copies of documentation evidencing currency, renewal or amendment of its Accreditation within five (5) days of such request.

(c) Each Party will notify the other as soon as possible of any notice from an Authority affecting or likely to affect its Accreditation and will provide a copy of that notice to the other Party on request.

8 INSPECTION AND AUDIT RIGHTS

8.1 Rights of Inspection and Audit

(a) In addition to the rights of inspection and audit specified in Clauses 6 and the ORM and subject to the provisions of this Clause 8, either Party may conduct or require the conduct of an inspection or audit relevant to assessing the other Party's compliance with the Operating Requirements Manual (including the Rollingstock Interface Standards) and the Safeworking Procedures and Safety Standards periodically as specified in Operating Requirements Manual.

Deleted: <#>OPERATOR'S STAFF¶

Field Code Changed

Deleted: 6

Deleted: 7

Formatted: Not Highlight

Deleted: 12(f)

Deleted: 8

8.2 Inspection of Trains and Rollingstock

(a) Where Queensland Rail reasonably believes that the Operator's Rollingstock or Rollingstock Configurations do not comply with:

Deleted: 13

Deleted: Interface Risk Management Plan

Deleted: the Interface Risk Management

(i) The Operating Requirements Manual or

Deleted: Aurizon Network

(ii) any applicable Laws relevant to the Operator's Train Services,

Deleted: the authorised Rollingstock a

and Queensland Rail cannot otherwise determine whether this is the case, Queensland Rail may inspect any Trains or Rollingstock which is utilised or intended to be utilised in the operation of Train Services or require the Operator to have an inspection conducted and for this purpose Queensland Rail or Queensland Rail's Staff will be entitled at any time to enter and ride on the Operator's Trains or Rollingstock.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

(b) Queensland Rail shall have the right to require any of the Operator's Rollingstock (either loaded or empty) to be available at such location as Queensland Rail may reasonably require, including locations on the Network but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by Queensland Rail.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Infrastructure

Deleted: Aurizon Network

(c) Notwithstanding the provisions of Clause 3, if any of the Operator's Rollingstock is reasonably considered by Queensland Rail to be loaded in excess of the limits specified

Deleted: Aurizon Network

Formatted: Font: 6 pt

in the Operating Requirements Manual or in an unsafe or insecure manner, then Queensland Rail may at any time require the Operator to discontinue the Train Service or to remove the excess or adjust the load at the Operator's expense. If the Operator fails to immediately remove the excess or adjust the load, Queensland Rail may arrange for its removal or adjustment and the Operator will be responsible for all resultant costs incurred by Queensland Rail.

- Deleted: Schedule 4
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: .

8.3 Notice of Inspection or Audit

The Party conducting or requiring the conduct of an inspection or audit must give the other Party reasonable prior written notice of such inspection or audit except in the case of emergencies or if an event or circumstance referred to in Clauses 15 or 16, has occurred and such notice shall include the following:

- Deleted: 15
- Deleted: 20
- Deleted: 16
- Deleted: 21

- (a) details of the inspection or audit to be carried out;
- (b) the name of the person conducting the inspection or audit;
- (c) the timing and expected duration of the inspection or audit;
- (d) the location of the inspection or audit;
- (e) the grounds upon which the Party requires the inspection or audit; and
- (f) the Party's requirements of the other Party in relation to the inspection or audit.

8.4 Conduct of Inspection or Audit

(a) Any inspection or audit carried out pursuant to this Agreement may be conducted by the relevant Party, its appointed representative or by a suitably qualified person reasonably acceptable to both Parties, provided that if the inspection or audit would require access to commercially sensitive information of a Party and that Party has a legitimate commercial reason for wanting to withhold access to that information from the other Party, then the inspection or audit shall be conducted by a suitably qualified independent person reasonably acceptable to both Parties who shall be given access to the commercially sensitive information by the Party the subject of the inspection or audit but who shall be prohibited from disclosing that commercially sensitive information to the other Party .

(b) The Operator shall use reasonable endeavours to ensure that Queensland Rail, its appointed representative or the person appointed to conduct an inspection or audit are entitled to enter and be upon land and premises (whether or not owned or leased by the Operator) on which the Operator's Rollingstock is located from time to time (which location is specified in a notice pursuant to Clause 8.3) for the purposes of carrying out any inspection or audit or exercising any other right under this Agreement.

- Deleted: Aurizon Network
- Deleted: 8.3
- Deleted: 13.3

(c) In exercising any right of inspection or audit under this Agreement, a Party must not interfere unreasonably with the other Party's Trains and Rollingstock or Train Movements on the Nominated Network and must use its reasonable endeavours to avoid damage or injury and to minimise any disruption to the other Party's business activities.

(d) Subject to Clause 8.4(e), a Party conducting an inspection or audit ("**Inspecting Party**") will not be liable for any delays or cancellation of Train Services or Claims suffered or incurred by or made or brought by or against the other Party as a result of the exercise by the Inspecting Party of its rights under this Clause 8 provided the Inspecting Party complies with Clause 8.4(c).

- Deleted: 8.4(e)
- Deleted: 13.4(e)
- Deleted: 8
- Deleted: 13

(e) The Operator will be liable for and will indemnify Queensland Rail in respect of any Claim made against Queensland Rail by another Railway Operator as a result of a delay or cancellation of a Train service of that other Railway Operator as a result of the exercise by the Operator of its inspection or audit rights under this Clause 8 provided that the Operator will not be liable for, or be required to indemnify Queensland Rail in respect of, any such Claim where:

- Deleted: 8.4(c)
- Deleted: 13.4(c)
- Deleted: Aurizon Network
- Deleted: Aurizon Network

- (i) the Operator has complied with Clause 8.4(c) in exercising its inspection or audit rights; and
- (ii) the inspection or audit reveals that Queensland Rail is in breach of its obligations under this Agreement.

- Deleted: 8
- Deleted: 13
- Deleted: Aurizon Network
- Deleted: 8.4(c)

8.5 Cooperation by the Parties

Each Party shall provide all reasonable assistance required by the other Party in conducting any inspection or audit under this Agreement, including allowing a Party, its appointed representative or person appointed to conduct an inspection or audit to discuss any relevant matter with Queensland Rail's Staff or the Operator's Staff (as applicable). A member of Queensland Rail's Staff or the Operator's Staff (as applicable) may be present at the inspection or audit.

- Deleted: 13.4(c)
- Deleted: Aurizon Network

- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Formatted: Font: 6 pt

8.6 Costs of Inspection or Audit

- (a) The Party who conducts or requires the conduct of an inspection or audit under Clause 7 or an agreed periodic audit shall bear the reasonable costs of conducting the inspection or audit.
- (b) The Party whose operations are inspected or audited under Clause 1 or Clause 8.2 shall bear the reasonable costs of conducting the inspection or audit unless it is demonstrated that the stated grounds for requiring the conduct of the inspection or audit did not exist. In circumstances where the stated grounds for such inspection or audit have not been demonstrated to exist, the Party that required the conduct of the inspection or audit shall bear the costs of conducting such inspection or audit.

- Deleted: 1.1.1(a)
- Deleted: 12(f)
- Deleted: 8.2
- Deleted: 13.2

8.7 Copies of Reports

The Parties must provide each other with a copy of any report of any inspection or audit undertaken pursuant to this Clause 8 in respect of its compliance with the ORM (including the Rollingstock Interface Standards).

- Deleted: 8
- Deleted: 13
- Deleted: Interface Risk Management Plan

8.8 Consequences of Inspection or Audit

- (a) Unless otherwise agreed, where a Party requires the conduct of an inspection or an audit under Clauses 1 or 8.2(a)(i) of this Agreement, that Party will be liable to the other Party in respect of loss or damage (including damages for Consequential Loss) arising from the conduct of the inspection or audit if, and only if, no reasonable person in the position of the Party who required the conduct of the inspection or audit could have formed the view that the stated grounds for such inspection or audit existed, provided that the other Party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the inspection or audit. The Party who required the conduct of the inspection or audit shall bear the burden of establishing that a reasonable person in its position could have formed that view.
- (b) Notwithstanding clause 13.8(a), Queensland Rail will not be liable to the Operator for any loss or damage (including damages for Consequential Loss) arising from the Operator's liability to the End User in connection with the inspection or audit.

- Deleted: 1.1.1(a)
- Deleted: 12(f)
- Deleted: 8.2(a)(i)
- Deleted: 13.2(a)(ii)

- Deleted: Aurizon Network

8.9 Parties' Obligations

An inspection or audit by a Party under this Agreement shall not relieve the other Party of its obligations under this Agreement or at Law.

9 INSURANCE BY OPERATOR

9.1 Maintain Insurance Policies

The Operator must prior to the commencement of Train Services at its expense take out and subsequently maintain current at all times during the Term insurance with a Corporation licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to Queensland Rail) those policies of insurance required by this Agreement.

- Deleted: Aurizon Network
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 77

9.2 Required Insurance Policies

The Operator must take out and maintain insurance for the risks and on the terms specified in Schedule 7.

- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Formatted: Font: Bold

9.3 Disclosure of Insurance Policies

The Operator must provide to Queensland Rail evidence of the insurance policies effected pursuant to this Clause 9 or, if requested by Queensland Rail, copies of such insurance policies, to Queensland Rail's reasonable satisfaction:

- Deleted: Schedule 7
- Formatted: Font: Bold
- Deleted: Aurizon Network

- (a) at least fourteen (14) days prior to the commencement of Train Services;
- (b) upon renewal of each insurance policy during the Term; and
- (c) whenever reasonably requested to do so in writing by Queensland Rail.

- Deleted: 9
- Deleted: 14
- Deleted: Aurizon Network
- Deleted: Aurizon Network

9.4 Failure to Disclose Insurance Policies

If the Operator, whenever required to do so under this Agreement, fails to produce to Queensland Rail evidence to the reasonable satisfaction of Queensland Rail of insurances that have been effected or maintained by it, Queensland Rail may:

- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network

- (a) effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Queensland Rail; and/or
- (b) terminate this Agreement pursuant to Clause 16.1(g).

- Deleted: Aurizon Network
- Deleted: 16.1(g)
- Deleted: 21.1(g)
- Formatted: Font: 6 pt

9.5 Minimum Terms of Policies

Each of the policies of insurance effected in accordance with this Agreement must, to the extent permitted by Law:

- (a) note the interests of the Operator, any contractor and Queensland Rail;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of Queensland Rail (which consent shall not be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in Schedule 7.

9.6 Operator Not to Render Policy Void

The Operator must not render any of the insurances effected in accordance with this Clause 9 void or voidable or liable to refusal of any claim.

9.7 Compliance

The Operator must at all times comply with the terms and conditions of all insurance policies effected pursuant to this Clause 9.

9.8 Notice of Potential Claims

In addition to any other obligation on the Operator pursuant to this Agreement, the Operator must notify Queensland Rail as soon as practicable after the occurrence of any claim under any insurance policy required by this Agreement, notify Queensland Rail of that event in reasonable detail and thereafter keep Queensland Rail informed of subsequent developments concerning any claim.

9.9 Operator to pay all excess/eductibles

The Operator must in respect of any claims by it or any other insured for which it is responsible, pay and bear all excesses/eductibles provided for in any insurances effected in accordance with this Clause 9.

9.10 Settlement of Claims

Upon settlement of a claim under any policy required by this Agreement covering damage to Network the monies received must be paid to Queensland Rail unless the Operator has already partially or totally indemnified Queensland Rail for the relevant damage, in which case the monies shall be paid to the Operator but only to the extent that Queensland Rail has been indemnified.

10 INDEMNITIES AND LIABILITIES

10.1 Indemnity by Operator

Subject to Clause 10.3, the Operator is solely liable for and releases, indemnifies and will keep indemnified Queensland Rail, its directors and Queensland Rail's Staff against all Claims of any nature suffered or incurred by or made or brought against Queensland Rail, its directors or Queensland Rail's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of Queensland Rail) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of the Operator.

10.2 Indemnity by Queensland Rail

Subject to Clause 10.3, Queensland Rail is solely liable for and releases, indemnifies and will keep indemnified the Operator, its directors and Operator's Staff against all Claims of any nature suffered or incurred by or made or brought against the Operator, its directors or the Operator's Staff due to or arising out of this Agreement in respect of any loss of or damage to or destruction of real or personal property (including property of the Operator) or personal injury to or death of any person in each case caused by or (to the extent of the contribution) contributed to by the wilful default or any deliberate or negligent act or omission of Queensland Rail or Queensland Rail's Staff.

10.3 Liability to Third Parties

Notwithstanding Clause 10.1 or Clause 10.2, the Operator is solely liable for and releases, indemnifies and will keep indemnified Queensland Rail, its directors and Queensland Rail's Staff against all Claims due to or arising out of this Agreement in respect of damage to or loss of any property or personal injury to or death of any person where such person or property is being transported on Train Services except to the extent that such damage, loss, injury or death is caused by or contributed to (to the extent of the contribution) by the wilful default or any deliberate or negligent act or omission of Queensland Rail or Queensland Rail's Staff. Unless otherwise agreed, the Operator shall extend to Queensland Rail any exclusion or limitation of liability afforded by the Operator's conditions of carriage with End Users and shall provide to Queensland Rail details of the Operator's conditions of carriage relevant to Queensland Rail's liability in place from time to time.

- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Formatted: Font: Bold
- Deleted: Schedule 7
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 77
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Formatted: Font: Bold
- Deleted: 9
- Deleted: 14
- Deleted: 9
- Deleted: 14
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: 9
- Deleted: 14
- Deleted: Infrastructure
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: 10.3
- Deleted: 15.3
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: 10.1
- Deleted: 15.1
- Deleted: 10.2
- Deleted: 15.2
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Formatted: Font: 6 pt

10.4 Liability from ~~Network~~ Standard

Notwithstanding any other provision of this Agreement, ~~Queensland Rail~~ will not be liable to the Operator and the Operator will not have or make any Claim against ~~Queensland Rail~~ in respect of any loss of or damage to real or personal property, including property of the Operator or End Users, or personal injury to or death of any person or any other damage, expense, injury, cost or loss whatsoever arising out of or in connection with the standard of the ~~Network~~ or any failure of or defect in the ~~Network~~ except to the extent that such loss, damage, injury, cost or expense results directly from the failure of ~~Queensland Rail~~ to perform its obligations under Clause ~~6.2(a)~~, or ~~Queensland Rail~~'s negligence in performing those obligations.

