

Aurizon Network 2014 Draft Access Undertaking

Discussion Paper on potential short term transfer mechanism



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Introduction

Aurizon Network is pleased to provide this submission to the Queensland Competition Authority (**QCA**) for consideration as part of the 2014 Draft Access Undertaking (**2014 DAU**) proposal. Aurizon Network committed in its submission in November 2013 to developing a short term transfer mechanism, and has held numerous conversations with stakeholders in determining this initial mechanism as outlined in this paper.

Aurizon Network believes that transfers lead to efficient operation of the network, and increase asset utilisation by making train service entitlements (**TSEs**) available to access holders where they otherwise would not be consumed. In designing this mechanism, Aurizon Network does not intend to be a broker for customers to identify opportunities for short term transfers. Aurizon Network will simply facilitate the movement of below rail access rights between access holders. It is expected that customers will enter into their own commercial agreements to manage other aspects of a transfer of TSEs.

Aurizon Network has developed the short term transfer mechanism described in this paper as a first step on the journey. The intention is to put in place a simple, functioning short term transfer mechanism. Over time, as both Aurizon Network and access holders become more familiar with the process, it may be possible to make incremental changes, for example broadening the criteria to allow greater flexibility for more transfers.

Aurizon Network is currently implementing new information technology systems which will result in the planning and operation of train services being much more dynamic. Once these systems are in place it is possible that further changes may be introduced to the operation of the short term transfer mechanism. Aurizon Network will continue to work with customers to assess the success of the mechanism and identify further improvements which can be made.

Background

During the consultation for the 2013 Draft Access Undertaking and the 2014 DAU process customers have asked for a short term transfer mechanism for access rights. For example, through their respective submissions:

- The Queensland Resources Council (**QRC**) has sought the introduction of mechanisms for the expeditious finalisation of transfers, pre-approval of some transfers and the establishment of a register of those considering transfers;
- BHP Billiton Mitsubishi Alliance (**BMA**) has sought the introduction of mechanisms that allow more flexible transfers of access rights where Aurizon Network is not financially disadvantaged; and
- Rio Tinto has sought the introduction of mechanisms to allow short term transfer of below rail capacity.

One common thread has been the desirability of some form of short term transfer mechanism to increase the ability of access holders to reallocate access rights on a short term basis to enhance supply chain flexibility and efficiency.

Aurizon Network has considered industry submissions and responded with a commitment to develop a short term transfer mechanism subject to various principles including the following:

- Aurizon Network will not be exposed to any additional liability or risks as a result of facilitating the short term transfer process;
- no other access holder will be adversely affected by the short term transfer;
- below rail network capacity must be available; and
- other elements of the supply chain (including Operators) are able to accommodate the short term transfer.

Aurizon Network has consulted with stakeholders, including the QRC, Aurizon Operations, Pacific National and BMA in finalising the principles for the short term transfer mechanism. This consultation has resulted in positive feedback from stakeholders, for example, the QRC believes:

“Aurizon Network’s proposal would be a significant step forward, and the QRC appreciates Aurizon Network’s efforts to introduce a mechanism and to reflect the feedback of stakeholders.”¹

Asciano notes:

“...given the proposal seeks to address issues related to the flexibility of access rights Asciano believes that the proposal should be put before the QCA to enable the proposal to be assessed and elements of the proposal incorporated into the access undertaking...”²

The concept outlined in this paper anticipates that short term transfers will be a variation to existing access agreements, hence TSEs which result from the short term transfer are subsequently being treated equally with all other contracted TSEs.

¹ QRC Submission, Main Submission, 9 October 2014, page 33

² Asciano, Submission to the Queensland Competition Authority in Relation to the Resubmitted 2014 Aurizon Network Draft Access Undertaking October 2014, page 25

Objectives

The principal objective of the short term transfer mechanism outlined in this paper is to provide access holders with additional flexibility to manage demand variability and take or pay obligations in a revenue cap environment through timely short term transfers of TSEs.

An additional objective of the short term transfer mechanism is to provide for the transfer of access rights to occur at a time as close as possible to the operation of the proposed service, thus providing an avenue for access holders to manage short term variability within the supply chain without adversely affecting access seekers who are seeking long term access rights.

The short term transfer process is not intended to replace or alter existing transfer rights or provisions but rather to supplement these provisions. For clarity, the intention is that there will be two transfer processes:

1. longer term transfers, as per the existing arrangements under access agreements (no change);
and
2. short term transfers (the process that this paper relates to).

Capacity Considerations

Aurizon Network considers the major time factor in processing transfers is assessing the available capacity to determine if the requested access rights can be provided. For the short term transfer process, Aurizon Network considers there are two different scenarios.

Scenario 1 – No additional access rights required

Subject to other elements of the supply chain (e.g. above rail operator and loadout capability) being able to accommodate a proposed short term transfer of capacity, it is considered rail network capacity will always exist where a proposed short term transfer:

1. utilises the same route (i.e. operates across common rail infrastructure);
2. has a common destination; and
3. additional access rights are not needed for a complete train path from the transferee's origin.

For this type of short term transfer, the assessment of capacity is simple. This type of short term transfer is not anticipated to be refused on the basis of a lack of available capacity, as the transferee is merely using the transferor's pre-existing access rights.

As shown in Figure 1, an example of a short term transfer based on this scenario would be a change in origin from Blair Athol to Caval Ridge.



Figure 1: Example of short term transfer, Blair Athol to Caval Ridge with a common destination

Scenario 2 – Additional access rights required

Capacity may exist for proposed short term transfers from one origin to another that:

1. utilises all or part of the same route (i.e. operates across common rail infrastructure);
2. has a common destination; and
3. additional access rights are needed for a complete train path from the transferee's origin.

This might occur, for example, where the transferor's origin is closer to the destination than the transferee's origin.

This type of short term transfer will require an assessment of available capacity in order to determine whether the additional access rights can be granted on a short term basis to give the complete train paths needed by the transferee. However, Aurizon Network will have only a relatively limited window of opportunity to assess capacity availability and determine whether those additional access rights can actually be granted, as such it is anticipated, to the extent reasonably practical, that available capacity for this type of transfer will be pre-determined.

Aurizon Network considers that it can develop rapid assessment processes for assessing available capacity for these types of capacity assessments – but which will necessarily need to include margins of error or other limitations that ensure this process errs on the side of ensuring no adverse effects to TSEs for access holders. Because of the limited time for the assessment, it may not be possible to be sure in every situation whether sufficient available capacity exists and that there will be no adverse effects to existing TSEs for access holders. Where Aurizon Network is unable to satisfy itself, within the time available, that the additional access rights can be granted without adversely affecting existing TSEs, then Aurizon Network will have little choice but to refuse the transfer.

