

Aurizon Network Pty Ltd

Study Funder

Studies Funding Agreement – [Prefeasibility] [Feasibility] Study

[insert Expansion name]

Drafting note: Aurizon Network will be the last party to execute the Funding Agreements. The Study Funder and each Other Study Funder must provide executed copies of their respective Funding Agreements to Aurizon Network. Aurizon Network will execute all Funding Agreements on the same date so that they all have the same Commencement Date. The Funding Agreements will contain the same conditions precedent. In the case of Funding Agreements for a feasibility study, if a condition precedent in any of the Funding Agreements is not satisfied by the conditions date, then all Funding Agreements will terminate at the same time.

This template Funding Agreement applies for both prefeasibility studies and feasibility studies.

This Agreement assumes that the Study Funder and each Other Study Funder has any necessary ACCC authorisation to negotiate and otherwise perform its obligations and exercise its rights (including the sharing of information) under this Agreement and each Other Funding Agreement.

This Agreement is structured as funding by way of monthly loans. Alternative funding methodologies may be acceptable to Aurizon Network and Study Funders (eg monthly payments (equivalent to

monthly Drawdown Amounts) or upfront payment with drawdown on milestones being achieved). Parties can negotiate these alternatives. This document is the standard that will apply if agreement cannot be reached between the parties.

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Date

Parties

Aurizon Network Pty Ltd ABN 78 132 181 116 of Level 17, 175 Eagle Street, Brisbane, Queensland (**Aurizon Network**)

The party specified in item 1 of schedule 1 (**Study Funder**)

Background

- A The Study Funder and each Other Study Funder have requested that Aurizon Network carry out the Rail Study.
 - B Aurizon Network has agreed to carry out the Rail Study on the basis that:
 - (a) the Study Funder contributes to the funding of the Rail Study on the terms of this Agreement; and
 - (b) each Other Study Funder contributes to the funding of the Rail Study on the terms of its Other Funding Agreement.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Agreement:

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

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

Access Undertaking means an access undertaking, policy, code or other similar document applicable to any aspect of access to the Railway Network which has been approved by the Access Regulator in accordance with the Access Legislation.

Additional Costs has the meaning given in **schedule** Error! Reference source not found..

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

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

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

which will, or will likely, result in:

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

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

All Continuing Study Funders' Study Percentage means if the Rail Study is a Pre-feasibility Study, at a time, the sum of:

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

as at that time.¹

Allocation Principles means the principles set out in **item 4 of schedule** Error! Reference source not found..

All Study Funders means the Study Funder and each Other Study Funder.

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

Assign has the meaning given in **clause 19.2(a)**.

Assignee has the meaning given in **clause 19.3(a)**.

Audit has the meaning given in **clause 11.3(a)**.

Auditor has the meaning given in **clause 11.3(a)**.

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

Bank Guarantee means a bank guarantee (or bank guarantees) (if applicable) satisfying the requirements of **clause 12** which is required to be given by the Study Funder to Aurizon Network as security under this Agreement.

Bank Guarantee Amount means the value of the Bank Guarantee required to be given by the Study Funder to Aurizon Network under this Agreement from time to time and which, as at the Commencement Date, is the amount specified in **item 5 of schedule 1**.

¹ SFA – PS only

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

Capacity has the meaning given in the Access Undertaking.

Capacity Model means the computer-based model, and all variables used in that model, used during the Rail Study to assess the Capacity of the Railway Network (including the Expansion).

Capacity Review has the meaning given in **clause 11.5(a)**.

Capacity Reviewer has the meaning given in **clause 11.5(a)**.

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

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

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

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

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

Completion Date means the date Aurizon Network determines, acting reasonably, that the Rail Study has been completed.

Completion Notice has the meaning given in clause 7.4(a)(i).

Concept Study has the meaning given in the Access Undertaking.

Conditions means the conditions specified in **item 4 of schedule 1**.

Conditions Date for a Condition means the date specified for the Condition in **item 4 of schedule 1**.