Deleted: Infrastructure

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Infrastructure

Deleted: Infrastructure

Deleted: Aurizon Network

10.5 Defence of Claims

The Parties shall render each other all reasonable assistance in the defence of any Claim made against a Party by a Third Party arising out of any Incident or other event giving rise to a Claim.

Deleted: 6.2(a)

Deleted: 7.2(a)

Deleted: Aurizon Network

10.6 Continuation of Indemnities and liabilities

(a) The releases and indemnities contained in this Clause ~~10~~ for the benefit of either Party continue in full force and effect as to any Claims occurring or arising from any act occurring during the Term notwithstanding the termination of this Agreement whether by expiration of time or otherwise.

Deleted: 10

Deleted: 15

(b) Clause 18 continues to apply in respect of any Dispute occurring or arising from any act or omission of a Party during the Term notwithstanding the termination of this Agreement by expiration of time or otherwise.

10.7 Determination of Liability

In the event of an Incident involving the Operator or any other event which results or could result in a Claim by or against the Operator or ~~Queensland Rail~~, liability as between the Operator and ~~Queensland Rail~~ shall for the purposes of this Clause ~~10~~ be determined:

Deleted: Aurizon Network

Deleted: Aurizon Network

(a) as agreed between the Parties;

Deleted: 10

(b) failing such agreement within one (1) Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed pursuant to Clause ~~10.8~~; or

Deleted: 15

(c) where the amount of the Claim exceeds the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00) and either Party is dissatisfied with the report of the loss adjuster, by a Court of competent jurisdiction.

Deleted: 10.8

Deleted: 15.8

10.8 Loss Adjuster

Subject to Clause ~~18~~, where a matter is to be referred to a loss adjuster in accordance with Clause ~~10.7~~ then the following provisions of this Clause shall apply:

Deleted: 18

Deleted: 23

(a) The loss adjuster shall be appointed by the Parties, or in default of such appointment within fourteen (14) days after the need to appoint a loss adjuster, by the President of The Chartered Institute of Loss Adjusters Australasian Division.

Deleted: 10.7

Deleted: 15.7

(b) In any event, the loss adjuster shall:

(i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;

(ii) have no interest or duty which conflicts or may conflict with his function as a loss adjuster, he being required to fully disclose any such interest or duty before his appointment; and

(iii) not be an employee of the Operator, the End User or ~~Queensland Rail~~ or of a Related Body Corporate of any of them.

Deleted: Aurizon Network

(c) The loss adjuster appointed pursuant to this Clause ~~10.8~~ shall not be permitted to act until he has given written notice of the acceptance of his appointment to both Parties.

Deleted: 10.8

Deleted: 15.8

(d) Any loss adjuster appointed pursuant to this Clause ~~10.8~~ shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and the performance of his duties.

Deleted: 10.8

Deleted: 15.8

(e) Any person nominated as a loss adjuster hereunder shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1990* (Qld), shall not apply to him or his determination or the procedures by which he may reach his determination.

(f) Each Party must ensure to the best of its ability that the loss adjuster is given the opportunity to interview any employee, agent or contractor involved in or with

Formatted: Font: 6 pt

knowledge of the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.

- (g) Each Party must make available to the loss adjuster any files, documents, data, recordings or other information that may be of use to, or is requested by, the loss adjuster for the purposes of his investigation.
- (h) The loss adjuster will determine the quantum of the relevant Claim and the liability of the Operator and/or Queensland Rail in respect of such Claim and shall provide a copy of his report on such matters to each of the Parties within a reasonable time after his appointment.
- (i) In the absence of manifest error, the decision of the loss adjuster shall be final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000.00).

Deleted: Aurizon Network

10.9 Costs

Subject to Clause 18, the costs of the loss adjuster shall be borne by the Parties in such proportions as liability is determined by the loss adjuster or where the liability is determined by a Court, in such proportions as liability is determined by the Court.

Deleted: 18
Deleted: 23

11 LIMITATION OF LIABILITY

11.1 No Liability for Consequential Loss

Except as otherwise expressly provided in Clauses 8.8 and 15.3(b), neither Party shall in any circumstances be liable to the other for (and the indemnities in Clauses 10.1 and 10.2 shall not extend to) any Consequential Loss.

Deleted: 8.8
Deleted: 13.8
Deleted: 15.3(b)
Deleted: 20.3(b)
Deleted: 10.1
Deleted: 15.1
Deleted: 10.2
Deleted: 15.2

11.2 Limitation on Claims

Neither Party shall make any Claim against the other in respect of the neglect or default of that Party under the Agreement unless:

- (a) notice of the Claim has been given to the other within twelve (12) Months of the occurrence of the event or circumstance out of which such Claim arises; and
- (b) the amount of the Claim exceeds ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) in respect of any one event or cause of action or series of related events or causes of action (provided that if this condition is satisfied then the Party may proceed for the full amount of the Claim and is not limited to only so much of the Claim as exceeds the required threshold of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)).

11.3 Claims in respect of non-provision of Access

The Operator shall not have or make any Claim against Queensland Rail in respect of the non-provision of Operational Rights or cancellation of any Train Service unless, and shall only have a claim to the extent that:

- (a) a Train Service is cancelled as a result of a failure by Queensland Rail to make the Network available for the Operator to operate the Train Service at the Scheduled Time in the Train Schedule and Queensland Rail was unable to schedule the Train Service at a reasonable alternative time; and
- (b) the failure by Queensland Rail to make the Network available was a result of a breach of this Agreement by Queensland Rail, or negligence on the part of Queensland Rail; and
- (c) the failure by Queensland Rail to make the Network available is not attributable to:
 - (i) the End User or the Operator;
 - (ii) another Railway Operator (other than Queensland Rail);
 - (iii) a Force Majeure Event;
 - (iv) Major Periodic Maintenance of (including Enhancements to) the Network scheduled in a manner consistent with the Network Management Principles; or
 - (v) any action taken by Queensland Rail, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
 - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and Schedule 5, and the total

Deleted: Aurizon Network
Deleted: Aurizon Network
Deleted: Infrastructure
Deleted: Aurizon Network
Deleted: Aurizon Network
Deleted: Infrastructure
Deleted: Aurizon Network
Deleted: Aurizon Network
Deleted: Infrastructure
Deleted: Aurizon Network
Deleted: Infrastructure
Deleted: Aurizon Network
Deleted: 5.6
Deleted: 6.6
Formatted: Font: Bold
Formatted: Font: Bold, Not All caps
Deleted: Schedule 5
Formatted: Font: Bold, Not All caps
Deleted: Schedule 5
Formatted: Font: Bold
Formatted: Font: 6 pt

number of Train Services cancelled in a Billing Period as a result of a failure by Queensland Rail to make the Network available exceeds the Allowable Threshold; or

- (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and Schedule 5, but the non-provision of Access or cancellation of Train Services is of a magnitude which is beyond the scope of that performance and adjustments regime.

- Deleted: Aurizon Network
- Deleted: Infrastructure
- Deleted: 5.6
- Deleted: 6.6
- Formatted: Font: Bold
- Formatted: Font: Bold, Check spelling and grammar, Not All caps
- Deleted: Schedule 5
- Formatted: Font: Bold
- Deleted: Schedule 5

11.4 Claims in respect of delays to Train Movements

Neither Party (the “Affected Party”) shall have or make any Claim against the other Party (the “Defaulting Party”) in respect of delays to Train Movements unless, and shall only have a Claim to the extent that:

- (a) the delay was a result of a breach of this Agreement by the Defaulting Party, or negligence on the part of the Defaulting Party; and
- (b) the delay is not attributable to:
 - (i) the Affected Party (or the End User where the Operator is the Affected Party);
 - (ii) another Railway Operator (other than the Defaulting Party or the End User where the Operator is the Defaulting Party);
 - (iii) a Force Majeure Event;
 - (iv) Major Periodic Maintenance of (including Enhancements to) the Network scheduled in a manner consistent with the Network Management Principles; or
 - (v) any action taken by Queensland Rail, acting reasonably, in response to an emergency or a genuine safety risk; and
- (c) either:
 - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and Schedule 5; or
 - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of Clause 5.6 and Schedule 5, but the delays are of a magnitude which is beyond the scope of that performance and adjustments regime.

- Deleted: Infrastructure
- Deleted: Aurizon Network
- Deleted: 5.6
- Deleted: 6.6
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 5
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 5
- Formatted: Font: Bold
- Deleted: 5.6
- Deleted: 6.6
- Formatted: Font: Bold
- Formatted: Font: Bold, Check spelling and grammar, Not All caps
- Deleted: Schedule 5
- Formatted: Font: Bold
- Deleted: Schedule 5
- Deleted: 12
- Deleted: 17
- Deleted: Schedule 2
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 2
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: 19.18(d)
- Deleted: 24.18(d)
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Formatted: Font: 6 pt

12 MATERIAL CHANGE

[Clause 17 to be omitted where the End User is paying all Access Charges]

12.1 Meaning of Material Change

In this Clause 12;

- (a) “Material Change” means a:
 - (i) Change in Relevant Taxes;
 - (ii) Change in Law;
 - (iii) change in the funding from governments in respect of that part of the Nominated Network specified in Part 4 of Schedule 2; or
 - (iv) matter deemed to be a Material Change under Clause 19.18(d); and
- (b) “Net Financial Effect” means the net effect in financial terms of a Material Change on Queensland Rail in relation to performing its obligations or exercising its rights under this Agreement and/or an End User’s Access Agreement including any offsetting benefits or adverse effects directly or indirectly connected to the Material Change. Any change in the funding from governments in respect of the Nominated Network which is adverse to Queensland Rail shall, to the extent that change affects the financial position of Queensland Rail, be deemed to be an additional cost to Queensland Rail of performing its obligations under this Agreement and/or the End User’s Access Agreement.

12.2 Adjustment for a Material Change

- (a) If there is no Reference Tariff applicable to the relevant Train Service under this Agreement then:
 - (i) if at any time after the date of this Agreement a Material Change occurs which affects the financial position of Queensland Rail or the cost to Queensland Rail of performing its obligations under this Agreement and/or

the End User’s Access Agreement, Queensland Rail may notify the Operator, the End User and any other contracted operator of the End User, giving details of the Net Financial Effect of the Material Change;

Deleted: Aurizon Network

(ii) within fourteen (14) days after receipt of a notice under Clause 12.2(a)(i), the Parties, the End User and each other contracted operator of the End User shall meet and negotiate in good faith any appropriate adjustments to the amounts payable under this Agreement in order to remove as far as practicable the Net Financial Effect of the Material Change and return Queensland Rail to the position it would have been in had it not been for the Material Change. If the Parties, the End User and any other contracted operator of the End User do not reach agreement within twenty (20) days of Queensland Rail’s notice, the matter will be referred to an expert for determination in accordance with Clause 13.3.

Deleted: 12.2(a)(i)

Deleted: 17.2(a)(i)

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: 13.3

(b) If a Reference Tariff is applicable to the relevant Train Service under this Agreement then the relevant Reference Tariff Schedule will provide for the consequences of Material Change.

Deleted: 18.3

12.3 Parties Obligations

The Parties’ obligations under this Agreement will continue notwithstanding the existence of a Material Change.

13 DISPUTES

13.1 Method

If any claim, dispute or question (“**Dispute**”) arises under this Agreement or the ORM or in relation to the Operational Rights then unless otherwise expressly provided to the contrary in this Agreement such Dispute shall be resolved in accordance with this Clause 13 and either Party may give to the other Party to the Dispute a notice in writing (“**Dispute Notice**”) specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 13.

Deleted:

Deleted: 13

Deleted: 18

13.2 Chief Executive Resolution

Deleted: 13

Deleted: 18

(a) Except as otherwise provided in this Agreement, the Parties hereby agree that any Dispute shall be referred in the first instance and in any event within five (5) Business Days of the Dispute Notice to the chief executive officer of Queensland Rail (or his nominee) and the chief executive officer of the Operator (or his nominee) for the purposes of this Clause 13.2 for resolution.

Deleted: Aurizon Network

Deleted: 13.2

(b) If the Dispute is not resolved within ten (10) Business Days, the relevant Dispute may by agreement between Queensland Rail and the Operator be referred for resolution by an expert in accordance with Clause 13.3 or by arbitration in accordance with Clause 13.4.

Deleted: 18.2

Deleted: Aurizon Network

Deleted: 13.3

13.3 Expert

Deleted: 18.3

Deleted: 13.4

Subject to Clause 18, where any matter may be referred to an expert pursuant to Clause 13.2 or is required by this Agreement to be referred to an expert then except as otherwise provided for in this Agreement, the matter must be referred for determination by a person:

Deleted: 18.4

Deleted: 18

(a) who is appointed by the Parties, or in default of such appointment within ten (10) Business Days after either Party giving notice in writing to the other Party requiring the appointment of an expert then that person is to be nominated at either Party’s request by:

Deleted: 23

Deleted: 13.2

(i) if the Parties agree that the Dispute is of a financial nature, the President for the time being of CPA Australia;

Deleted: 18.2

(ii) if the Parties agree that the Dispute is of a non-financial nature, the President for the time being of the Engineers Australia – Queensland Division; and

(iii) in any other case, by the President for the time being of the Queensland Law Society Incorporated;

(b) who has appropriate qualifications and practical experience having regard to the nature of the Dispute;

(c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;

(d) who is not an employee of the End User, Operator or Queensland Rail or of a Related Body Corporate of any of them;

Deleted: Aurizon Network

(e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment;

Formatted: Font: 6 pt

- (f) who shall have regard to the provisions of this Agreement and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter submitted by the Parties or submitted by the Parties as soon as reasonably practicable at his request and who must provide both Parties with a copy of his determination in the form of a report within a reasonable time after his appointment;
- (g) who shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (h) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration (including, without limitation, the *Commercial Arbitration Act 1990* (Qld)) shall not apply to him or his determination or the procedures by which he may reach his determination;
- (i) whose decision, in the absence of manifest error, shall be final and binding upon the Parties; and
- (j) whose costs (and the costs of any advisers to the expert) shall be borne by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties).