Aurizon Network believes that, as experience increases with what is possible in the context of short term transfers, the assessment processes will continue to be developed and refined over time to improve the determination of available capacity for the purposes of short term transfers. Aurizon Network will ensure access holders are advised of advancements and changes in the assessment processes to provide information on what the capacity assessment considerations are.

As shown in Figure 2, examples of a short term transfer based on this scenario would be a change in origin from Peak Downs to Saraji or from Peak Downs to North Goonyella – in each case with a common destination.



Figure 2: Examples of short term transfers would include (1) Peak Downs to Saraji or (2) Peak Downs to North Goonyella, with a common destination.

Scope

Aurizon Network, in consultation with stakeholders has developed a number of requirements which are to apply to short term transfers including, for example, that short term transfers:

- be limited to a maximum of 25% of the TSEs in an access holder's access agreement(s) for the relevant origin to destination train service in any one financial year;
- must not result in the maximum number of services able to be loaded from a load out as determined by reference to load out capability being exceeded. Load out capability is to be agreed in advance by Aurizon Network and the operator of the load out facility;
- require a common destination;
- require commencement in the next relevant period (as a default, the next week commencing at 12:00am on Monday) from receipt of the request for the short term transfer;
- the TSEs transferred must be in multiples of two one-way paths;
- the short term transfer will only be permissible where the transferee's train services will have access charges based on the same reference tariff as that used in respect of access charges for the transferor's train services that are the subject of the short term transfer; and
- the short term transfer will only be permissible where there is a like for like train service description for the train services, with the exception of the change in origin.

Where Aurizon Network has received more than one short term transfer notice that require ancillary access rights (that is, access rights in addition to proposed transferred access rights) and there is not sufficient capacity to permit all of those proposed short term transfers, those short term transfer notices received earlier in time will be given priority. This does not apply to short term transfers that do not require ancillary access rights, as there is no competition for available capacity in respect of those short term transfers.

There is no relationship between short term transfers and longer term transfers and the mechanisms will work independently of each other. For example, short term transfers undertaken by an access holder will not count towards the duration of affected transfers for the purposes of proposed limitations applicable to longer term transfers e.g. transfers not exceeding two out of any three years in duration.

Gaming protections

Customers have requested that Aurizon Network include mechanisms to protect against potential gaming opportunities. In this respect, the reasons for which Aurizon Network may refuse a short term transfer will need to include refusal where Aurizon Network considers, acting reasonably, that there is no genuine intention or ability on the part of the short term transferee to utilise the TSEs that are proposed to be short term transferred. However, Aurizon Network is open to considering what other gaming risks might arise and what appropriate anti-gaming mechanisms could be implemented.

In assessing the genuine intention or ability of the short term transferee to utilise the TSEs, Aurizon Network will give consideration to whether:

- the short term transferee utilised at least 85% of any access rights previously transferred to it in the same year under a short term transfer provision in its access agreement; and
- the proposed short term transferee is fully utilising over the previous three months all of the access rights granted to it under an access agreement relating to train services from the same origin to the destination as that specified in the short term transfer notice (and vice versa).

These criteria are similar to the criteria that Aurizon Network would use to consider the granting of a transfer of access rights under the longer term transfer process in the standard access agreements.

Requests for a short term transfer

The trigger for a proposed short term transfer is the giving of a short term transfer notice. The form for short term transfer notices is proposed to be published on Aurizon Network's website and will include matters such as:

- details of the proposed short term transferee;
- the existing origin/destination combination;
- the proposed new origin;
- the number of TSEs that are proposed to be transferred, including (if applicable) the maximum and minimum required by the short term transferee in order to make the short term transfer a viable option for it;
- the period for which the TSEs are proposed to be transferred
- written confirmation from the loading facility's operator that the load point is able to accommodate the proposed short term transfer in addition to existing contracted access rights;
- confirmation that a railway operator has agreed to operate the haul (if not the existing operator for the transferor);
- authorisation by the existing (and, if required, new) access holder;
- access agreement details and type; and
- other relevant information.

Preconditions and contractual mechanisms

In order for an access holder to request a short term transfer, the following will need to be in place for both the short term transferor and short term transferee for the specific origin to destination combination (train service type (**TST**) as defined in the standard access agreements) that is proposed to be transferred:

- access agreement;
- operating plan;
- interface risk management plan;
- access interface deeds (where applicable to that agreement type); and
- where access rights are held in an end user access agreement (**EUAA**), a train operations agreement (**TOA**).

The transferred paths relating to the short term transfer notice are to be treated as contracted TSEs unless the proposed short term transfer is refused by Aurizon Network. Aurizon Network can only refuse a short term transfer in specific circumstances including within a defined timeframe.

The mechanism to provide for short term transfers is intended to be established through specific provisions within the approved access undertaking and standard access agreements (**SAAs**) which include, for example:

- a contractual right to allow short term transfers to occur throughout the life of the access agreement;
- deeming provisions for amendments to the access agreement where short term transfers take place;
- criteria and the process for undertaking a short term transfer; and
- obligations for Aurizon Network to make the short term transfer provisions available to access holders with pre-existing access agreements (such as UT1, UT2 or UT3 access agreements), where an access holder wishes to include such provisions.

Aurizon Network's preferred approach to short term transfer provisions is to set the bulk of these out in access agreements as these provisions are ultimately about making variations to contractual rights based on a notional 'transfer' of existing access rights. Industry, however, expressed a desire that as many provisions as practical be included in the access undertaking instead of the SAAs. While this may create some complexity, Aurizon Network, at this stage, is prepared to seek to accommodate industry's desire. However, in accommodating this request, Aurizon Network is without the benefit of the usual contractual limitations on liability that apply under the SAAs and consequently has included a provision in the access undertaking to address the shortfall in protection which it would otherwise have the benefit of.

Aurizon Network notes that a disadvantage of including the process provisions for the short term transfer mechanism in the access undertaking is that this limits the ability for Aurizon Network to make timely adjustments to the mechanism. Where Aurizon Network and access holders agree to make incremental changes to the process, in order for Aurizon Network to amend the process, it will need to submit a draft amending access undertaking to the QCA for consideration rather than agreeing amendments to an access agreement.

Aurizon Network has included as schedules to this paper drafting for proposed short term transfer provisions in both the access undertaking and the SAAs. For the convenience of preparing those provisions, Aurizon Network has based the drafting on the 2014 DAU and the 2014 EUAA (**2014 EUAA**).

Further minor drafting adjustments may be required to the 2014 EUAA-based provisions for application to other forms of SAAs. At this stage, Aurizon Network has not prepared drafting for other forms of SAAs or for the provisions needed in a TOA.

In order for existing access holders to benefit from the short term transfer mechanism, an amendment to existing access agreements will need to be agreed with each access holder to insert short term transfer provisions which will include, for example:

- a contractual right to allow short term transfers to occur throughout the life of the access agreement; and
- deeming provisions for amendments to access agreements where short term transfers take place.