Confidential Information of a Disclosing Party means:

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

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

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

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

- (a) any loss of profits or loss of production;
- (b) any loss of whatever nature concerning supply of product from a mine to any third party or to make product available to transport;
- (c) loss of business opportunities;
- (d) loss of or damage to reputation or goodwill;
- (e) loss of or damage to credit rating; and
- (f) loss or damage that does not naturally, according to the usual course of things, flow from a breach of contract,

but does not include any of the following Claims to the extent that the Party would in the absence of this definition be entitled to recover them at law:

- (g) any costs or expenses incurred by the Party in connection with mitigating the effects of any breach of this Agreement by the other Party (including implementing a workaround solution in respect of or otherwise mitigating any failure of a Party to comply with the requirements (including warranties) of this Agreement provided that if a loss arising from the

breach of the Agreement is itself not recoverable because it is a Consequential Loss, the costs or expenses incurred in mitigating that loss shall also be treated as (non-recoverable) Consequential Loss;

- (h) a loss (including a loss arising out of a Claim by a third party) in respect of:
 - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or
 - (ii) personal injury to or death of any person; or
- (i) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury Claims; or
- (j) any fines or penalties imposed by a governmental or regulatory body for failure by the Party to comply with the law as a result of the other Party's failure to comply with the requirements of the Agreement, and any costs or expenses incurred by the first Party in dealing with any actions, investigations, inquiries or proceedings by a governmental or regulatory body in respect of such failures or breaches.

Continuing Study Funders has the meaning given in **clause 5.3(c)** or **clause 9.5(b)(i)** (as the context requires).

Disclosee has the meaning given in **clause 20.3**.

Disclosing Party has the meaning given in **clause 20.1(a)**.

Dispute has the meaning given in **clause 16.1(a)** and includes:

- (a) a matter referred to an Expert for determination under this Agreement; and
- (b) a "Dispute" (as defined in an Other Funding Agreement) if Aurizon Network joins the Study Funder to the dispute resolution process under the Other Funding Agreement in accordance with **clause 16.9**.

Dispute Notice has the meaning given in **clause 16.1(a)**.

Dispute Resolution Process means:

- (a) the dispute resolution process under **clause 16**; and
- (b) if Aurizon Network joins the Study Funder to the dispute resolution process under an Other Funding Agreement in accordance with **clause 16.9**, the dispute resolution process under the Other Funding Agreement.

Drawdown Amount means:

- (a) in the case of a Drawdown Notice given under **clause 5.2**, the amount calculated in accordance with **schedule 5** for the relevant Month; and
- (b) in the case of a Drawdown Notice given under **clauses 17.1(b)(ii)** or **17.6(b)(iii)**, the amount specified in the Drawdown Notice in accordance with **17.1(b)(ii)** or **17.6(b)(iii)** (as applicable).

Drawdown Notice has the meaning given in **clauses 5.2(a), 17.1(b)(ii) and 17.6(b)(iii)**.

Estimated Total Study Costs means, at a time, the sum of:

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

which, as at the Commencement Date, is the amount specified in row 2 of the table in **schedule 3**.

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

Expert has the meaning given in **clause 16.2(b)**.

External Costs has the meaning in **schedule** Error! Reference source not found..

Feasibility Study has the meaning given in the Access Undertaking.

Financial Obligation means any obligation of a Party to:

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

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

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

Funding Shortfall means, at a time, the difference between the Estimated Total Study Costs and the Total Study Commitment as at that time.

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

Incurred has the meaning given in **clause 11.1**.

Initial Commitment for the Continuing Study Funders means the sum of maximum aggregate amounts that they may each be obliged to lend to Aurizon Network under clause 5.1(b) of this Agreement and/or their Other Funding Agreements (as applicable), prior to any variation referred to in **clause 5.3**.

Intellectual Property Rights means all industrial and intellectual property rights including rights to inventions, discoveries, innovations, technical information, technical data, prototypes, manufacturing processes, improvements, patent rights, circuitry, algorithms, computer software programs, software code and source documents, drawings, plans, specifications,

trademark rights, trade names, design rights, copyright (including moral rights), and other monopoly rights, samples and know-how.

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

- (a) 2%; and
- (b) the Commonwealth Bank of Australia's "Corporate Overdraft Reference Rate" (monthly charging cycle) quoted by the Commonwealth Bank of Australia on its public website for the last Business Day of the previous Month (or in the event that such a rate is not quoted at, or in respect of, any relevant date, such other similar rate as is quoted by a major commercial bank agreed by the Parties or, failing agreement, as determined by an Expert under **clause 16.3**).

Internal Costs has the meaning given in **schedule** Error! Reference source not found..

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

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

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

Land Acquisition Costs means costs and expenses referred to in **paragraph (g)** of **item 3.1** of **schedule 4**.

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

Licence Fee means the fee payable by the Study Funder for the grant of a Rail Study Licence under **clause 6.3(a)(i)**, being an amount equal to the Loaned Amount on the date on which the fee is payable.

Loaned Amount means, at a time, the aggregate outstanding principal amount of all loans provided by the Study Funder to Aurizon Network under this Agreement as at that time.