Any determination made by an expert must be consistent with the provisions of this Agreement.

13.4 Arbitration

Subject to Clause ~~18~~, the Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Operator and ~~Queensland Rail~~ and failing agreement upon such arbitrator within fourteen (14) days after the date of written notice from one Party to the other requiring the appointment of an arbitrator then to an arbitrator appointed by the President of the Institute of Arbitrators. Every such reference shall be an arbitration within the meaning of the *Commercial Arbitration Act 1990* (Qld), and subject to the provisions relating to arbitration contained in that Act.

- Deleted: 18
- Deleted: 23
- Deleted: Aurizon Network

13.5 Determination by Court

If any Dispute is not resolved in accordance with Clause ~~13.2~~, nor referred to an expert in accordance with Clause ~~13.3~~, nor referred to arbitration by agreement of the Parties in accordance with Clause ~~13.4~~, nor referred to the QCA in accordance with Clause ~~13.6~~, then the Dispute shall be referred to the courts of the State.

- Deleted: 13.2
- Deleted: 18.2
- Deleted: 13.3
- Deleted: 18.3
- Deleted: 13.4
- Deleted: 18.4
- Deleted: 13.6
- Deleted: 18.6
- Deleted: 18
- Deleted: 23

13.6 Queensland Competition Authority (QCA)

Subject to Clause ~~18~~, the Parties may agree to refer and where required by this Agreement shall refer any Dispute to the QCA.

14 FORCE MAJEURE

14.1 Claim of Force Majeure

If by reason of a Force Majeure Event occurring either Party is wholly or partially unable to carry out its obligations under this Agreement (other than an obligation to pay monies), that Party must, as soon as it becomes aware of the Force Majeure Event, give to the other Party and the End User prompt written notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) details of the Force Majeure Event and that part of the Nominated Network affected;
- (b) details of the obligations affected;
- (c) details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to remedy the situation; and
- (d) an estimate of the time during which the Party will be unable to carry out its obligations due to the Force Majeure Event.

No Party will be obliged to settle any strike, lockout or other labour dispute on terms not acceptable to it.

14.2 Suspension of obligations

If by reason of a Force Majeure Event affecting all or any part of the Nominated Network either Party is delayed or prevented from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay monies) then the obligations of that Party will be suspended during that time and to the extent that the performance of such obligations is prevented or hindered by the Force Majeure Event.

14.3 Duty to Mitigate

Each Party will use all reasonable diligence to remedy or overcome the effect of the Force Majeure Event as soon as possible and will attempt to identify alternative viable means of providing the Operational Rights affected and to mitigate the effect of the Force Majeure Event.

14.4 End of period of Force Majeure

Subject to Clauses 14.5 and 14.6, the suspension of the obligations of the Parties due to a Force Majeure Event ends when the Party that issued the notice of the Force Majeure Event is able to resume full performance of its obligations under this Agreement at which time it must issue a notice to the other Party and the End User advising that it intends to recommence the performance of its obligations and must thereafter recommence the performance of its obligations.

- Deleted: 14.5
- Deleted: 19.5
- Deleted: 14.6
- Deleted: 19.6

14.5 Termination for Loss or Damage to Nominated Network

(a) In the event that any part of the Nominated Network specified in Part 2 of Schedule 2 is damaged or destroyed by a Force Majeure Event and in Queensland Rail's reasonable opinion the cost of repairing such damage or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network, Queensland Rail may by written notice advise the Operator of:

- Deleted: Schedule 2
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 2
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network

- (i) the estimated cost of effecting the necessary repairs or replacement; and
- (ii) Queensland Rail's intention to not repair or replace the relevant part of the Nominated Network unless:
 - (A) the Operator or End User; and
 - (B) any other Railway Operator using that part of the Nominated Network,

pay the amounts specified by Queensland Rail towards the cost of effecting the necessary repairs or replacement,

- Deleted: Aurizon Network

provided that such notice must also be given to the End User pursuant to clause 12.5 of the End User Access Agreement.

(b) If the Operator or the End User pursuant to the End User Access Agreement (as applicable) gives notice to Queensland Rail advising that it will bear the whole, or that part requested by Queensland Rail, of the cost of necessary repairs or replacement, then Queensland Rail will proceed with the repairs or replacement within a reasonable time after receipt by Queensland Rail from the Operator or End User of payment of the relevant amount subject to reaching agreement with any other Railway Operator using the affected part of the Nominated Network. Where the Operator or End User pays to Queensland Rail the whole of the estimated cost, Queensland Rail must, upon completion of the necessary repairs or replacement, refund to the Operator or End User (as applicable) any amount by which the amount paid by the Operator or End User exceeds the actual cost and the Operator or End User (as applicable) shall pay to Queensland Rail the amount by which the actual cost exceeds the amount paid by the Operator or End User.

- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network

(c) If within sixty (60) days after receipt of a notice from Queensland Rail under Clause 14.5(a), the Operator or End User has not given notice to Queensland Rail pursuant to Clause 14.5(b), indicating that it will pay the whole, or that part requested by Queensland Rail, of the cost of the necessary repairs or replacement, Queensland Rail shall have the right to terminate this Agreement by giving not less than thirty (30) days' notice in writing to the Operator and the End User without prejudice to any of the rights of the Parties accrued prior to the date of such termination.

- Deleted: Aurizon Network
- Deleted: 14.5(a)
- Deleted: 19.5(a)
- Deleted: Aurizon Network
- Deleted: 14.5(b)
- Deleted: 19.5(b)
- Deleted: Aurizon Network
- Deleted: Aurizon Network

14.6 Termination after extended Force Majeure Event

If by reason of a Force Majeure Event a Party ("affected Party") is rendered unable to perform its obligations under this Agreement for a period of more than three (3) consecutive Months, the Parties must meet in an endeavour to identify any alternative viable means to provide the suspended Access Rights and failing an alternative means being agreed upon within one (1) Month of the end of the three (3) Month period the other Party may terminate this Agreement by thirty (30) days written notice to the affected Party and the End User and the provisions of this Agreement relating to termination set out in Clauses 16.5 and 16.6 apply without prejudice to any of the rights of the Parties accrued prior to the date of such termination. Queensland Rail must send a written notice of invitation to the End User for, and provide the End User with a reasonable opportunity to participate in, any meeting of the Parties pursuant to this clause 14.6.

- Deleted: Aurizon Network
- Deleted: 16.5
- Deleted: 21.4
- Deleted: 16.6
- Deleted: 21.5
- Deleted: Aurizon Network
- Deleted: 14.6
- Deleted: 19.6
- Formatted: Font: 6 pt

15 SUSPENSION

15.1 Right of Suspension

- (a) Queensland Rail may, by notice in writing to the Operator and the End User prior to or immediately following the suspension, suspend the right of the Operator to operate some or all of the Train Services upon the occurrence of any one or more of the following events or circumstances:
 - (i) the Operator fails to pay when due any amount payable under this Agreement and such default continues for seven (7) days after notice from Queensland Rail to the Operator and the End User of the default;
 - (ii) the Operator fails to meet or comply with:
 - (A) any of its obligations under Clauses 6, 1.1 or 1.1 (with the exception of Clauses 5.1(a)(vi), 1.1 and 1.1 of this Agreement and Queensland Rail is of the reasonable opinion that such failure either:
 - (i) adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Operator) or other users of the Network (including Network Service Providers); or
 - (ii) has caused or is likely to cause an increased risk to the safety of any person or material risk to property; or
 - (B) the Train Service Description and Queensland Rail is of the reasonable opinion that such failure either:
 - (i) adversely affects or is likely to adversely affect the entitlements of any Railway Operator (other than the Operator) or other users of the Network (including Network Service Providers) and that Queensland Rail has sought to avoid such adverse effects by rescheduling Trains and changing Train priority in accordance with the Network Management Principles provided that Queensland Rail will not be obliged to take any action that may cause any additional cost or risk to Queensland Rail or an adverse impact on any Railway Operator (other than the Operator); or
 - (ii) has caused or is likely to cause an increased risk to the safety of any person or material risk to property;
 - (iii) an Insolvency Event occurs in relation to the Operator;
 - (iv) the Operator's Accreditation is suspended, cancelled or amended so that it cannot perform its obligations generally under this Agreement;
 - (v) the Operator fails to comply with the requirements of a notice given by Queensland Rail to the Operator and the End User (within the reasonable time specified in that notice) requiring the Operator to cease conduct which in the reasonable opinion of Queensland Rail is causing or threatening to cause Serious Environmental Harm or Material Environmental Harm;
 - (vi) the Operator fails to effect or maintain the insurances required under Clause 9.2 of this Agreement and such default continues for seven (7) days after notice from Queensland Rail to the Operator and the End User of the default;
 - (vii) the Operator fails to provide, prior to the departure of the Train pursuant to Clause 5.5, information that is reasonably required by Queensland Rail in relation to the relevant Train in accordance with Part 2 of Schedule 10;
 - (viii) the Operator purports to Assign any of its rights or interests in this Agreement other than as permitted in this Agreement;
 - (ix) the Operator is in default of the due performance of any other obligation under this Agreement, and such default continues for thirty (30) days after notice from Queensland Rail to the Operator and the End User of the default;
 - (x) the events or circumstances referred to in Clause 16.1(b), 16.1(c) or 16.1(f) exist; or
 - (xi) events or circumstances specified as providing Queensland Rail with a right to suspend the End User's Access Rights under the End User Access Agreement.

- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: 1
- Deleted: 8
- Deleted: 1
- Deleted: 9
- Deleted: 1
- Deleted: 12
- Deleted: 5.1(a)(vi)
- Deleted: 6.1(a)(v)
- Deleted: 1.1
- Deleted: 8.3
- Deleted: 1.1
- Deleted: 9.6
- Deleted: Aurizon Network
- Deleted: Infrastructure
- Deleted: Infrastructure
- Deleted: Aurizon Network
- Deleted: Infrastructure
- Deleted: Infrastructure
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: 9.2
- Deleted: 14.2
- Deleted: Aurizon Network
- Deleted: 5.5
- Deleted: 6.5
- Deleted: Aurizon Network
- Field Code Changed
- Formatted: Font: Bold
- Formatted: Check spelling and grammar
- Deleted: Schedule 1010
- Formatted: Font: Bold
- Deleted: Schedule 10
- Deleted: Aurizon Network
- Deleted: 16.1(b)
- Deleted: 21.1(b)
- Deleted: 16.1(c)
- Deleted: 21.1(c)
- Deleted: 16.1(f)
- Deleted: 21.1(f)
- Deleted: Aurizon Network
- Formatted: Font: 6 pt

Such suspension shall continue until such time as the Operator or End User (as applicable) has remedied the relevant default and, where appropriate, taken action to prevent its recurrence.

(b) Queensland Rail may suspend the right of the Operator to operate any Train Services on the Nominated Network in the event of breach or, acting reasonably, anticipated breach by the Operator of:

Deleted: Aurizon Network

- (i) any Laws relating to rail safety relevant to the operation of Train Services;
- (ii) Queensland Rail Train Control Directions given in a manner not inconsistent with the Network Management Principles;
- (iii) Safeworking Procedures; or
- (iv) Safety Standards,

Deleted: Aurizon Network

and Queensland Rail is of the reasonable opinion that such breach has caused or such anticipated breach is likely to cause, an increased risk to the safety of any person or material risk to property.

Deleted: Aurizon Network

Such suspension may be effected by notice in writing to the Operator and the End User prior to or immediately following the suspension and shall continue until such time as the breach is rectified or, in the event of anticipated breach, the Operator has demonstrated that it is in compliance. The Operator must ensure that upon such suspension the relevant Operator's Staff immediately ceases to perform functions on the Nominated Network until such time as the suspension is lifted by Queensland Rail.

Deleted: Aurizon Network

(c) Queensland Rail may suspend the operation of the Operator's Rollingstock or Rollingstock Configurations:

Deleted: Aurizon Network

- (i) for actual non-compliance with applicable Laws, the authorisation under Schedule 4 for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where the Operator has failed to rectify such non-compliance within a reasonable period of time; or
- (ii) for actual non-compliance or (acting reasonably) anticipated non-compliance with applicable Laws, the authorisation under Schedule 4 for the Rollingstock or Rollingstock Configurations involved or the Rollingstock Interface Standards specified in the Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property.

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Deleted: Aurizon Network

Such suspension may be effected by notice in writing to the Operator and the End User prior to or immediately following the suspension and shall continue until the Operator has rectified the non-compliance or, in the event of anticipated non-compliance, the Operator has demonstrated that it is in compliance.

15.2 Details of Suspension

Where Queensland Rail has a right under this Clause 15 to suspend rights of the Operator, the notice of suspension given by Queensland Rail must set out:

Deleted: Aurizon Network

- (a) the rights of the Operator which are affected by the suspension;
- (b) the reasons for the suspension; and
- (c) the actions the Operator or End User must take to have the suspension lifted.

Deleted: 15

Deleted: 20

Deleted: Aurizon Network

15.3 Effect of Suspension

(a) The suspension of any rights does not affect or suspend any other obligation of the Operator[, including the obligation to pay Access Charges] under this Agreement and shall be without prejudice to Queensland Rail's other rights and remedies in respect of that or any other default.

Deleted: Aurizon Network

(b) Where Queensland Rail suspends some or all of the Operator's Train Services, Queensland Rail will be liable to the Operator in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, no reasonable person in Queensland Rail's position could have formed the view that the stated grounds for the suspension existed, provided that the Operator must use all reasonable endeavours to mitigate the loss or damage arising from the suspension. Queensland Rail shall bear the burden of establishing that a reasonable person in Queensland Rail's position could have formed that view.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Formatted: Font: 6 pt

(c) Notwithstanding clause 20.3(b), Queensland Rail will not be liable to the Operator for any loss or damage (including damages for Consequential Loss) arising from the Operator's liability to the End User in connection with the suspension.