The provisions to be included in amendments to pre-existing access agreements are intended to be similar to the attached 2014 EUAA-based drafting but will need to be varied as necessary to reflect differences in terminology in older forms of access agreements.

Transfer fees

Transfer fees are intended to reflect the loss of revenue which arises when a longer haul path is transferred to a shorter haul. In a revenue cap environment, transfer fees protect end users from the socialisation of the revenue difference. Existing transfer fees are required to be paid prior to a transfer taking effect.

Transfer fees vary in different generations of access agreements. For example whilst UT1 and UT2 access agreements provide for transfer fees regardless of the duration of the term of the transfer, UT3 access agreements provide for a \$0 transfer fee where transfers have a term shorter than two years. Additionally UT3 access agreements do not prohibit a series of transfers with a term of less than two years, effectively socialising the revenue difference amongst access holders (and ultimately the end customers).

Aurizon Network considers that:

- it is substantially protected from revenue short fall that arises through the transfer of access rights by way of the revenue cap;
- a level of socialisation is accepted through UT3 access agreements and the proposed 2014 SAAs; and
- any requirement to finalise payment of transfer fees prior to a short term transfer taking effect will adversely affect the ability to promptly complete the short term transfer.

Bearing all this in mind, it is intended that no transfer fee be payable in relation to short term transfers. If Aurizon Network becomes subject to additional costs for administering the short term transfer process which have not been included in the maximum allowable revenue approved by the QCA, it will consider in future how best to recover these. Aurizon Network considers this could be achieved by either:

- socialising the costs between all access holders via a revenue adjustment under Schedule F of the 2014 DAU (not currently accommodated in the existing drafting); or
- through a direct charge to the access holder reflecting the reasonable costs to Aurizon Network of facilitating the short term transfer when the access holder completes the short term transfer.

Reference tariffs

Below are pricing, take or pay (ToP) and allowable revenue considerations for the short term transfer mechanism in a revenue cap environment.

Pricing and Allowable Revenue

The short term transfer of the operation of train services to the new origin with the same destination combination must be subject to access charges based on the same reference tariffs that apply to the operation of those train services from the old origin.

As short term transfers are only allowable between train services which are subject to access charges based on the same reference tariff and not across reference tariffs, revenue received from the operation of train services from the new origin will be recognised in relation to the allowable revenue applicable for that specific reference tariff. This reduces the risk of revenue gains in relation to one reference tariff (potentially reducing future access charges that are subject to that reference tariff) at the expense of revenue losses for another reference tariff (potentially increasing future access charges that are subject to that other reference tariff).

Take or Pay

Transfer notices are intended to be a variation to contracted TSEs. Transfer notices will therefore need to be collated and consolidated for ToP calculation purposes and the ToP obligation will move from the access holder (that is, short term transferor) to the short term transferee. This can, for example, be illustrated as follows:

Mine A: Access holder				
	Week 1	Week 2	Week 3	Week 4
Contract TSE	15	15	15	15
Short term transfer notice adjustment	-5	0	0	0
Nominal TSE for ToP	10	15	15	15

Mine B: Short term transferee				
	Week 1	Week 2	Week 3	Week 4
Contract TSE	15	15	15	15
Short term transfer notice adjustment	+5	0	0	0
Nominal TSE for ToP	20	15	15	15

Billing

Billing of actual train services will remain unchanged and will be completed in accordance with the access agreement for the short term transferee.

Scheduling and day of operations

Transfer notices in respect of short term transfers may be given at two different times as set out below.

Pre-ordering short term transfer notices

Not more than seven business days and not less than 48 hours prior to the close of train orders for the relevant period, an access holder can submit to Aurizon Network a short term transfer notice. Aurizon Network will assess the request, and if it cannot be fulfilled Aurizon Network will notify the access holder prior to the close of train orders. Transfer notices received within the 48 hours prior to the close of orders for the relevant period will not be considered.

As short term transfers are a variation to contracted TSEs, they will be treated equally with other contracted TSEs for the purpose of the contested train path (CTP) principles in Schedule G.

Where the access holder has not received a short term transfer refusal notice from Aurizon Network, the train orders for train services that operate under a transfer notice are to be placed by the access holder or train operator (as applicable) at the same time as other train orders.

As a short term transfer becomes a contracted TSE (unless refused by Aurizon Network), train services will be scheduled before any other ad-hoc or day of operations requests for train services.

Short term transfers are to be scheduled along with contracted TSEs at the time of preparing the Intermediate Train Plan (ITP). For example:

Mine A: Access holder				
	Week 1	Week 2	Week 3	Week 4
Nominal Contract TSE	15	15	15	15
Short term transfer notice adjustment	-5	0	0	0
Nominal TSE for CTP	10	15	15	15

Mine B: Short term transferee				
	Week 1	Week 2	Week 3	Week 4
Nominal Contract TSE	15	15	15	15
Short term transfer notice adjustment	+5	0	0	0
Nominal TSE for CTP	20	15	15	15

Post-scheduling short term transfer notices

Once Aurizon Network issues the ITP for a relevant seven day period, access holders will be able to submit further short term transfer notices where the ITP shows there are paths available which could be used via a short term transfer.

Services already included and/or agreed in the ITP must not be moved to accommodate either short term transfers or ad-hoc requests. In addition, train services once scheduled in an ITP cannot themselves be the subject of a short term transfer.

The period for a short term transfer which is the subject of a post-scheduling short term transfer notice must end on the last day of the relevant seven day period.

Schedule 1: Drafting based on 2014 DAU

Short term transfer provision

Discussion draft (for inclusion in 2014 DAU)

19 December 2014

Amendments to clause 2.3(d)

Part 2: Intent and Scope

2.3 Scope

- (d) Nothing in this Undertaking (except under clause 7.5.5(a)) can require Aurizon Network or any other party to an Access Agreement or a Train Operations Agreement, executed before the Approval Date, to vary that Access Agreement or Train Operations Agreement or to act in a way that is inconsistent with the relevant Access Agreement or Train Operations Agreement.