Deleted: Aurizon Network

16 TERMINATION

16.1 Termination by Queensland Rail

Deleted: Aurizon Network

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, Queensland Rail may, by notice in writing to the Operator and the End User, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

Deleted: Aurizon Network

(a) the Operator fails to pay when due any amount said to be payable under this Agreement, other than due to a bona fide dispute regarding whether the amount is payable for which a Dispute Notice has been given in accordance with clause 13.1 and which has not been resolved in favour of the amount being required to be paid, and such default continues for thirty (30) days after notice from Queensland Rail to the Operator and the End User of the default;

Deleted: 13.1

Deleted: 18.1

Deleted: Aurizon Network

(b) the Operator fails to comply in any material respect with:

(i) any obligations under Clauses 6, 1, 1 or 1 (with the exception of Clauses 1 and 9.6) of this Agreement; or

Deleted: 1

Deleted: 8

Deleted: 1

Deleted: 9

Deleted: 1

Deleted: 12

(ii) any Queensland Rail Train Control Direction within the control of the Operator, any Safeworking Procedures or Safety Standard, and such default continues for, or the Operator has failed to take reasonable action to prevent recurrence of the default within, thirty (30) days after notice from Queensland Rail to the Operator and the End User of the default;

Deleted: 1.1

Deleted: 8.3

(c) the Operator fails to comply in any material respect with the Train Service Description and fails to demonstrate to the reasonable satisfaction of Queensland Rail, within sixty (60) days after notice from Queensland Rail to the Operator and the End User to do so, that the Operator will consistently comply with the Train Service Description for the remainder of the Term provided that Queensland Rail, acting reasonably, has determined not to vary the Train Service Description having regard to relevant factors including:

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

(i) the impact on other users of the Network (including Network Service Providers); and

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

(ii) the efficient utilisation of the Network;

Deleted: Infrastructure

(d) an Insolvency Event occurs in relation to the Operator and such default continues for a period of sixty (60) days;

Deleted: Infrastructure

Deleted: Infrastructure

(e) the Operator's Accreditation is suspended, cancelled or amended so that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Agreement, and such default continues for thirty (30) days after notice from Queensland Rail to the Operator and the End User of the default;

Deleted: Aurizon Network

(f) where the Environmental Protection Agency gives the Operator a direction, notice or order about the conduct of the Operator in relation to the operation of Train Services which causes or threatens to cause Serious Environmental Harm and the Operator fails, within the time:

(i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or

(ii) otherwise agreed to by the Environmental Protection Agency,

to

(iii) comply with the direction, notice or order, as modified by any court order (if applicable); or

(iv) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Protection Agency in relation to the requirements of the direction, notice or order,

and such failure continues for thirty (30) days after notice by Queensland Rail to the Operator (and copied simultaneously to the End User) to remedy such failure;

Deleted: Aurizon Network

Formatted: Font: 6 pt

- (g) the Operator fails to effect or maintain the insurances required under Clause 9.2 of this Agreement and such default continues for thirty (30) days after notice from Queensland Rail to the Operator and the End User of the default;
- (h) the Operator purports to Assign any of its rights or interests in this Agreement other than as permitted by this Agreement;
- (i) the Operator is in default of the due performance of any other obligation under this Agreement, and such default continues for sixty (60) days after notice from Queensland Rail to the Operator and the End User of the default; or
- (j) where, for a period of at least 12 consecutive months, the Train Service Description does not include any Train Services,

Deleted: 9.2
 Deleted: 14.2
 Deleted: Aurizon Network

Deleted: Aurizon Network

provided that, where Queensland Rail has a right of suspension under Clause 15.1 which arose in respect of the occurrence of the same underlying event or circumstance, Queensland Rail has first exercised its corresponding right of suspension under Clause 15.1 in respect of that event or circumstance.

Deleted: Aurizon Network
 Deleted: 15.1
 Deleted: 20.1
 Deleted: Aurizon Network
 Deleted: 15.1
 Deleted: 20.1

16.2 Termination for Change in Control

Queensland Rail may terminate this agreement immediately if:

- (a) there is a Change in Control; and
- (b) the Operator has not obtained Queensland Rail's prior consent to that Change in Control in accordance with Clause 17.2, which will apply. **Termination by the Operator**

Deleted: 17.2
 Deleted: ¶
 Formatted: Font:
 Deleted: Aurizon Network

16.3

Without limiting any rights of termination contained elsewhere in this Agreement or otherwise existing at Law, the Operator may, by notice in writing to Queensland Rail and the End User, immediately terminate this Agreement upon the occurrence of any one or more of the following events or circumstances:

- (a) an Insolvency Event in relation to Queensland Rail occurs and such default continues for a period of sixty (60) days;
- (b) Queensland Rail's Accreditation is cancelled such that it cannot perform its obligations generally under this Agreement, and such default continues for thirty (30) days after notice from the Operator to Queensland Rail and the End User of the default;
- (c) Queensland Rail fails to pay when due any amount said to be payable under this Agreement, other than due to a bona fide dispute regarding whether the amount is payable for which a Dispute Notice has been given in accordance with clause 13.1 and which has not been resolved in favour of the amount being required to be paid, and such default continues for thirty (30) days after notice from the Operator to Queensland Rail and the End User of the default;
- (d) Queensland Rail is in default of the due performance of any other obligation under this Agreement and such default continues for sixty (60) days after notice from the Operator to Queensland Rail and the End User of the default.

Deleted: Aurizon Network
 Deleted: Aurizon Network
 Deleted: Aurizon Network
 Deleted: 13.1
 Deleted: 18.1
 Deleted: Aurizon Network
 Deleted: Aurizon Network
 Deleted: Aurizon Network

16.4 Grounds for Termination to be specified

A notice of termination given under Clauses 16.1 or 16.3 must set out the grounds for the termination.

Deleted: 16.1
 Deleted: 21.1
 Deleted: 16.3
 Deleted: 21.2
 Deleted: 16
 Deleted: 21

16.5 Obligations and other rights upon termination or expiration

- (a) Neither termination of this Agreement by a Party pursuant to this Clause 16, nor expiration of this Agreement prejudices:
 - (i) a Party's right to make a Claim or recover damages or avail itself of other remedies under this Agreement or at Law; or
 - (ii) either Party's rights to recover monies due to it under this Agreement.
- (b) Upon termination of this Agreement Queensland Rail and the Operator shall be released from all further obligations or liabilities under this Agreement except in respect of any antecedent breach of this Agreement on their respective parts. Any liability in respect of such antecedent breach shall be limited in the manner provided in this Agreement.

Deleted: Aurizon Network

16.6 Removal of Rollingstock following termination

- (a) Immediately on expiration of the Term, and as soon as practicable following termination of this Agreement for any other reason, the Operator must, at the Operator's cost, remove all of the Operator's Rollingstock from the Nominated Network.

Formatted: Font: 6 pt

- (b) If the Operator fails to remove the Operator’s Rollingstock from the Nominated Network, Queensland Rail may serve notice on the Operator demanding the removal of Rollingstock within a specified time.
- (c) If the Operator fails to remove any of the Operator’s Rollingstock from the Nominated Network the subject of the notice of demand within the time specified in the notice of demand issued by Queensland Rail in accordance with Clause 16.6(b), Queensland Rail is entitled to remove the Rollingstock and recover the reasonable costs of removal from the Operator.
- (d) The Operator is liable, and will indemnify Queensland Rail, for any costs incurred by Queensland Rail in relation to any damage or obstruction caused to the Network or the Nominated Network by the Operator in removing any Rollingstock in accordance with this Clause.
- (e) The Operator shall comply with all reasonable directions issued by Queensland Rail in relation to the removal of the Rollingstock in accordance with this Clause.

- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: 16.6(b)
- Deleted: 21.5(b)
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Infrastructure
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Formatted: Not Highlight
- Formatted: Not Highlight

17 ASSIGNMENT

17.1 Assignment by Queensland Rail

- (a) With the prior written consent of the Operator, which will not be unreasonably withheld, Queensland Rail may Assign its rights and obligations under the Access Agreement to any person who is responsible and has the expertise and financial capacity needed to operate and maintain the rail infrastructure and comply with the obligations of Queensland Rail under this Agreement.
- (b) It will be unreasonable for the Operator to withhold its consent to an Assignment if this Access Agreement is proposed to be Assigned to an entity which:
 - (i) has an investment grade credit rating of at least BBB; and
 - (ii) has the necessary expertise to operate and maintain the rail infrastructure and discharge the obligations of Queensland Rail under this Agreement.
- (c) On the assignee executing and delivering to the Operator a deed covenanting to be bound by and to perform Queensland Rail’s obligations under the Access Agreement, Queensland Rail will be released and discharged from further liability under the Access Agreement in respect of obligations that the assignee has undertaken to perform.

- Deleted: Aurizon Network may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the Operator provided that Aurizon Network procures the Assignee to covenant with the Operator by deed 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. Upon the Assignee entering into that deed Aurizon Network will be released and discharged from further liability under this Agreement in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.¶
- Formatted: Not Highlight
- Formatted: Heading 5
- Formatted: Not Highlight
- Formatted: Heading 5, Indent: Left: 3 cm
- Formatted: Not Highlight

17.2 Assignment by the Operator

- (a) The Operator may Assign the whole of its rights and obligations under the Access Agreement with the prior consent of Queensland Rail, which will not be unreasonably withheld, provided that the Operator:
 - (i) provides Queensland Rail with written evidence of the End User’s consent to the Assignment; and,
 - the assignee:
 - (ii) enters into a deed of covenant with Queensland Rail and agrees to be bound by and to perform the Operator’s obligations under this Agreement;
 - (iii) satisfies Queensland Rail (acting reasonably) that the assignee has the financial and other relevant resources to enable it to discharge the obligations of the Operator under this Agreement in respect of the Assigned rights; and
- (b) On the assignee executing and delivering to Queensland Rail a deed covenanting to be bound by and to perform the Operator’s obligations under this Agreement, the Operator will be released and discharged from further liability under this Agreement in respect of obligations that the assignee has undertaken to perform.

- Deleted: <#>Subject to the following provisions of this Clause 22.2, the Operator shall not Assign its rights or obligations, or any part thereof, under this Agreement without:¶
- <#>the prior written consent of Aurizon Network, which consent may not be unreasonably withheld; and¶
- <#>providing Aurizon Network with written evidence of the End User’s consent to the Assignment. ¶
- <#>The Operator may, provided: ¶
- <#>it has provided to Aurizon Network written evidence of the End User’s consent to the Assignment; and¶
- <#>it is not in default in the performance or observance of any of its obligations under this Agreement, ¶
- Assign the whole of its rights and obligations under this Agreement to:¶
- <#>a Related Body Corporate of the Operator which is Accredited to operate Train Services and is otherwise capable of performing the obligations of the Operator under this Agreement provided that the Operator shall remain liable for the performance of the duties, responsibility...

17.3 Charging

A Party (“**Chargor**”) may create a Charge over all of its rights under this Agreement in favour of a recognised financial institution (“**Chargee**”) to secure financial accommodation provided to the Chargor in relation to its obligations under this Agreement, provided that the Chargee shall first covenant in writing in favour of the other Party (“**Non-Charging Party**”), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee will comply with the provisions of this Clause 17, as if it were originally a party hereto, and will not exercise any power of sale of the rights and/or obligations of the Chargor under the Agreement except in accordance with this Clause 17.

- Deleted: 17
- Deleted: 22
- Deleted: 17
- Deleted: 22
- Formatted: Font: 6 pt

18 RELATIONSHIP WITH END USER ACCESS AGREEMENTS

18.1 Disputes

- (a) Prior to any referral of a matter to a loss adjuster, expert, arbitrator or the QCA (“**Adjudicator**”) in accordance with Clause 10.7 or 13, either Party may notify the other Party that the End User should be a party to that referral and, if such a notice is given, then the End User must be:
- (i) notified of the matter to be referred to the Adjudicator; and
 - (ii) provided with a copy of the provisions of this Agreement governing the referral of a matter to, the determination of a matter by and the payment of the costs of the Adjudicator (“**Dispute Provisions**”).
- (b) If the End User is given a notice under Clause 18.1(a), then:
- (i) where the Adjudicator is to be a loss adjuster, expert or arbitrator, the Parties are deemed not to have agreed the appointment of the loss adjuster or expert unless the End User has also agreed to the appointment of that loss adjuster, expert or arbitrator;
 - (ii) the Parties must comply with the Dispute Provisions in respect of the End User as though the End User was a Party to this Agreement for the purposes of the matter referred to the Adjudicator; and
 - (iii) the Adjudicator in addition to determining the matter between the Parties must also determine any claim, dispute, question or liability involving the End User and the End User Access Agreement arising in connection with any of the events or facts the subject of the matter referred to the Adjudicator by the Parties (unless that claim, dispute, question or liability has already been agreed by Queensland Rail and the End User or otherwise determined).
- (c) If the Operator is notified of a matter to be referred to an Adjudicator in accordance with the End User Access Agreement, then the Operator:
- (i) must comply with the provisions of that agreement governing the referral of a matter to, the determination of a matter by and the payment of the costs of an Adjudicator;
 - (ii) must provide the Adjudicator with a copy of this Agreement;
 - (iii) agrees that the Dispute Provisions do not apply to any claim, dispute, question or liability involving the Operator and this Agreement arising in connection with the matter referred to the Adjudicator; and
 - (iv) agrees that, for the avoidance of doubt, the decision of the Adjudicator, in the absence of manifest error, shall be final and binding upon the Operator.

Deleted: 10.7

Deleted: 15.7

Deleted: 13

Deleted: 18

Deleted: 18.1(a)

Deleted: 23.1(a)

Deleted: Aurizon Network

18.2 Notice to an Operator

- (a) Where, under one of the following clauses of the End User Access Agreement, Queensland Rail provides notice to the End User of a change to train service allocations or Operator nominations, Queensland Rail acknowledges that it must also provide such notice contemporaneously to the Operator:
- (i) clause 2.3 (“Exercise of Access Rights”);
 - (ii) clause 4.1 (“Reduction of Access Rights”); and
 - (iii) clause 4.2 (“Relinquishment and Transfer of Access Rights”).
- (b) Where, under one of the following clauses of the End User Access Agreement, Queensland Rail provides notice of default, suspension or termination to the End User, Queensland Rail acknowledges that it must also provide such notice contemporaneously to the Operator:
- (i) clause 12 (“Force Majeure”);
 - (ii) clause 13 (“Suspension”);
 - (iii) clause 14 (“Termination”); and
 - (iv) clause 17.18(e) (“Ownership of Land”).

Deleted: Aurizon Network

Deleted: Aurizon Network

Formatted: Not Highlight

Deleted: Aurizon Network

Deleted: Aurizon Network

Formatted: Font: 6 pt

19 GENERAL

19.1 Variation/Amendment

- (a) Except as otherwise provided in this Agreement any variation or amendment to this Agreement must be in writing signed by:
 - (i) both Parties; and
 - (ii) except where the amendment solely relates to operational matters that do not have consequential impacts on the End User’s Access Rights, the utilisation of the End User’s Access Rights or the End User Access Agreement, the End User.
- (b) The Operator must provide the End User with a copy of any written agreement to variations or amendments to this Agreement

19.2 Confidentiality

- (a) Subject to Clause 19.2(b), the Parties shall comply with the provisions of the confidentiality deed set out in Schedule 12.
- (b) Either Party may disclose to the End User:
 - (i) the terms of this Agreement; or
 - (ii) information and notices arising from or in connection with this Agreement or the Operational Rights but only to the extent that such disclosure:
 - (A) is required by the terms of this Agreement or the End User Access Agreement;
 - (B) is reasonably necessary for the performance of obligations or the exercise rights under this Agreement or the End User Access Agreement;
 - (C) is reasonably necessary in connection with the safe operation of the Nominated Network; or
 - (D) would otherwise be permitted by the provisions of the confidentiality deed set out in Schedule 12.

- Deleted: 19.2(b)
- Deleted: 24.2(b)
- Formatted: Font: Bold
- Deleted: Schedule 12
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 1212
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Formatted: Font: Bold

19.3 Intellectual Property

All material supplied or made available by one Party (“the Supplier”) to the other Party remains the intellectual property of the Supplier and cannot be reproduced nor used for any purpose other than the purpose for which it was supplied without the approval of the Supplier.

19.4 Entire Agreement

- (a) This Agreement, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever and no Party will be liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

- Formatted: Font: Bold
- Deleted: Schedule 12
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 1212
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps

19.5 Non-merger

Each representation, covenant and obligation under this Agreement continues in full force and effect until such representation, obligation or covenant is satisfied or completed.

19.6 Authority to enter into Agreement

- (a) The Parties represent and warrant to and covenant with each other that they have full power to enter into and perform their obligations under this Agreement and that this Agreement constitutes valid and binding obligations on the Parties respectively enforceable in accordance with its terms.

- Formatted: Font: 6 pt

- (b) If this Agreement is executed by an attorney the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Agreement.

19.7 Interpretation not to disadvantage a Party

In the interpretation of this Agreement no rules of construction shall apply to the disadvantage of one Party on the basis that that Party put forward this Agreement or any part thereof.

19.8 Relationship

- (a) The relationship between the Parties is entirely contractual and nothing in this Agreement creates or is to be taken to create any partnership, joint venture or relationship of employer and employee between the Parties or any of them.
- (b) This Agreement is for the exclusive benefit of the Parties and does not create any rights in any Third Parties.

19.9 Notices

(a) Form of Notice

Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Agreement (other than a Queensland Rail Train Control Direction or a direction from the Queensland Rail Commander) ("**Notice**") must be in writing and signed by an authorised officer of that Party and may, if so agreed by Queensland Rail, be in electronic form.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

(b) Method of Service

A Notice may be given by:

- (i) being personally delivered on a Party;
- (ii) being left at the Party's current address for service;
- (iii) being sent to the Party's current address for service by pre-paid ordinary mail; or
- (iv) being emailed to the Party's email address.

Deleted: sent by facsimile transmission to the Party's current facsimile number for service provided that a copy of the notice is then delivered by one of the means described above.

(c) Deemed Notice

A Notice is deemed given if:

- (i) personally delivered, upon delivery;
- (ii) posted to an address in Australia, three (3) days after posting; or
- (iii) sent by email, when the sender receives an automated message confirming delivery or four hours after the time sent unless the sender receives an automated message that the email has not been delivered.

Deleted: facsimile, on the next day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number.

(d) Addresses for Service

- (i) Each Party's address for service is:

Queensland Rail:

Address: Level 15, 295 Ann Street, Brisbane, Queensland

Email: [***]

Attention: Chief Executive Officer, Queensland Rail Pty Ltd

Operator

Address: [***]

Email: [***]

Attention: [***]

- (ii) A Party may from time to time change its particulars of service by giving written notice of that change to the other Party

Deleted: Facsimile

Formatted: Highlight

Formatted: Highlight

Deleted: Facsimile

Formatted: Highlight

Formatted: Highlight

19.10 Certificate

A certificate signed by any duly authorised officer of Queensland Rail as to a matter or as to a sum payable to Queensland Rail in connection with this Agreement is prima facie evidence of the matter stated in it or the sum payable.

Deleted: Aurizon Network

Deleted: Aurizon Network

Formatted: Font: 6 pt

19.11 Costs

Subject to any express provision in this Agreement to the contrary, each Party bears its own legal and other expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

19.12 Stamp Duty

- (a) The Operator is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it.
- (b) If Queensland Rail pays any stamp duty (including any fine or penalty) on or relating to this Agreement or any document executed under or in connection with it, the Operator must reimburse Queensland Rail the amount paid upon demand.

Deleted: Aurizon Network

Deleted: Aurizon Network

19.13 Waiver and Exercise of Rights

- (a) A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (b) No failure or delay by either Party to exercise any right or remedy under this Agreement may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Agreement does not constitute a waiver of succeeding defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Agreement does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Agreement.

19.14 Computation of Time

Where time is to be reckoned by reference to a day or event, that day or the day of the event will be excluded.

19.15 Severance of invalid or illegal terms

- (a) If any term of this Agreement, or its application to any Party, person or circumstance is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatsoever, then:
 - (i) that term or its application to such Party, person or circumstance is severable from this Agreement;
 - (ii) the remainder of this Agreement, excluding the severed part, remains in force and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
 - (iii) to the extent permissible by law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this Clause as to a replacement term. If the Parties cannot agree upon a replacement term, this Agreement is continued in accordance with Clause 19.15(a)(i) and (ii).

Deleted: 19.15(a)(i)

Deleted: 24.15(a)(i)

19.16 Rights Cumulative

Subject to any express provision in this Agreement to the contrary, the rights of any Party under this Agreement are cumulative and are in addition to any other rights of that Party.

19.17 Approvals and Consents

Subject to any express provision in this Agreement to the contrary, a Party may conditionally or unconditionally give or withhold any consent to be given under this Agreement.

Deleted: Schedule 2

Formatted: Font: Bold

Deleted: Schedule 2

Formatted: Font: Bold

19.18 Ownership of Land

The Operator acknowledges that the land identified in Part 5 of Schedule 2:

Formatted: Font: Bold, Check spelling and grammar, Not All caps

- (a) is not owned or controlled by Queensland Rail; and

Deleted: Aurizon Network

Formatted: Font: 6 pt

- (b) is not land the entry to which is included within the definition of “Access” in Queensland Rail’s Access Undertaking (as those provisions are amended, varied or replaced from time to time),

Deleted: Aurizon Network

and agrees that in respect of that land owned or controlled by another person (“Landowner”) then:

- (c) the Operator will comply with the requirements of the Landowner in relation to that land as notified to the Operator by Queensland Rail from time to time;
- (d) if, after the date of this Agreement, there is a change in the costs incurred by Queensland Rail due to the requirements of the Landowner in respect of that land, then that change shall be deemed to be a Material Change [for the purposes of the End User Access Agreement]; and [bracketed text to be included where End User is paying all Access Charges]
- (e) if Queensland Rail’s rights in respect of that land are terminated for any reason other than the default of Queensland Rail of any agreement that affects Queensland Rail’s use of that land or other than by agreement with the Landowner, then Queensland Rail may by notice to the Operator suspend and/or terminate the Operational Rights insofar as they relate to that part of the Nominated Network which is situated on that land.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

19.19 Implementation of Agreement

Each Party must promptly execute all documents and do all such acts and things as is necessary or desirable to implement and give full effect to the provisions of this Agreement.

19.20 Schedules

In the event that the content of a Schedule requires variation or replacement in accordance with this Agreement, Queensland Rail shall issue to the Operator a replacement Schedule which shall upon issue be substituted for and replace the relevant Schedule in this Agreement. Nothing in a Schedule shall be varied in any way except by the issue of a replacement Schedule by Queensland Rail in accordance with this Clause.

Deleted: Aurizon Network

Deleted: Aurizon Network

19.21 Governing Law and Jurisdiction

This Agreement shall be interpreted according to the Laws for the time being in force in the State and each of the Parties submits to the jurisdiction of the courts of the State and the jurisdiction of all courts competent to hear appeals therefrom and waives any right to object to any proceedings being brought in those courts.

19.22 Most Favoured Nation Status

[Delete clause 24.22 where End User is paying all Access Charges]

- (a) If the Operator believes on reasonable grounds that:
- (i) Queensland Rail has entered into an Access Agreement with another Railway Operator for a Train service that transports the same specified commodity in the same specified geographic area as a Train Service provided in accordance with this Agreement (“Like Train Service”); and
- (ii) the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in Queensland Rail’s Access Undertaking,
- the Operator may provide written notification to Queensland Rail which must include the reasons why the Operator considers this to be the case.
- (b) Within thirty (30) days of receipt of such notification, Queensland Rail must advise the Operator:
- (i) whether or not Queensland Rail agrees that the Access Agreement with the other Railway Operator is for a Like Train Service and, if not, the reasons why Queensland Rail considers this to be the case;
- (ii) if Queensland Rail agrees that the Access Agreement with the other Railway Operator is for a Like Train Service, whether or not Queensland Rail agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in Queensland Rail’s Access Undertaking and, if not, the reasons why Queensland Rail considers that the access charge applicable to the Like Train Service has not been developed in contravention of the limits on price differentiation; and
- (iii) if Queensland Rail agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Formatted: Font: 6 pt

differentiation then within sixty (60) days of advice provided pursuant to Clause 19.22(b), Queensland Rail must advise the Operator:

Deleted: 19.22(b)

(A) whether or not Queensland Rail has been able to vary the access charge applicable to the Like Train Service such that it no longer contravenes the limits on price differentiation set out in Queensland Rail's Access Undertaking; or

Deleted: 24.22(b)

Deleted: Aurizon Network

Deleted: Aurizon Network

(B) if Queensland Rail has not been able to vary the access charge applicable to the Like Train Service that Queensland Rail agrees to the reduction of the Access Charge payable by the Operator including the amount of the proposed reduced Access Charge.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

(c) If the Operator does not agree with Queensland Rail's response to its notification, the dispute shall be referred to an expert for resolution in accordance with Clause 13.3.

Deleted: Aurizon Network

Deleted: 13.3

(d) If:

Deleted: 18.3

(i) another Railway Operator provides Queensland Rail with notification that it believes that some or all of the Operator's Train Services are a Like Train Service to a Train service operated by the other Railway Operator, and that the Access Charge has been developed in contravention of the limits on price differentiation set out in Queensland Rail's Access Undertaking; and

Deleted: Aurizon Network

(ii) Queensland Rail agrees that this Agreement is for a Like Train Service and that any Access Charge under this Agreement has been developed in contravention of the limits on price differentiation set out in Queensland Rail's Access Undertaking.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

then Queensland Rail has the right by notice to the Operator to vary the Access Charge such that it no longer contravenes the limits on price differentiation set out in Queensland Rail's Access Undertaking.

Deleted: Aurizon Network

Deleted: Aurizon Network

EXECUTION

Executed in Queensland

SIGNED for and on behalf of)

QUEENSLAND RAIL)

in the presence of:)

Witness

Signature

Print Name

Print Name

[the OPERATOR])

in the presence of:)

Witness

Signature

Print Name

Print Name

Note: Queensland Rail will require the Operator to execute this Agreement either:

Deleted: Aurizon Network

- (a) under seal; or
- (b) under s127(i) of the Corporations Act; or
- (c) under a duly executed Power of Attorney.

Schedule 1

TRAIN SERVICE ENTITLEMENTS

1 PART 1 TRAIN SERVICE DESCRIPTION

1.1 Train Service Characteristics

The following tables define the characteristics of Train Services which characteristics shall form part of the Train Service Description.

Commodity: Coal
Sectional Run Times: See Clause [1.2](#)
Special Operating Restrictions: See Clause 1.5

Deleted: 1.2
Deleted: 1.2
Formatted: Font: Bold
Formatted: Font: Bold

System:

Origin	Destination	Distance (km)	Time at Origin Loading Facility (hrs)

Notes: Origin is denoted as the mine and/or [Queensland Rail](#) terms for the location at which the mine loads Trains
 Train Services run loaded between Origin and Destination and empty between Destination and Origin.

Deleted: Aurizon Network

For Train Services with the above characteristics, the time at the Destination unloading facility is as per the following table.

Destination Unloading Facility	Time at Destination Unloading Facility (hrs)

For Train Services with the above characteristics, the average Time at Depot and the Other Dwell Time are as per the following table:

System	Time at Depot (hrs)	Other Dwell Time (hrs)

Commitment Date:

[insert]

1.2 Sectional Running Times

The Sectional Running Times to be achieved by coal system Trains are set out in Table 1.2 below:

Table 1.2 -Sectional Running Times:

From	To	Sectional Running Time	
		Direction Empty (minutes)	Direction Loaded (minutes)

Formatted: Font: Bold, Not All caps
Deleted: Schedule 2
Deleted: Schedule 2
Formatted: Font: Bold
Formatted: Font: Bold
Formatted: Font: Bold, Not All caps
Deleted: Aurizon Network
Formatted: Font: 6 pt

Note: A Diagram illustrating the location of each Section can be found in [Schedule 2](#)
 [Operator to provide details of Sectional Running Times]

1.3 Train Service Levels

The number of Nominated Weekly Train Services for the relevant coal system Train that [Queensland Rail](#) will provide to the Operator from the Commitment Date are set out in Table 1.3 below.