Amendments to clauses 7.1 and 7.3

Part 7: Available Capacity allocation and management

7.1 Application

- (a) This **Part 7** addresses the allocation and management of Capacity, including in circumstances where there is insufficient Available Capacity to satisfy all of the Access Applications submitted to Aurizon Network. In particular under its provisions:
 - (i) Aurizon Network may refuse to grant Access Rights if the relevant Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that it can fully utilise those Access Rights. (**Clause 7.2**)
 - (ii) Aurizon Network will be obliged to give priority to the granting of Access Rights to a Renewing Access Seeker in respect of a Renewal in certain circumstances. (**Clause 7.3**)
 - (iii) Standard Access Agreements will include provisions allowing an Access Holder to relinquish Access Rights for a Transfer. Aurizon Network has obligations in relation to the allocation of Capacity to facilitate a Transfer. (**Clause 7.4.2**)
 - (iv) Short Term Transfers under Short Term Transfer Provisions will be required to meet specified requirements. (**Clause 7.5**)
 - (iv)(v) Aurizon Network will notify Access Seekers if their Access Applications are Mutually Exclusive Access Applications and assist them to modify their Access Applications to seek to avoid them being Mutually Exclusive Access Applications. (**Clause 7.6.17-5.4**)

~~(v)~~(vi) Where Aurizon Network has received Mutually Exclusive Access Applications, Aurizon Network will prioritise the granting of Access Rights having regard to a series of specified criteria. (Clause ~~7.6.2~~7.5.2)

However, these provisions for Mutually Exclusive Access Applications do not apply where the allocation occurs under **Part 8**. (Clause ~~7.6.2(a)~~7.5.2(a))

~~(vi)~~(vii) Subject to the provisions of the relevant Access Agreement, scheduling and Network Control will be performed by Aurizon Network consistently with the Network Management Principles (including the System Rules). Aurizon Network has various rights and obligations in relation to amending System Rules. (Clause ~~7.7.6~~)

7.3 Renewals

- (a) This **clause 7.3** sets out provisions that apply where all or any part of an Access Holder's existing Access Rights (ignoring the effect of any Short Term Transfers) will expire and:
- (i) that Access Holder (where the Access Holder has no Customer); or
 - (ii) the person nominated by the Access Holder's Customer in writing to Aurizon Network (and, for clarity, that Customer may nominate itself),
- (**Renewing Access Seeker**) wishes to hold or to continue to hold (as applicable) equivalent Access Rights, subject to **clause 7.3(b)**, for a further term commencing immediately after those existing Access Rights will expire (that is, a **Renewal**).

Insertion of new clause 7.5

7.5 Short Term Transfers

7.5.1 Application

- (a) Short Term Transfers will take effect under the Short Term Transfer Provisions. This **clause 7.5** operates in conjunction with the Short Term Transfer Provisions and is intended to provide transparency, certainty and consistency for Access Holders in respect of key aspects of the process and requirements to be satisfied for a proposed Short Term Transfer to occur. This **clause 7.5** has no effect in relation to an Access Agreement that does not contain a Short Term Transfer Provision.
- (b) For the purposes of this Access Undertaking:
- (i) a Short Term Transferee is not an Access Seeker in relation to the relevant Short Term Transfer;
 - (ii) a Short Term Transfer Notice is not an Access Application; and
 - (iii) a Short Term Transfer is only available for coal carrying Train Services.

- (c) Part 4, Part 5 and this Part 7 (other than this clause 7.5) do not apply in respect of the process for giving effect to a Short Term Transfer.
- (d) Short Term Transfers must not result in Aurizon Network being adversely affected in relation to any Commercial Terms that apply in connection with the proposed Nominated Access Rights.

7.5.2 Transfer Notice requirements

- (a) A Short Term Transfer Notice given under Short Term Transfer Short Term Provisions must comply with the requirements in this **clause 7.5.2**.

Timing for giving notice

- (b) A Short Term Transfer Notice must only be given:
 - (i) not less than 48 hours, and not more than 7 Business Days prior to the close of Train Orders for the first day of the proposed Short Term Transfer Period (**Pre-Ordering Short Term Transfer Notice**); or
 - (ii) any time after Train Services for a Relevant Period have been scheduled in the ITP until the end of that Relevant Period (**Post-Scheduling Short Term Transfer Notice**) if it appears that there is capacity in the ITP to accommodate the proposed Short Term Transfer.

Form of notice

- (c) A Short Term Transfer Notice must be in the form required by Aurizon Network as published on the Website. The form will cover the matters to be addressed in accordance with this **clause 7.5.2**.

Specifying the Short Term Transferee

- (d) A Short Term Transfer Notice must specify the Access Holder to whom it is proposed to Short Term Transfer the Nominated Access Rights (**Short Term Transferee**).

Specifying the Nominated Access Rights

- (e) Subject to **clauses 7.5.2(f) to (h)**, a Short Term Transfer Notice must specify the Nominated Access Rights, including:
 - (i) the existing origin and destination for the Nominated Access Rights;
 - (ii) the date on which the Nominated Access Rights are proposed to be Short Term Transferred (**Short Term Transfer Date**) which must be:
 - (A) for a Pre-Ordering Short Term Transfer Notice, the first day of the first Relevant Period relating to the Short Term Transfer; and
 - (B) for a Post-Scheduling Short Term Transfer Notice, a day during the Relevant Period referred to in **clause 7.5.2(b)(ii)**;
 - (iii) the Relevant Periods for which the Nominated Access Rights are proposed to be Short Term Transferred (**Short Term Transfer Period**), which must:
 - (A) for a Pre-Ordering Short Term Transfer Notice relating to more than one Relevant Period, be comprised of consecutive Relevant Periods;

- (B) for a Post-Scheduling Short Term Transfer Notice, end on the last day of the Relevant Period referred to in **clause 7.5.2(b)(ii)**; and
- (iv) the Train Service Entitlements for the Nominated Access Rights for each Relevant Period, which must:
- (A) be an even number of whole Train Services (each Train Service being a one way Train Service); and
- (B) for each Relevant Period during the proposed Short Term Transfer Period, not exceed the Notional Relevant Period Train Services for the Relevant Period.
- (f) The Nominated Access Rights for a Post-Scheduling Short Term Transfer Notice must not relate to a Train Service that has already been scheduled in the relevant ITP.
- (g) The Total Annual Short Term Transferred TSEs for a Year must not exceed 25% of the Total Annual TSEs for that Year, where:
- (i) **Total Annual Short Term Transferred TSEs** means, in respect of a proposed Short Term Transfer by an Access Holder, the sum of:
- (A) all Train Service Entitlements for the Nominated Access Rights for the proposed Short Term Transfer (**Relevant Nominated Access Rights**); and
- (B) all Train Service Entitlements:
- (1) with the same origin and destination as the Relevant Nominated Access Rights; and
- (2) with Access Charges set by reference to the same Reference Tariff as the Relevant Nominated Access Rights,
- which have previously been Short Term Transferred by that Access Holder; and
- (ii) **Total Annual TSEs** means the sum of all Train Service Entitlements held by that Access Holder:
- (A) with the same origin and destination as the Relevant Nominated Access Rights; and
- (B) with Access Charges set by reference to the same Reference Tariff as the Relevant Nominated Access Rights.
- (h) Where an Access Holder has Train Service Entitlements (under one or more Access Agreements) with the same origin but having different dates of grant (being the dates on which the Access Agreements granting those Train Service Entitlements were signed – each being a **Date of Grant**), then:

- (i) the Train Service Entitlements will be grouped into separate tranches based on the Date of Grant (each being a **TSE Tranche**); and
- (ii) the Nominated Access Rights for a proposed Short Term Transfer by that Access Holder will firstly be drawn from the TSE Tranche with the earliest Date of Grant until there are no remaining applicable Train Service Entitlements in that TSE Tranche and then from the TSE Tranche with the next earliest Date of Grant in the sequence and so on.