Table 1.3: Train Service Levels

Service Levels	No. of Train Services
Nominated Weekly Train Services ¹	
Nominated Monthly Train Services ¹ (31 days)	
Nominated Monthly Train Services ¹ (30 days)	
Nominated Monthly Train Services ¹ (29 days)	
Nominated Monthly Train Services ¹ (28 days)	
Nominated Annual Train Services ¹	

¹NB: A Train Service is a One Way Train Service

The above Train Service Levels will be converted into timetables using the process referred to in paragraph 2.2(i) of the Scheduling Principles set out in [Schedule 10](#).

1.4 Transit Times

The target Average Below Rail Transit Time Factor is set out below:

Coal	Target Average Below Rail Transit Time Factor (%)

Deleted: Schedule 1010

Field Code Changed

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Deleted: Schedule 10

1.5 Special Operating Restrictions

In scheduling Train Services in accordance with the Network Management Principles, [Queensland Rail](#) will comply with the following special operating restrictions:

[Specific operating restrictions to be agreed]

Deleted: Aurizon Network

1.6 Cycle Description

With the following exceptions, the Train Services Cycle description is the most direct route over the Nominated Network between the Origins and Destinations and Destinations and Origins (as described in Paragraph 1.1).

Note: Where there is duplicated Track or multiple roads (eg yards), [Queensland Rail](#) will have the ability to schedule the Train over any of the Tracks or roads.

Deleted: Aurizon Network

Exceptions

[To be agreed]

1.7 Stowage

[To identify any agreed short term Stowage requirements additional to that provided in the relevant Reference Tariff Schedule]

1.8 Permitted Movements on the Nominated Network

[To detail any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times]

Formatted: Font: 6 pt

Schedule 2
NOMINATED NETWORK

PART 1 EXTENT OF NOMINATED NETWORK

For the purposes of this Agreement the Nominated Network on which the Operator will be entitled to operate Train Services will be described by a combination of diagram and/or table but does not include freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

[Diagram/table to be inserted as applicable]

PART 2 NOT USED

PART 3 TRAIN CONTROL CENTRES AND SIGNAL CABINS

The movement of the Operator’s Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins as follows:

[Diagram to be inserted]

PART 4 PARTS OF THE NOMINATED NETWORK SUBJECT TO CLAUSE 12.1(a)(iii),

[To be inserted if applicable]

Deleted: 12.1(a)(iii)

Deleted: 17.1(a)(iii)

PART 5 LAND IN WHICH OTHER PARTIES HAVE AN INTEREST (Clause 19.18)

[To be inserted if applicable]

Deleted: 19.18

Deleted: 24.18

PART 6 WEIGHBRIDGES AND OVERLOAD DETECTORS (Clause 3)

A. WEIGHBRIDGES CERTIFIED FOR BILLING PURPOSES:

Location	Owner/Operator	Weighbridge “In Motion Trade Certificate” Electronic Weighing and Billing

The tolerances are those required to achieve certification.

B. AGREED OPERATIONAL WEIGHBRIDGES AND OVERLOAD DETECTORS

Location	Owner/Operator	Tolerance
		+/- (x)%

Schedule 3

CALCULATION OF ACCESS AND OTHER CHARGES

[delete all of Schedule 3 where End User Access Agreement provides for End User to pay all Access Charges].

1 PART 1 BASE ACCESS CHARGES

1.1 Table 1.1 below defines the seven elements of the Base Access Charges that are used to calculate the Access Charge payable by the Operator to Queensland Rail for each Train Service:

Table 1.1: Base Access Charge

			Base Access Charge
Train Service			
Origin			
Destination			
AT₁ (\$/’000 Gtk)			
AT₂ (\$/ One Way Train Service)			
QCA Levy	(\$/net tonne)	QL	

1.2 The elements of the Base Access Charge will be escalated on the Escalation Date.

The First Escalation Date is the first date that is twelve (12) Months after the most recent Review Date and each subsequent Escalation Date shall be twelve (12) Months after the previous Escalation Date where no Review Date has occurred in the twelve (12) Month period.

2 PART 2 RELEVANT OPERATING PARAMETERS

2.1 The calculation of G_{tk} and net tonnes for application with the Base Access Charges in Part 5 of this Schedule shall be as detailed in this Part 2.

2.2 The gross tonnes for each individual Train Service operated will be the sum of:

- (b) the maximum gross mass as specified in Schedule 4 for each locomotive comprising the Train Service;
- (c) the mass determined at any Weighbridge located adjacent to the loading facilities for each loaded or partly loaded Wagon comprising the Train Service;
- (d) where there is no Weighbridge located adjacent to the loading facility or that Weighbridge has malfunctioned the mass determined at the closest Weighbridge to the loading facility located en route for each loaded or partly loaded Wagon comprising the Train Service;
- (e) where all Weighbridges en route have malfunctioned, the average mass for loaded Wagons of that class of Wagon determined for all Trains operated of the same Train Service type in the most recent Month during the previous twelve (12) Months for which a Weighbridge was functioning for the entire Month for each loaded or partly loaded Wagon comprising the Train Services provided such data is available; or
- (f) where there are no Weighbridges located en route between the Origin and Destination or no data is available pursuant to paragraph (d) of this Clause the maximum gross mass as specified in Schedule 4 for each loaded or partly loaded Wagon comprising the Train Service;
- (g) the tare mass as specified in Schedule 4 for each empty Wagon comprising the Train Service; and
- (h) for all other Rollingstock, the maximum gross mass specified in Schedule 4 for each item of such Rollingstock comprising the Train Service.

2.3 The G_{tk} for each individual Train Service operated shall be the gross tonnes for the Train Service as calculated in Clause 2.2 of this Schedule multiplied by the distance specified in Table 1.1 of Schedule 1 for the relevant Train Service.

Deleted: Aurizon Network

Deleted: Incremental Maintenance Tariff

Deleted: . AT₁

Deleted: Incremental Capacity Tariff

Deleted: AT₂

Deleted: Allocated Tariff 1 . (\$/’000 Ntk) AT₃

Deleted: , Ntk

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 4

Deleted: Schedule 4

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Formatted: Font: Bold

Formatted: Font: Bold, Check spelling and grammar, Not All caps

Deleted: Schedule 1

Formatted: Font: Bold

Deleted: Schedule 1

Formatted: Font: 6 pt

- 2.4 The net tonnes for each individual Train Service operated shall be the gross tonnes as calculated in Clause 2.2 of this Schedule less the sum of:
 - (a) the maximum gross mass as specified in [Schedule 4](#) for each locomotive comprising the Train Service;
 - (b) the tare mass as specified in [Schedule 4](#) for each Wagon comprising the Train Service; and
 - (c) for all other Rollingstock, the tare mass specified in [Schedule 4](#) for each item of such Rollingstock comprising the Train Service.

3 PART 3 REVIEW DATE

3.1 Review Date

3.1.1 The Parties acknowledge that the Base Access Charge elements have been agreed by reference to the relevant Reference Tariffs in place at the time.

3.1.2 For the purposes of this [Schedule 3](#), the Review Dates shall be the first day of the Month in which the renewed or varied Reference Tariff Schedule relevant to the Train Services is intended to apply from in accordance with [Queensland Rail's](#) Access Undertaking. Where such date is prior to the date when the renewed or varied Reference Tariff Schedule relevant to the Train Services is published or otherwise advised ("**Advice Date**"), then the Parties will account to one another accordingly for the period between the Review Date and the Advice Date.

3.2 Review of Charges

3.2.1 For each Train Service type the Base Access Charge elements and, where necessary, any other elements of this [Schedule 3](#) will be reviewed on each Review Date.

3.2.2 For each Train Service type [Queensland Rail](#) will advise the Operator in writing of the Base Access Charge elements and any other changes to this [Schedule 3](#), to apply from each Review Date within 14 days of the latter of the Review Date or the date on which the QCA endorses the relevant renewal or variation. In determining any variations, [Queensland Rail](#) will have regard to:

- (a) the new or varied relevant Reference Tariffs;
- (b) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Schedule;
- (c) other related factors in the relevant Reference Tariff Schedule; and
- (d) [Queensland Rail's](#) Access Undertaking.

3.2.3 If the Operator does not accept some or all of the variations advised pursuant to Clause 3.2.2 of this Schedule, the Operator must give [Queensland Rail](#) notice within 14 days of receipt of notice of the variations.

3.2.4 The Parties will negotiate in good faith to attempt to agree any new Base Access Charge elements and/or other changes to this Schedule for which the Operator has given notice pursuant to Clause 3.2.3 of this Schedule.

3.2.5 If the Parties have not agreed the new Base Access Charge elements and/or other changes to this Schedule within thirty (30) days of the relevant Review Date, either Party may refer the determination of the new Base Access Charge elements and/or other changes to this Schedule to an expert in accordance with Clause 3.3 of this **Schedule**.

3.2.6 Unless and until agreement is reached or a determination is made pursuant to Clause 3.2 of this Schedule, the Base Access Charge elements and/or any other relevant provision of this Schedule prevailing as at the Review Date shall continue to be utilised to determine the amount of Access Charges payable by the Operator. If any change in the Base Access Charge elements or any relevant provision of this Schedule is subsequently agreed or determined then the revised Base Access Charges or any relevant provision of this Schedule will apply from the relevant Review Date and the Parties will account to one another accordingly.

3.3 Expert Review

3.3.1 This Clause 3.3 only applies where the Base Access Charge elements and/or any other changes to this Schedule are referred to an expert for review pursuant to Clause 3.2 of this [Schedule 3](#).

3.3.2 Where a matter is to be referred to an expert pursuant to Clause 3.2 of this Schedule, the matter must be referred for determination by a person:

- (a) who is appointed by the Parties, or in default of such appointment within fourteen (14) days after either Party giving notice in writing to the other Party requiring the appointment of an expert then that person is to be nominated at either Party's request by

Deleted: Schedule 4
Formatted ...
Deleted: Schedule 4
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Formatted ...
Deleted: Schedule 4
Formatted ...
Formatted ...
Deleted: Schedule 4
Formatted ...
Deleted: Schedule 4
Formatted ...
Formatted ...
Deleted: Schedule 4
Formatted ...
Deleted: <#>The Ntk for each individ...
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...
Deleted: Aurizon Network
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...
Deleted: Aurizon Network
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...
Deleted: Aurizon Network
Formatted ...
Formatted ...
Deleted: Aurizon Network
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...
Deleted: Aurizon Network
Formatted ...
Formatted ...
Deleted: Aurizon Network
Formatted ...
Formatted ...
Deleted: Aurizon Network
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...
Deleted: Schedule 3
Formatted ...
Formatted ...

the President for the time being of the Australian Society of Certified Practising Accountants;

- (b) who has appropriate qualifications and practical experience having regard to the nature of the matter in dispute;
- (c) who has no interest or duty which conflicts or may conflict with his function as expert, he being required to fully disclose any such interest or duty by written notice to the Parties before his appointment;
- (d) who is not an employee of the Operator, the End User or Queensland Rail or of a Related Body Corporate of any of them;
- (e) who shall not be permitted to act until he has given written notice to both Parties that he is willing and able to accept the appointment; and
- (f) who shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1990* (Qld) shall not apply to him or his determination or the procedures by which he may reach his determination.

Deleted: Aurizon Network

- 3.3.3 Queensland Rail will provide the expert with documentation to support the Queensland Rail determination of the Base Access Charge elements and/or any other changes to this Schedule. The expert may request any other documentation from either Party or any other party as it sees fit in order to determine the outcome of the dispute.

Deleted: Aurizon Network

Deleted: Aurizon Network

- 3.3.4 The expert shall be required to undertake to keep confidential all matters coming to its knowledge by reason of the expert's appointment and performance of its duties, other than that already in the public domain. The expert shall not include such information in its reasons for reaching the determination.

- 3.3.5 The expert shall review the Queensland Rail documentation and either:

Deleted: Aurizon Network

- (a) uphold the Queensland Rail Base Access Charge elements and/or any other changes to this Schedule proposed by Queensland Rail; or
- (b) where the expert believes the Queensland Rail provided Base Access Charge elements and/or any other changes to this Schedule have not been determined consistent with Queensland Rail's Access Undertaking and the relevant Reference Tariff Schedule, the expert shall seek to reach agreement with Queensland Rail as to, and failing agreement shall determine, appropriate Base Access Charge elements and/or any other changes to this Schedule, having regard to:
 - (i) the new relevant Reference Tariffs;
 - (ii) the differences between the relevant Train Service and the Reference Train Service defined in the relevant Reference Tariff Schedule;
 - (iii) other related factors in the relevant Reference Tariff Schedule; and
 - (iv) Queensland Rail's Access Undertaking.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

- 3.3.6 The expert will report its findings to Queensland Rail and the Operator and the reasons for such assessment.

Deleted: Aurizon Network

Deleted: Aurizon Network

- 3.3.7 In the absence of manifest error, the decision of the expert shall be final and binding upon the Parties.

- 3.3.8 The costs of the expert and any advisers to the expert shall be borne by:

- (a) the Operator in the event that the expert does not adjust the Base Access Charge elements and/or any other changes to this Schedule most recently proposed by Queensland Rail prior to referral to the expert;
- (b) Queensland Rail in the event that the Base Access Charge elements and/or any other changes to this Schedule are varied from those most recently proposed by Queensland Rail prior to referral to the expert; or
- (c) in such other proportion as the expert considers appropriate.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

4 PART 4 ESCALATION FORMULA

- 4.1 Unless otherwise agreed between the Parties, the Base Access Charge elements, except the QCA Levy, and any other charges specified as being subject to escalation will escalate on each Escalation Date from and including the First Escalation Date, in accordance with the following formula:

$$BAC_n = BAC_{n-1} * CPI_n / CPI_{n-1}$$

Where:

DocID: 66487765.1

Formatted: Font: 6 pt

- BAC_n means the escalated value of the relevant Base Access Charge element or other charge for the purpose of calculating Access Charges and other charges payable under this Agreement pursuant to Part 5 of this Schedule;
- BAC_{n-1} means the escalated value of the relevant Base Access Charge element or other charge applied prior to the relevant Escalation Date or in the case of Access Charges at the First Escalation Date means the relevant Base Access Charge element shown in Table 1.1;
- CPI_n means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 6 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable BAC_n is being determined;
- CPI_{n-1} means the Consumer Price Index Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter the midpoint of which is 18 months prior to the midpoint of the Quarter commencing on the Escalation Date for which the variable BAC_n is being determined.

4.2 Review of Consumer Price Index

4.2.1 If in the reasonable opinion of Queensland Rail or the Operator the Consumer Price Index used for the purposes of the escalation formula specified in Clause 4.1 of this Schedule 3:

- (a) is altered in a material way;
- (b) ceases to be published; or
- (c) ceases to be published at sufficiently regular intervals or is likely to cease to be published at sufficiently regular intervals for the purpose of the formula in Clause 4.1 of this Schedule 3.

then Queensland Rail or the Operator (as the case may be) shall notify the other Party in writing of such opinion.

4.2.2 Upon such notice being given, the Parties will negotiate with a view to agreeing to vary the application of the Consumer Price Index or to adopting an alternative or alternatives to the Consumer Price Index and failing agreement within forty five (45) days of such notice being given then the matter shall be referred to an expert in accordance with Clause 13.3 of the Agreement.

4.2.3 If the dispute is resolved after the next Escalation Date, the Parties agree to retrospectively adjust any Access Charges invoiced since that date to be consistent with the outcome of the dispute resolution.

5 PART 5 CALCULATION OF INVOICE FOR ACCESS

5.1 The amount of the invoice for charges payable by the Operator under this Agreement for the relevant Billing Period shall be calculated in accordance with the following formula:

$$TC = AC * (1 + GST) + G$$

Where

TC is the total amount of charges payable by the Operator for the relevant Billing Period;

AC is the sum of the Access Charges payable for the relevant Billing Period in respect to each Train Service type where the Access Charges payable for each Train Service shall equal the sum of IM, ICC, and QL for each Train Service type;

IM is the incremental maintenance charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$(AT_1 * GTK) / 1000$$

Where

AT_1 is the amount specified as such in Clause 1 of this Schedule 3, as escalated, or varied, from time to time in accordance with this Agreement, for the relevant Train Service as applicable on the last day of the relevant Year; and

GTK is the sum of the Gtk for all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Gtk for each individual Train Service operated being determined in accordance with Clause 2.3 of this Schedule 3;

ICC is the charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$$AT_2 * NTS$$

Deleted: Aurizon Network

Formatted: Font: Bold, Check spelling and grammar, Not All caps

Deleted: Schedule 3

Formatted: Font: Bold

Deleted: Schedule 3

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold, Check spelling and grammar, Not All caps

Deleted: Schedule 3

Formatted: Font: Bold

Deleted: Schedule 3

Deleted: Aurizon Network

Deleted: 13.3

Deleted: 18.3

Deleted: , ALT1, ALT2, ET, EE

Deleted: AT1 in Table 1.1 of this Schedule for the relevant Train Service type as escalated for the relevant Billing Period

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 3

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Deleted: Schedule 3

Deleted: incremental capacity

Formatted: Font: 6 pt

Where

AT₂ is the amount specified as AT₂ in Table 1.1 of this [Schedule 3](#) for the relevant Train Service type as escalated for the relevant Billing Period; and

NTS is the number of relevant individual Train Services operated for the relevant Billing Period;

QL is the QCA Levy charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula:

$QL * NT$

Where

QL is the amount specified [in Clause 1 of this Schedule 3, as escalated or varied from time to time in accordance with this Agreement for the relevant Train Service as applicable on the last day of the relevant Year](#); and

NT is the sum of the net tonnes of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the net tonnes for each individual Train Service operated being determined in accordance with Clause 2.4 of this [Schedule 3](#);

GST is the rate of GST (expressed as a decimal) applicable at the time the supply is made; and

G is the sum of any other amount due and payable under this Agreement including charges for GST not already factored in by the formula for AC including, but not limited to, payment for Ancillary Services, interest, Overload Charges, payment for ad-hoc Train services not calculated in AC above, performance payments from [Schedule 1](#) or [Schedule 5](#) and any adjustments (positive or negative).

5.2 For the purposes of this [Schedule 3](#), a Train Service is a One Way Train Service.

5.3 A Train Service shall be deemed to commence at that time nominated by [Queensland Rail](#) in accordance with its information systems in use at the time.

6 PART 6 OVERLOAD CHARGES

Overload Charges will be levied at the rate specified in the relevant Load Variation Table published by [Queensland Rail](#) from time to time. The method of calculation and required payment method for Overload Charges will be advised.

7 PART 7 ADJUSTMENT CHARGES

Adjustment Charges will be applied as approved by the QCA, from time to time, and as determined, in accordance with [Queensland Rail](#)'s Access Undertaking.

- Deleted: Schedule 3
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 3
- Deleted: ALT1 is the Ntk allocated charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula: $(AT_3 * NTK) / 1000$
- Where
- AT₃ is the amount specified as AT₃ in Table 1.1 of this [Schedule 3](#) for the relevant Train Service type as escalated for the relevant Billing Period; and
- NTK is the sum of the Ntk of all relevant Train Services (loaded and empty) operated for the relevant Billing Period on the basis of the Ntk for each individual Train Service operated being determined in accordance with Clause 2.5 of this [Schedule 3](#);
- ALT2 is the net tonne allocated charge for the relevant Billing Period for the relevant Train Service type which is calculated by the formula: $AT_4 * NT$
- Where
- Formatted: Indent: Left: 3 cm
- Deleted: as QL in Table 1.1 of this
- Deleted: Schedule 3
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 3
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 1
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 1
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 5
- Formatted: Font: Bold
- Formatted: Font: Bold, Not All caps
- Deleted: Schedule 5
- Formatted: Font: Bold
- Formatted
- Deleted: Schedule 3
- Formatted: Font: Bold
- Deleted: Schedule 3
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Deleted: Aurizon Network
- Formatted: Font: 6 pt

Schedule 4

AUTHORISED ROLLINGSTOCK AND ROLLINGSTOCK CONFIGURATIONS

Clause 0

PART 1 AUTHORISED ROLLINGSTOCK

The Operator must provide a certificate from a suitably qualified person as per the ORM, certifying that the Rollingstock is compliant with the Interface Risk Management Plan (including the Rollingstock Interface Standards), or if non-compliances exist, can be operated to an acceptable level of risk by implementing the relevant controls in the Interface Risk Management Plan. Other controls listed in the ORM relevant to the compatibility of Rollingstock with the Network must also be implemented in order to gain authorisation.

Derivatives of generic classes of Rollingstock that are operated from time to time may also be covered by that Rollingstock's certification provided that the operating characteristics or safety aspects of the derivative Rollingstock are not materially different to the certified Rollingstock.

The Operator is authorised to use the classes of Rollingstock nominated in the Train Route Acceptance Certificates (annexed hereto as Annexure 'A') on the route/s specified on the Train Route Acceptance Certificates or a valid authority to travel.

The Operator must document the interface characteristics of the Rollingstock in the certificate of compliance.

Upon receipt of the above certifications, Queensland Rail will authorise the Rollingstock by recording the Rollingstock details in the Vizirail rollingstock database including the individual Rollingstock numbers.

Inclusion in this Part 1 is not sufficient for operation on the Nominated Network (or any other parts of the Network) and specific authorisation for the Rollingstock in this Part 1 as part of a Rollingstock Configuration in Part 2 is required prior to any operation of Train Services.

PART 2 AUTHORISED ROLLINGSTOCK CONFIGURATIONS

The Operator must provide a certificate from a suitably qualified person as per the ORM, certifying that the Rollingstock Configurations are compliant with the Interface Risk Management Plan (including the Rollingstock Interface Standards), or if non-compliances exist, can be operated to an acceptable level of risk by implementing the relevant controls in the Interface Risk Management Plan. Other controls listed in the ORM relevant to the compatibility of Rollingstock Configurations with the Network must also be implemented in order to gain authorisation.

Upon receipt of the above certifications, Queensland Rail will authorise the Rollingstock Configurations by issuing Train Route Acceptance Certificates (annexed hereto as Annexure 'A').

The Train Route Acceptance Certificates describe the authorised Rollingstock Configurations in terms of the maximum Train parameters available for the route/s specified on the Train Route Acceptance Certificates and all suitable arrangements and combinations of available authorised Rollingstock that will still ensure train route compatibility.

PART 3 RELEVANT ROLLINGSTOCK (Clause 8.4(d)(ii))

[To be inserted as applicable]

Deleted: 1.1

Deleted: 6.9

Deleted: clause 6.9

Deleted:

Deleted: Interface Risk Management Plan

Deleted: Aurizon Network

Deleted: Infrastructure

Deleted: clause 6.9

Deleted:

Deleted: Interface Risk Management Plan

Deleted: Aurizon Network

Formatted: Font: 6 pt

Schedule 5

PERFORMANCE LEVELS

Clause ~~5.6~~

PART 1: DEVELOPMENT OF PERFORMANCE LEVELS

- 1.1** The Parties must meet as soon as practicable after the Commencement Date to negotiate in good faith to endeavour to agree the ~~Queensland Rail~~ Performance Level and the Operator Performance Level within twelve (12) Months of the Commencement Date, which Performance Levels may involve financially based incentives and sanctions and, unless otherwise agreed, will be applicable for the Term. A failure to agree the Performance Levels is not a Dispute for the purposes of Clause ~~13~~.
- 1.2** On and from the date the Performance Levels are implemented by the Parties, the Parties must monitor, record and assess the performance of their respective obligations under this Agreement against the Performance Levels. Each Party must comply with the reporting and assessment requirements set out in this ~~Schedule 5~~.

[Once criteria is agreed for the Performance Levels, an agreed reporting mechanism will be developed]

Deleted: 5.6

Deleted: 6.6

Deleted: Aurizon Network

Deleted: 13

Deleted: 18

Formatted: Font: Bold, Not All caps

Deleted: Schedule 5

Deleted: Schedule 5

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold, Not All caps

Formatted: Font: 6 pt

Schedule 6

SAFeworking PROCEDURES, SAFETY STANDARDS PART 1 SAFeworking PROCEDURES / SAFETY STANDARDS

Line Sections

The following specific Safeworking Procedures are in operation for the line sections and station yards that comprise the Nominated Network as detailed below:

System	From	To	Safeworking Procedures

Deleted: , EMERGENCY PROCEDURES & ENVIRONMENTAL STANDARDS¶
Clauses 8.1 and 9.1¶

Deleted: 1.1 Aurizon Network's Safeworking Procedures¶
Aurizon Network's Safeworking Procedures that apply to the Nominated Network are as detailed in:¶
¶
[To be identified in and completed after the Risk Assessment]¶
¶
Aurizon Network's Safeworking Procedures and Safety Standards form part of Aurizon Network's safety management system and may be altered from time to time by Aurizon Network in the manner prescribed in the Agreement and advised in accordance with Part 6 of **Schedule 10.**¶
1.2 .

Deleted: ¶
1.3 Localised Areas

Formatted: Body Text, Indent: Left: 0 cm, Tab stops: Not at 3.63 cm

Deleted: ¶
For localised areas such as station yards, Aurizon Network station masters, signalmen or similar officers may be responsible for giving Aurizon Network Train Control Directions.¶
1.4 . High Visibility Clothing¶
High visibility clothing is to be constructed from high daytime visibility (Class F) materials, orange (special purpose) in colour. During the hours of darkness or when working in tunnels or low light weather conditions or between 1700 - 0800 hours, the high visibility clothing shall include shall include retroreflective (Class R) material. The retroreflective material is to be at least 50mm wide and is to consist of two parallel strips around the body and in the case of a garment with sleeves a signal parallel strip around the upper arms. The colour and materials are to conform to AS/NZS 1906.4:1997 *Retroreflective materials and devices for road traffic control purposes: Part 4: High-visibility material for safety garments.*¶
1.5 Wearing of High Visibility Clothing¶
The Operator's Staff and visitors shall wear high visibility clothing: ¶
when on Aurizon Network's Right of Way;¶
in other work situations where high visibility clothing will reduce the risk of coming into contact with moving Trains, vehicles or plant; and¶
protective headwear must be worn at emergency sites.¶
High visibility clothing is not required to be worn by the Operator's Staff under the following conditions:¶
when the movement of Trains is within a building (such as a diesel shed) and with...

Deleted: PART 2 AURIZON NETWORK EMERGENCY PROCEDURES¶
Aurizon Network will provide the Operator with a copy of the Aurizon Network Emergency Procedures (as amended from time to time) which detail the procedures developed by Aurizon Network for dealing with a Network Incident.¶

Formatted: Indent: Left: 0 cm

Formatted: Font: 6 pt

Schedule 7 INSURANCE

Deleted: 7

Deleted: 7

Clause 9

Deleted: 9

Deleted: 14

Required Operator's Insurances

- (a) **Public liability insurance**
- (i) to cover the legal liability of the insured arising out of or in connection with the performance of this Agreement by the Operator whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than THREE HUNDRED AND FIFTY MILLION DOLLARS (\$350,000,000) and with a self-insured retention not to exceed *[to be inserted]* for any one loss or an aggregate deductible of not more than *[to be inserted]*;
- (ii) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date; and
- (iii) to cover the Operator's rail operations and associated activities on the Nominated Network.
- (b) **Employees** - Insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of any Operator's Staff.
- (c) **Carrier liability insurance** in relation to the legal liability of the insured arising out of the transport of goods by Train Services to a sum insured of not less than TEN MILLION DOLLARS (\$10,000,000) and with a deductible not to exceed *[to be inserted]* for any one loss.
- (d) **Motor Vehicle (non-Act) insurance** to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of this Agreement by the Operator or Operator's Staff and must include:
- (i) third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000); and
- (ii) a Dangerous Goods extension with a maximum sum insured as required by statute.
- (e) **Motor Vehicle insurance** to cover the statutory liability in respect of personal injury arising out of or in connection with the use by the Operator or the Operator's Staff of all vehicles in the performance of their obligations under this Agreement.
- (f) Insurances effected pursuant to (a) and (d) of this Schedule must:
- (i) include a principal's indemnity endorsement specifically noting Queensland Rail as an insured party in respect of its interest arising out of or under this Agreement;
- (ii) include a cross liability clause;
- (iii) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
- (iv) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

Deleted: Aurizon Network

Formatted: Font: 6 pt

Schedule 8

QUEENSLAND RAIL'S INVESTIGATION PROCEDURES

Deleted: 8

Deleted: 8

Clause 1

Deleted: 1.1

Deleted: 8.5

1 PART 1 ESTABLISHMENT OF INVESTIGATION

1.1 Routine Investigation

- (a) Incident Severity Levels 1 and 2 (Category B) are classified as general Incidents requiring Queensland Rail a routine Investigation and shall be managed by Queensland Rail but conducted by the Operator on terms of reference provided by Queensland Rail unless otherwise agreed by the Parties. SAF/STD/0012/COM Accident and Incident Reporting, Recording and Investigation sets out the reporting requirements for various Incident Severity Levels.
- (b) The Operator shall provide Queensland Rail with a copy of any report produced as a result of a routine Investigation conducted under this Clause 1.1 and the Parties shall cooperate in the implementation of all recommendations reasonably made as part of that report.