Using a range for Nominated Access Rights

- (i) A Short Term Transfer Notice may, if applicable, describe the number of Train Services for the Nominated Access Rights as a range with a maximum and a minimum (**Nominated Range**).
- (j) Where:
 - (i) the Short Term Transfer Notice includes a Nominated Range; and
 - (ii) Aurizon Network:
 - (A) would give a Short Term Transfer Refusal Notice based on the maximum Nominated Access Rights; but
 - (B) would not give a Short Term Transfer Refusal Notice if the Short Term Transfer related to less than the maximum number of Train Services in the Nominated Range,

then:

- (iii) Aurizon Network must give the Access Holder and proposed Short Term Transferee a notice (**Nominated Access Rights Notice**) specifying the number of Train Services referred to in **clause 7.5.2(j)(ii)(B)**;
- (iv) Aurizon Network must ensure that the number of Train Services specified in a Nominated Access Rights Notice is as high as possible; and
- (v) a Nominated Access Rights Notice to be given under **clause 7.5.2(j)(iii)** must be given no later than the date by which a Short Term Transfer Refusal Notice would have been given.
- (k) Where a Nominated Access Rights Notice is given, the proposed Short Term Transfer will take effect based on the Nominated Access Rights specified in that Nominated Access Rights Notice as though the Short Term Transfer Notice was specifically for those Nominated Access Rights.
- (l) Where:
 - (i) the Short Term Transfer Notice includes a Nominated Range; and
 - (ii) neither a Nominated Access Rights Notice nor a Short Term Transfer Refusal Notice has been given,

the proposed Short Term Transfer will take effect based on the maximum Nominated Access Rights specified in the relevant Nominated Range.

Specifying the Short Term Origin

- (m) A Short Term Transfer Notice must specify the origin of the Short Term Access Rights (**Short Term Origin**).

Specifying the Short Term Transferee's Access Agreement

- (n) Subject to **clause 7.5.2(k)**, a Short Term Transfer Notice must specify the relevant Access Agreement under which the Short Term Access Rights are proposed to be granted (**Short Term Transferee's Access Agreement**).
- (o) The Short Term Transferee's Access Agreement:
 - (i) must have existing Train Service Entitlements from the Short Term Origin; and
 - (ii) where there is more than one relevant Access Agreement, must be the most recently executed of those Access Agreements.

Pre-compliance with operational requirements

- (p) A Short Term Transfer can only occur where:
 - (i) the Short Term Transferee has satisfied all of the requirements of the Short Term Transferee's Access Agreement and, if applicable, the Short Term Transferee Train Operations Agreement that are required to be satisfied prior to the operation of a Train Service utilising the Short Term Access Rights if the Short Term Transfer occurs; and
 - (ii) by reference to the loading facility capability that has been agreed between Aurizon Network and access holders prior to the relevant Short Term Transfer Notice being provided to Aurizon Network, the loading facility will, if the Short Term Transfer occurs, have sufficient available capacity to load Train Services utilising the Short Term Access Rights within the timeframes and in the manner contemplated in the relevant Access Agreements, assuming 100% utilisation of the Short Term Access Rights and all other Access Rights for Train Services using that loading facility.

Reference Tariff

- (q) The Short Term Access Rights for a proposed Short Term Transfer must be subject to Access Charges that are set by reference to the same Reference Tariff as the relevant Nominated Access Rights.
- (r) Nothing in **clause 7.5.2(q)** permits Aurizon Network to set Access Charges relating to proposed Short Term Access Rights by reference to a Reference Tariff other than the Reference Tariff that would be applicable in accordance with **Part 6** and **schedule F**.

Specifying the new operator

- (s) Where the Short Term Transferee's Access Agreement is an End User Access Agreement, the Short Term Transfer Notice must specify the Train Operations Agreement under which the Short Term Access Rights are proposed to be utilised (**Short Term Transferee Train Operations Agreement**).
- (t) Where the Short Term Transferee's Access Agreement is an Access Holder Access Agreement, the Short Term Transfer Notice must specify the nominated 'Operator' who is proposed to operate Train Services utilising the Short Term Access Rights.

Accompanying consents

- (b) A Short Term Transfer Notice must be accompanied by:
- (i) except where the Short Term Transferee is also the person who gave the relevant Short Term Transfer Notice, the written consent of the Short Term Transferee to the grant of the Short Term Access Rights to it under the Short Term Transfer Provisions of the Short Term Transferee's Access Agreement;
 - (ii) where the Short Term Transferee Operator is not the Short Term Transferee, written confirmation from the Short Term Transferee Operator that:
 - (A) if the Short Term Transfer takes effect, it has sufficient available capacity to operate Trains that comply with the Short Term Access Rights within the timeframes and in the manner contemplated in the Short Term Transferee's Access Agreement or Short Term Transferee Train Operations Agreement (as applicable), assuming 100% utilisation of the Short Term Access Rights and all other Access Rights for Train Services which it operates; and
 - (B) it has agreed with the Short Term Transferee that it will, if requested by the Short Term Transferee, operate Train Services utilising 100% of the Short Term Access Rights; and
 - (iii) in relation to the loading facility that will load Train Services utilising the Short Term Access Rights, written confirmation from the loading facility's operator (**Loading Facility Confirmation**) that:
 - (A) if the Short Term Transfer takes effect, the loading facility will have sufficient available capacity to load those Train Services within the timeframes and in the manner contemplated in the relevant Access Agreements, assuming 100% utilisation of the Short Term Access Rights and all other Access Rights for Train Services using that loading facility; and
 - (B) where that operator is not the Short Term Transferee, it has agreed with the Short Term Transferee that it will, if requested, load the relevant Train Services.

7.5.3 Short Term Transfer Refusal Notice

- (a) If an Access Holder gives Aurizon Network a Short Term Transfer Notice, then Aurizon Network may:
- (i) for a Pre-Ordering Short Term Transfer Notice, prior to the close of Train Orders for the first day of the proposed Short Term Transfer Period; and
 - (ii) for a Post-Scheduling Short Term Transfer Notice, prior to the Short Term Transfer Date specified in the Short Term Transfer Notice,
- give the Access Holder and proposed Short Term Transferee a notice refusing a proposed Short Term Transfer (**Short Term Transfer Refusal Notice**).