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

1.2 Major Investigation

- (a) Incident Severity Levels 3, 4, 5 and 6 (Category A) are classified as major Incidents requiring a major Investigation. SAF/STD/0012/COM Accident and Incident Reporting, Recording and Investigation sets out the reporting requirements for various Incident Severity Levels.
- (b) Major Investigations conducted under Clause 1.2(a) of this Schedule will be undertaken jointly by the Parties. Management of the Investigation will be facilitated by Queensland Rail who will appoint the chairperson and who will advise the Department of Transport of the make-up of the Investigation team and its terms of reference.
- (c) A major Investigation will be set up as soon as possible following the Incident and the Parties will be required to have a representative at the site of the Incident within four (4) hours (or such other time as the Parties may agree) of notification to Queensland Rail of the Incident.

Deleted: Aurizon Network

Deleted: Aurizon Network

1.3 Membership of Investigating Teams

- (a) All members of Investigation teams, whether the Investigation is conducted in accordance with Clauses 1.1 or 1.2 of this Schedule, will be required to be appropriately qualified.
- (b) Investigation teams shall not include any persons directly involved in the relevant Incident or the Recovery or Restoration.
- (c) In the case of a joint Investigation conducted under Clause 1.2 of this Schedule, each Party shall nominate at least one representative and use reasonable efforts to ensure that the members of the Investigation team have collectively the skills and expertise to address the range of operational and Network issues likely to be encountered. The Parties may agree to the inclusion of additional members in the Investigation team for this purpose.
- (d) The lead investigator of a major Investigation panel must be trained and certified in Queensland Rail's accident/Incidents investigators course.
- (e) The need for independent team membership will be considered for major Investigations. A pool of interstate railway investigators exists and may be called upon where it is thought a degree of independence would be helpful to the Investigation.
- (f) In cases where worker death has occurred, the terms of reference and team composition shall be determined in conjunction with the Queensland Rail's Chief Risk Officer.
- (g) Where a major Investigation is undertaken to satisfy requirements of the *Transport (Rail Safety) Act 2010* (Qld) and the Department of Transport and Main Roads reporting guidelines, the chairperson must be registered with the Queensland Rail's Chief Risk Officer as an authorised investigator.

Deleted: Infrastructure

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Formatted: Font: 6 pt

1.4 Terms of Reference for Investigations

- (a) The terms of reference issued by Queensland Rail for any routine Investigation in accordance with Clause 1.1 of this Schedule will be to determine the cause of the Incident and to stipulate what action has been or will be taken to prevent recurrence.
- (b) The terms of reference issued by Queensland Rail for any major Investigation in accordance with Clause 1.2 of this Schedule shall, as a minimum, be to :
- i. ascertain probable causes;
 - ii. assess contributing factors;
 - iii. review current procedures for ensuring system integrity;
 - iv. make draft recommendations;
 - v. estimate direct and associated costs; and
 - vi. consider whether immediate remedial actions are required.
- (c) Additional terms may be added if agreed by the Parties or if determined in accordance with paragraph 1.3(f) of Part 1 of this Schedule.

Deleted: Aurizon Network

Deleted: Aurizon Network

2 PART 2 MAJOR INVESTIGATIONS REPORTS

A copy of the final reports of a major Investigation will be supplied to each Party. Each Party will be responsible for consideration and action on recommendations that are under the control of that Party. In the case of a fatal accident a copy of the report will also be sent to the Coroner.

3 PART 3 REVIEW OF INVESTIGATIONS

- (a) The Department of Transport and Main Roads has the right to call for an independent review of major Investigations in certain circumstances.
- (b) Under the *Transport (Rail Safety) Act 2010* (Qld), the Minister for Transport may establish or re-establish a Board of Enquiry about an Incident that has happened on or involving a railway and which the Minister considers a serious Incident.

Schedule 9

**ENVIRONMENTAL INVESTIGATION AND RISK
MANAGEMENT REPORT & INTERFACE RISK
MANAGEMENT PLAN**

Deleted: 9

Deleted: 9

PART 1 ENVIRONMENTAL INVESTIGATION AND RISK MANAGEMENT REPORT

Clause 1

[To be inserted]

Deleted: 1.1

Deleted: 9.1

PART 2 INTERFACE RISK MANAGEMENT PLAN

Clause 1

[To be inserted]

Formatted: Font: Not Italic

Deleted: 1.1.1(a)

Deleted: 12(a)

Formatted: Font: 6 pt

SCHEDULE 10

TRAIN CONTROL CONTACT DETAILS

4 PART 1 TRAIN CONTROL PROCEDURES

4.1 Operator's Advice to Queensland Rail Train Controller

For the benefit of the Operator's traincrew contact details for the Queensland Rail Train Controllers relevant to the Nominated Network are:

Line Sections:

Control Board:

Phone:

Fax:

For the benefit of the Operator's Controller contact details for the Queensland Rail Train Controllers relevant to the Nominated Network are:

Line Sections:

Control Board:

Phone:

Fax:

The Operator must provide to Queensland Rail (and keep current at all times during the Term) the contact details (including mobile and after hours contact details) for the Operator's Controller.

Operator's Controller:

Name: (to be completed by Operator)

Position:

Phone:

Mobile:

Fax:

4.2 Radio Procedures

When using the Train Control radio system the Operator's Staff are to follow the general radio procedures contained in the Observance of Signals Manual STD/0037/SWK (as amended from time to time).

Access to the Train Control radio system for each of the line sections that comprise the Nominated Network can be obtained as follows:

Line Section:

Channel Number:

Line Section:

Channel Number:

4.3 Contact details for party responsible for loading Trains – Clause 3(h)(ii)

The Operator must provide to Queensland Rail (and keep current at all times during the Term) the contact details for any party responsible for loading the Operator's Trains.

Party Responsible for Loading the Operator's Trains:

Name: (to be completed by the Operator)

Phone:

Fax:

(a) Safeworking Forms

Upon execution of this Agreement Queensland Rail will provide to the Operator sufficient copies of all safeworking forms necessary to operate on the Nominated Network. Queensland Rail will also

Deleted: 10

Deleted: 10

Deleted: INTERFACE COORDINATION PLAN

Deleted: Clause 6.7 Part 1 NETWORK MANAGEMENT PRINCIPLES

Additional Definitions

In the Network Management Principles, unless inconsistent with the context, the following words and expressions shall have the following meanings:

Access Seeker means a party who is seeking new or additional access rights; Ad Hoc Train Service means any Train service;

(i) additional to the number of Train services permitted under an existing access agreement, but otherwise consistent with the Train Service Entitlement and Rollingstock and Rollingstock Configuration authorised pursuant to that existing access agreement; or

(ii) varying from the Train Service Entitlement specified in an existing Access Agreement, but agreed to by Aurizon Network;

Available Capacity means Capacity excluding all Committed Capacity except Committed Capacity that will cease being Committed Capacity prior to the time in respect of which that Capacity is being assessed;

Below Rail Delay means a delay to a Train service from its scheduled train path in the Daily Train Plan, where that delay can be attributed directly to Aurizon Network but excludes:

(i) cancellations;

(ii) delays resulting from Aurizon Network complying with its Passenger Priority Obligations; and

(iii) delays resulting from a Force Majeure Event;

Capacity means the aggregate of all Existing Capacity and all Planned Capacity

Deleted: 2

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: As soon as reasonably practicable after becoming aware of any event that may affect the performance of

Deleted: Aurizon Network

Deleted: The Operator's Controller must be contactable by the Aurizon Network Train Controller at all times when any of

Formatted: Font: Italic

Deleted: Procedures for Entering the Nominated Network

Formatted: Font: Italic

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: PART 3 TRAIN OPERATIONS PROCEDURES Safety Notices

Deleted: Aurizon Network

Deleted: Aurizon Network

Formatted: Font: 6 pt

supply reasonable quantities of replacement forms as requested by the Operator. Additional forms may be obtained through the following contact:

Network Production Manager

Queensland Rail

Ph:

Fax:

Deleted: Aurizon Network Pty Ltd

4.4 Operational Meetings

The Operator must advise Queensland Rail of the name and contact details of the Operator's Representative to attend operational meetings.

Deleted: Aurizon Network

The Operator's Representative and the Queensland Rail Representative (or their nominees) shall meet on a Monthly basis or as agreed by the Parties for the purpose of:

Deleted: Aurizon Network

- reviewing the achievement of Performance Levels and other matters affecting the performance of Train Services so as to identify remedial action in relation to recurring problems and to plan action to address potential or known problems;
- reviewing requests or proposals by the Operator or Queensland Rail to vary the procedures contained in this Schedule;
- reviewing the reliability of the Operator's Trains;
- reviewing Operational Constraints;
- investigating or reviewing breaches or suspected breaches of the Safeworking Procedures, Safety Standards or Queensland Rail Train Control Directions by the Operator's Staff; and,
- reviewing any other matters relevant to the performance of this Agreement.

Deleted: Aurizon Network

Deleted: Aurizon Network

The Operator's Representative shall attend other operational meetings relevant to the operation of Train Movements on the Nominated Network as required by Queensland Rail from time to time.

Deleted: Aurizon Network

The Queensland Rail Representative is:

Deleted: Aurizon Network

(to be completed by Queensland Rail)

Deleted: Aurizon Network

Ph:

Fax:

The Operator's Representative is:

(to be completed by Operator)

Ph:

Fax:

5 PART 4 NOMINATED PERSONS

5.1 Operator's Incident Response Coordinator

Name:

Position:

Phone:

Mobile:

Fax:

5.2 Operator's Recovery Team Leader

Name:

Position:

Phone:

Mobile:

Fax:

Deleted: <#>PART 5 POSSESSION PROTOCOLS¶
Aurizon Network will provide the Operator with a copy of the Possession Protocols (as amended from time to time) which detail the rules governing the management and scheduling of Planned Possessions, Emergency Possession and Urgent Possessions on the Infrastructure.¶

6 PART 6 DOCUMENT CONTROL PROCEDURES

The Operator will provide to Queensland Rail the following details of its Document Controller:

Name: *(to be completed by Operator)*

Deleted: Aurizon Network

Position:

Formatted: Font: 6 pt

Business Hours Telephone Number:

Postal Address:

Email Address:

Upon execution of this Agreement, Queensland Rail will issue to the Operator one electronic copy of each of Queensland Rail's Safeworking Procedures, Queensland Rail will manage updates and revisions of these documents in accordance with AS/NZS 4292.1 Rail Safety Management provisions applying to document control.

Deleted: Aurizon Network

Deleted: the documents listed in Paragraph 1.1 of Part 1 of **Schedule 6**

Deleted: Aurizon Network

Updates and revisions of the Queensland Rail Emergency Procedures and Queensland Rail's Investigation Procedures will be managed in the same way.

Deleted: Aurizon Network

The Operator will be responsible for ongoing distribution of all documents to the relevant members of the Operator's Staff.

Deleted: Aurizon Network's

Formatted: Font: 6 pt

Schedule 11
ANCILLARY SERVICES AND OTHER CHARGES

Deleted: 11

Deleted: 11

Formatted: Font: 6 pt

**Schedule 12,
CONFIDENTIALITY DEED**

[Unless otherwise agreed, this deed shall be the confidentiality deed set out in Schedule B of Queensland Rail's Access Undertaking]

Deleted: 12

Deleted: 12

Deleted: Aurizon Network

Formatted: Font: 6 pt

Schedule 13 PRO FORMA SECURITY

Deleted: 13

Deleted: 13

To: Queensland Rail Limited (ABN 71 132 181 090) (Queensland Rail)

Deleted: Aurizon Network

Deleted: Pty Ltd

Deleted: ACN

Deleted: 132 181 116

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

At the request of [insert Operator/End User details] (ACN ### ##) (the [Operator/End User]) and in consideration of Queensland Rail accepting this undertaking in respect of the Train Operations Agreement between Queensland Rail and [Operator] dated [insert date] for the operation of train services on the rail network provided by Queensland Rail (the Agreement) [insert details of bank (ABN)] (the Guarantor) unconditionally and irrevocably undertakes to pay to Queensland Rail on written demand any sum or sums which may from time to time be demanded by Queensland Rail under and in accordance with the Agreement (as amended from time to time) to a maximum aggregate sum of \$[Security Amount].

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

The undertaking is to continue until:

- (a) notification has been received from Queensland Rail that the sum is no longer required by Queensland Rail;
- (b) this undertaking is returned to the Guarantor by Queensland Rail; or
- (c) payment by the Guarantor to Queensland Rail of the whole of the sum,

whichever occurs first.

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

Deleted: Aurizon Network

Deleted: Aurizon Network

Deleted: Aurizon Network

This undertaking is governed by the laws of Queensland.

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

[Bank Details]

Formatted: Font: 6 pt