- (b) Aurizon Network may only give a Short Term Transfer Refusal Notice in respect of a proposed Short Term Transfer if:
- (i) the Short Term Transfer or the Short Term Transfer Notice does not comply with one or more of the requirements under **clause 7.5.2** or the relevant Short Term Access Provisions;
 - (ii) the destination for the proposed Short Term Access Rights is different to the destination for the Nominated Access Rights;
 - (iii) Aurizon Network is not satisfied, acting reasonably, by reference to the load out capability that the loading facility for the Train Services that are to utilise the proposed Short Term Access Rights will have sufficient available capacity to load those Train Services within the timeframes and in the manner contemplated in the relevant Access Agreements, assuming 100% utilisation of the Short Term Access Rights and all other Access Rights for Train Services using that loading facility;
 - (iv) the Short Term Access Rights include Short Term Ancillary Access Rights and Aurizon Network is not satisfied, acting reasonably, that the Available Capacity of any part of the relevant Rail Infrastructure during the Short Term Transfer Period will be sufficient to enable:
 - (A) the grant of the Short Term Ancillary Access Rights; and
 - (B) the utilisation of the Short Term Access Rights,(A) without adversely affecting the Train Service Entitlements of all other Access Holders;
 - (v) Aurizon Network is not satisfied, acting reasonably, that the proposed Short Term Transferee for the proposed Short Term Transfer has a genuine intention or ability to utilise the Short Term Access Rights; or
 - (vi) Aurizon Network is not satisfied, acting reasonably, that the Short Term Transfer will not adversely affect Aurizon Network in relation to any Commercial Terms that apply in connection with the proposed Nominated Access Rights.
- (c) For the purpose of (but without limitation to) **clause 7.5.3(b)(v)** it will be reasonable for Aurizon Network to consider that a proposed Short Term Transferee for a proposed Short Term Transfer does not have a genuine intention to utilise the Short Term Access Rights where:
- (i) the proposed Short Term Transferee did not utilise at least 85% of any Access Rights previously Short Term Transferred to it in the same Year under a Short Term Transfer Provision in its Access Agreement; or
 - (ii) the proposed Short Term Transferee is not, or has not been in the preceding three month period, fully utilising all of the Access Rights granted to it under an Access Agreement relating to Train Services from the Short Term Origin to the destination for the Short Term Access Rights (and vice versa).

7.5.4 Mutually Exclusive Short Term Transfers

Where:

(a) Aurizon Network has received more than one Short Term Transfer Notice that require Short Term Ancillary Access Rights; and

(b) there is insufficient Available Capacity to permit all of those proposed Short Term Transfers,

then for the purpose of Aurizon Network considering which of those proposed Short Term Transfers should be given a Short Term Transfer Refusal Notice under **clause 7.5.3**, subject to the requirements under this **clause 7.5**, those Short Term Transfer Notices received earlier in time will be given priority for the Available Capacity. For clarity, Short Term Transfers that do not require Short Term Ancillary Access Rights will not be affected by this **clause 7.5.4** as those Short Term Transfers do not give rise to a contest for Available Capacity.

7.5.5 Past Access Agreements

(a) Aurizon Network will notify all Access Holders with Access Agreements that provisions for Short Term Transfers have been included in Standard Access Agreements and that Aurizon Network has undertaken under **clause 7.5.5(b)** to agree to amend existing Access Agreements to include equivalent provisions.

(b) Where, after receiving a notice under **clause 7.5.5(a)**, an Access Holder notifies Aurizon Network that it wishes to amend the Access Holder's Access Agreement to include a provision that is in all material respects equivalent to clause [insert] of the Standard Access Agreement (End User), Aurizon Network will prepare, and provide to the Access Holder, an appropriate deed of amendment and, if executed by the Access Holder, execute that deed of amendment.

7.5.6 Compliance

Aurizon Network is taken to have complied with this **clause 7.5** and is not liable under the Act or otherwise to any person provided Aurizon Network has made a good faith and reasonable attempt to comply with the relevant provisions of this **clause 7.5**.

Amendments to definitions

Part 12: Definitions and Interpretation

12.1 Definitions

Access Application

A written request for Access:

- (a) using the application form for such requests published on the Website from time to time; and
- (b) which satisfies:
 - (i) the information requirements set out in **schedule B** and **Part 4**; and
 - (ii) any additional information or clarification requested by Aurizon Network in accordance with **Part 4**,

Access Seeker	<u>excluding a Short Term Transfer Notice.</u> Subject to clause 4.8(a) and unless expressed to the contrary, the entity that provides Aurizon Network with a properly completed Access Application excluding a Train Operator <u>and a Short Term Transferee.</u>
<u>Date of Grant</u>	<u>The meaning given to that term in clause 7.5.2(h).</u>
<u>Loading Facility Confirmation</u>	<u>The meaning given to that term in clause 7.5.2(u)(iii).</u>
<u>Nominated Access Rights</u>	<u>For a Short Term Transfer, the Access Rights that the relevant Access Holder proposes to Short Term Transfer excluding any Short Term Access Rights from a prior Short Term Transfer.</u>
<u>Nominated Access Rights Notice</u>	<u>The meaning given to that term in clause 7.5.2(j)(iii).</u>
<u>Nominated Range</u>	<u>The meaning given to that term in clause 7.5.2(i).</u>
<u>Notional Relevant Period Train Services</u>	<u>For Train Service Entitlements for the Nominated Access Rights for a Relevant Period, the number of Train Services calculated as the sum of NRPTS_{M1} + NRPTS_{M2}, where:</u> <p>(a) <u>NRPTS_{M1} equals:</u></p> $\frac{Days_{RPM1} \times NMTS_{M1}}{Days_{M1}}$ <p><u>rounded down to the nearest even number of whole Train Services;</u></p> <p>(b) <u>NRPTS_{M2} equals:</u></p> $\frac{Days_{RPM2} \times NMTS_{M2}}{Days_{M2}}$ <p><u>rounded down to the nearest even number of whole Train Services (provided that if the Relevant Period is wholly within Month 1, NRPTS_{M2} will be zero).</u></p> <p>(c) <u>Days_{RPM1} is the number of days of the relevant Relevant Period within a Month (Month 1) (provided that where the Relevant Period is not wholly within one Month, Month 1 will be the earliest Month within which the Relevant Period occurs);</u></p> <p>(d) <u>NMTS_{M1} is the Nominated Monthly Train Services for Month 1;</u></p> <p>(e) <u>Days_{M1} is the number of days in Month 1;</u></p> <p>(f) <u>Days_{RPM2} is the number of days of the relevant Relevant Period within the Month after Month 1 (Month 2);</u></p>

(g) NMTS_{M2} is where the Relevant Period is not wholly within one Month, the Nominated Monthly Train Services for Month 2; and

(h) Days_{M2} is where the Relevant Period is not wholly within one Month, the number of days in Month 2.

**Pre-Ordering
Short Term
Transfer Notice**

The meaning given to that term in **clause 7.5.2(b)(i)**.

**Post-Scheduling
Short Term
Transfer Notice**

The meaning given to that term in **clause 7.5.2(b)(ii)**.

**Relevant
Nominated
Access Rights**

The meaning given to that term in **clause 7.5.2(g)(i)(A)**.

**Short Term
Access Rights**

The Nominated Access Rights and the Short Term Ancillary Access Rights (if any) for the relevant Short Term Transfer.

**Short Term
Ancillary Access
Rights**

Access Rights (that will use Available Capacity without the need for an Expansion or Customer Specific Branch Line) that are ancillary to the Nominated Access Rights to the extent required by the Short Term Transferee, in addition to the Nominated Access Rights, to operate Train Services from the Short Term Origin to the destination (and vice versa) using the Nominated Access Rights.

**Short Term
Transfer**

A variation of Access Rights in accordance with relevant Short Term Transfer Provisions and to the extent applicable **clause 7.5**.

**Short Term
Transfer Date**

The meaning given to that term in **clause 7.5.2(e)(ii)**.

**Short Term
Transfer Refusal
Notice**

The meaning given to that term in **clause 7.5.3(a)**.

**Short Term
Transfer Notice**

A notice for a proposed Short Term Transfer given by an Access Holder to Aurizon Network in accordance with **clause 7.5** and the Short Term Transfer Provisions in that Access Holder's Access Agreement.

Short Term Origin

The meaning given to that term in **clause 7.5.2(i)**.

**Short Term
Transfer Period**

The meaning given to that term in **clause 7.5.2(e)(iii)**.

**Short Term
Transfer
Provisions**

The provisions of a relevant Access Agreement that are expressly acknowledged and agreed in that Access Agreement by the relevant Access Holder and Aurizon Network to be 'Short Term Transfer Provisions'.

<u>Short Term Transferee</u>	<u>The meaning given to that term in clause 7.5.2(d).</u>
<u>Short Term Transferee's Access Agreement</u>	<u>The meaning given to that term in clause 7.5.2(j).</u>
<u>Short Term Transferee Train Operations Agreement</u>	<u>The meaning given to that term in clause 7.5.2(n).</u>
<u>Short Term Transferee Operator</u>	<p>If the Short Term Transferee's Access Agreement is:</p> <p>(a) <u>an End User Access Agreement, the party who is the 'Operator' under the Short Term Transferee Train Operations Agreement;</u></p> <p>(b) <u>an Access Holder Access Agreement, the party that is the nominated 'Operator' under the Short Term Transferee's Access Agreement specified in the Transfer Notice; or</u></p> <p>(c) <u>an Operator Access Agreement, the party who is the 'Operator' under the Short Term Transferee's Access Agreement.</u></p>
Transfer	The relinquishment by an Access Holder under an Access Agreement of all or part of its Access Rights (<u>excluding any Short Term Access Rights</u>) in order to create Available Capacity that can be used to grant new Access Rights to that Access Holder (who will be an Access Seeker in relation to those new Access Rights) or an Access Seeker nominated by that Access Holder <u>but does not include a Short Term Transfer.</u>
<u>TSE Tranche</u>	<u>The meaning given to that term in clause 7.5.2(h)(i).</u>

Amendments to Schedule G – Network Management Principles

5 Master Train Plan principles

5.2 Modifying the MTP

- (a) The MTP may be modified by Aurizon Network in accordance with any of **clauses 5.2(b), (c) and (d)**. For clarity, so long as a modification can be made in accordance with one of **clauses 5.2(b), (c) or (d)**, it is not necessary for each of those clauses to be complied with in respect of that modification.
- (b) Aurizon Network may make modifications to the MTP on a case-by-case basis without the need for consultation where:
 - (i) an Access Holder notifies Aurizon Network that it wishes to make a long-term Train Service Change, provided:
 - (A) that change:

- (1) is within the scope of its Train Service Entitlement; and
 - (2) does not result in any other Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met; and
 - (B) the Access Holder has given Aurizon Network reasonable prior notice of that change having regard to the necessary process to be complied with, and factors to be considered, by Aurizon Network;
 - (ii) a Planned Possession is cancelled;
 - (iii) a new or additional/ varied Train Service Entitlement has been created, through the signing of an Access Agreement or the negotiation of a variation to an Access Agreement (including where that new or amended Access Agreement arises as a result of a Transfer or Short Term Transfer), provided that the new or varied Train Service Entitlement does not result in any other Access Holder's Train Service/s or a Planned Possession, set out in the MTP, not being met; or
 - (iv) an Access Holder's Access Agreement allows Aurizon Network to alter the Access Holder's Train Service Entitlement – for example, by resuming Access Rights through a capacity resumption process.
- (c) Aurizon Network may make modifications to the MTP, on a case-by-case basis after consulting with any Access Holders whose Train Service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with Infrastructure Service Providers if the proposed modification affects a Planned Possession, where:
 - (i) Aurizon Network notifies all affected Access Holders that it wishes to make a long-term Train Service Change, provided that change:
 - (A) is within the scope of the relevant Access Holders' Train Service Entitlement/s; and
 - (B) is intended to accommodate:
 - (1) the creation of a new or varied Train Service Entitlement, through the signing of an Access Agreement or the negotiation of a variation to an Access Agreement (including where that new or amended Access Agreement arises as a result of a Transfer or Short Term Transfer), where that new or varied Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
 - (2) the creation of new Planned Possessions or the modification of existing Planned Possessions; or
 - (3) any other Operational Constraint affecting the MTP; and
 - (C) where it results in any existing Access Holder's Train Service Entitlement not being met, is only made with the agreement of that existing Access Holder (such agreement not to be unreasonably withheld); or
 - (ii) Aurizon Network notifies all affected Access Holders, within the time period specified in the relevant System Rules, of a long-term Train Service Change for the purpose of carrying out Major Periodic Maintenance

provided that, where that change is not within the scope of an Access Holder's Train Service Entitlement, Aurizon Network has used reasonable endeavours to mitigate the impact on that Access Holder. Any limitations (if any) on Aurizon Network's ability to exercise this right will be specified in individual Access Agreements.

6 Intermediate Train Plan principles

- (a) An ITP is an intermediate scheduling step in progressing from the MTP to the DTP. Aurizon Network will consider Planned Possessions, the Train Paths and the System Paths detailed in the MTP, Train Service Entitlements, Short Term Transfers and Train Orders when developing an ITP for the Relevant Period.

Schedule 2: Drafting based on 2014 EUAA

Short term transfer provision
Discussion draft (for inclusion in 2014 EUAA)
19 December 2014

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Last Refusal Date means, in respect of a proposed Short Term Transfer, the latest date for the giving of a Short Term Transfer Refusal Notice under the Access Undertaking in respect of the proposed Short Term Transfer.

Loading Facility Confirmation has the meaning given to that term in the Access Undertaking.

Relevant Access Agreement means an Access Agreement that contains a Short Term Transfer Provision.

Relevant Access Holder means the party that is:

- (a) the 'End User' under a Relevant Access Agreement that is an "End User Access Agreement" or an "Access Holder Access Agreement" (each as defined in the Access Undertaking); or
- (b) the 'Operator' under a Relevant Access Agreement that is an "Operator Access Agreement" (as defined in the Access Undertaking).

Relevant Short Term Transfer Notice has the meaning given in **clause 2.6(a)**.

Short Term Access Rights has the meaning given to that term in the Access Undertaking.

Short Term Transfer has the meaning given to that term in the Access Undertaking.

Short Term Transfer Notice has the meaning given to that term in the Access Undertaking.

Short Term Transfer Refusal Notice has the meaning given to that term in the Access Undertaking.

Short Term Transferee has the meaning given in **clause 2.3(a)**.

Short Term Transferor means a Relevant Access Holder that has given the End User a Short Term Transfer Notice under its Relevant Access Agreement.

Transferring Access Agreement has the meaning given in **clause 2.6(a)**.

2 Short Term Transfer of Access Rights by End User

2.1 Acknowledgement

The Parties acknowledge and agree that this **clause 2** is a Short Term Transfer Provision.

2.2 End User's right to Short Term Transfer

The End User may Short Term Transfer all or part of the Access Rights for a Train Service Type to itself or a Relevant Access Holder in accordance with this **clause 2**.

2.3 Short Term Transfer Notice

- (a) If the End User proposes to Short Term Transfer all or part of the Access Rights for a Train Service Type to itself or a Relevant Access Holder (**Short Term Transferee**) under this **clause 2**, the End User must give Aurizon Network a Short Term Transfer Notice in respect of the proposed Short Term Transfer.
- (b) A Short Term Transfer Notice given under **clause 2.3(a)** must comply with the requirements for a Short Term Transfer Notice under the Access Undertaking.

2.4 Short Term Transfer

- (a) If:
 - (i) the End User gives a valid Short Term Transfer Notice under **clause 2.3**;
and
 - (ii) Aurizon Network does not give the End User a Short Term Transfer Refusal Notice in respect of the proposed Short Term Transfer on or before the Last Refusal Date,
- (b) then, with effect on and from the Last Refusal Date, the End User will be taken to have relinquished the 'Nominated Access Rights' for the Train Service Type specified in the Short Term Transfer Notice for the 'Short Term Transfer Period' as specified in the Short Term Transfer Notice.
- (c) No Transfer Fee or Relinquishment Fee is payable in respect of a Short Term Transfer.

2.5 Short Term Transfer Refusal Notice

- (a) If the End User gives Aurizon Network a Short Term Transfer Notice for a proposed Short Term Transfer under this **clause 2**, Aurizon Network may, before the Last Refusal Date for the proposed Short Term Transfer, give the End User and the Short Term Transferee a Short Term Transfer Refusal Notice in respect of the proposed Short Term Transfer.
- (b) Aurizon Network may only give the End User a Short Term Transfer Refusal Notice in respect of a proposed Short Term Transfer in the circumstances specified in the Access Undertaking.

2.6 Short Term Transfer from Relevant Access Agreement

- If:
 - (a) a Short Term Transferor gives Aurizon Network a valid Short Term Transfer Notice (**Relevant Short Term Transfer Notice**) under its Relevant Access Agreement (**Transferring Access Agreement**) in respect of a proposed Short Term Transfer;
 - (b) the End User is the 'Short Term Transferee' specified in the Relevant Short Term Transfer Notice;
 - (c) Aurizon Network does not give the Short Term Transferor and the End User a Short Term Transfer Refusal Notice in respect of the proposed Short Term Transfer on or before the Last Refusal Date,

then, with effect on and from the Last Refusal Date:

- (d) the Short Term Access Rights for the proposed Short Term Transfer will be taken to be Access Rights for an additional Train Service Type under this Agreement;
- (e) **schedule 2** will be taken to be varied to include the Train Service Description for the Short Term Access Rights as an additional Train Service Type which will be taken to be the same as the 'Train Service Description' for the 'Nominated Access Rights' under the Transferring Access Agreement specified in the Relevant Short Term Transfer Notice except that:
 - (i) the Train Service Compliance Date and Train Service Commitment Date will be taken to be the 'Short Term Transfer Date' specified in the Relevant Short Term Transfer Notice;
 - (ii) the Train Service Expiry Date will be taken to be the last day of the 'Short Term Transfer Period' specified in the Relevant Short Term Transfer Notice;
 - (iii) the Origin will be taken to be the 'Short Term Origin' specified in the Relevant Short Term Transfer Notice';
 - (iv) the 'Loaded distance from Origin to Destination (km)' and the 'Empty distance from Destination to Origin (km)' will be the distances from the 'Short Term Transferee Origin' specified in the Relevant Short Term Transfer Notice to the Destination determined by Aurizon Network, acting reasonably;
 - (v) the Loading Facility will be the Loading Facility specified in the 'Loading Facility Confirmation' that accompanied the Relevant Short Term Transfer Notice;
 - (vi) the Maximum Time at Loading Facility will be the period determined by Aurizon Network, acting reasonably;
 - (vii) the Nominated Monthly Train Services for each Month during the Short Term Transfer Period will be the 'Train Service Entitlements' for the 'Nominated Access Rights' under the Transferring Access Agreement for that Month specified in the Relevant Short Term Transfer Notice; and
- (f) **schedule 4** will be taken to be varied to include the Access Charge Rates for the Short Term Access Rights which will be taken to be determined by Aurizon Network, acting reasonably, based on the same Reference Tariffs that were applied in setting the access charges for the 'Nominated Access Rights' under the Transferring Access Agreement specified in the Relevant Short Term Transfer Notice.

2.7 Variation to Short Term Transfer Provision

- (a) If Aurizon Network becomes obliged under the Access Undertaking to vary the Short Term Transfer Provisions under all access agreements or particular classes of access agreements of which this Agreement forms part, then Aurizon Network must give the End User a notice setting out the variations to this **clause 2** which Aurizon Network is obliged to make to this **clause 2** in accordance with the Access Undertaking.
- (b) If Aurizon Network gives the End User a notice under **clause 2.7(a)**, then this **clause 2** will be taken to be varied as set out in that notice with effect on the date specified in that notice.

[Note: The corresponding provision included in UT3 and UT2 access agreements will need to be tailored to align with the definitions used in those access agreements.]

[Note: It will be necessary to include a clause in the Transferee Train Operations Agreement under which the Short Term Access Rights are taken to be included under that Train Operations Agreement.]