Month means a calendar month.

Nominee has the meaning given in **clause 17.6(a)(ii)**.

Notice has the meaning given in **clause 21.1**.

Other Study Funder means:

- (a) if the Rail Study is a Pre-feasibility Study, subject to clause 2.5:
 - (i) initially, each person listed in **schedule 3** other than the Study Funder; and

- (ii) after Condition 1 has been satisfied or waived by Aurizon Network, each person listed in **schedule 3** who is party to an Other Funding Agreement; and
- (b) if the Rail Study is a Feasibility Study, the party which is the “Study Funder” under an Other Funding Agreement.

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

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

Pre-feasibility Study has the meaning given in the Access Undertaking.

Proceedings has the meaning given in **clause 16.7(b)(i)**.

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

Project Agreement means an agreement (or series of related agreements) setting out the terms and conditions upon which (amongst other matters) Aurizon Network and/or users will carry out, or procure the carrying out of, the construction of the whole or part of the Rail Study Works.

Project Management Fee means the amount calculated in accordance with **item 3** of **schedule 6**.

Provisional Capacity Allocation has the meaning given in the Access Undertaking.

Provisional Project Management Fee means the amount calculated in accordance with **item 2** of **schedule 6**.

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

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

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

- (a) use any information, materials or reports (including the report referred to in **clause 7.5**) and the Rail Study Report solely for the Study Funder’s business purposes related to its rights and obligations under this Agreement and to make necessary copies; and
- (b) sub-licence the rights referred to in **paragraph (a)** of this definition to any Related Body Corporate, consultant or contractor of the Study Funder.

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

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

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

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

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

Report Date has the meaning given in **clause 7.4(d)**.

Representative means a person appointed by a Study Funder and an Other Study Funder, in accordance with the Study Funder Committee Rules, as its representative on the Study Funder Committee and includes any alternate of that person.

Reviewed Amount has the meaning given in **clause 12.3(a)(i)**.

Scope Change Event mean each of the following:

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

Scope of Works means the scope of works for the Rail Study specified for the relevant Rail Study in the Access Undertaking.

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

State means State of Queensland.

Study Costs means for the Rail Study:

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

Study Funder Committee means the Study Funder Committee established under **clause 8** of this Agreement.

Study Funder Committee Rules has the meaning given in **clause 8.1(b)**.

Study Funder's Estimated Study Costs means, at a time, the amount which is the Study Funder's Study Percentage of the Estimated Total Study Costs as at that time (which, as at the Commencement Date, is the amount specified for the Study Funder in row 1 column 4 of the table in **schedule 3**).

Study Funder's Share of Prefeasibility Costs means the amount specified in **item 3** of **schedule 1**.

Study Funder's Study Commitment means the amount specified for the Study Funder in row 1 column 5 of the table in **schedule 3** as varied under **clause 5.3**.

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

Supplier has the meaning given in **clause 23.3**.

Target Date means the date specified as such in **item 6** of **schedule 1** as varied under **clause 9** or **10** from time to time.

Target Study Cost means the amount specified as such in **item 6** of **schedule 1** as varied under **clauses 2.6, 9** or **10** from time to time.

Total Study Commitment means the sum of the Study Funder's Study Commitment and each Other Study Funder's "Study Funder's Study Commitment" (as defined under each Other Funding Agreement).

Total Study Costs means, at a time, the sum of the total Study Costs Incurred by Aurizon Network as at that time.

Variation Notice has the meaning given in **clause 2.6(a), 9.1** or **9.2(a)**.

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

1.2 Interpretation

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where the day on or by which any thing is to be done is not a Business Day, it must be done on or by the preceding Business Day;
- (c) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) "includes" means includes without limitation;
- (f) no rule of construction will apply to the disadvantage of one Party on the basis that that Party put forward the documents comprising this Agreement;
- (g) if the documents comprising this Agreement contain any ambiguity, discrepancy or inconsistency, then the following order of precedence will apply to resolve that ambiguity, discrepancy or inconsistency:
 - (i) this Agreement excluding the **schedules**; and
 - (ii) the **schedules**;
- (h) words in the singular include the plural and vice versa;
- (i) words importing one gender include every gender;

- (j) references to clauses and schedules are references to clauses of, and schedules to, this Agreement;
- (k) a requirement for a Party to obtain the consent or approval of the other Party requires the first Party to obtain the consent or approval in writing; and
- (l) a reference to:
 - (i) a person includes any company, partnership, joint venture, unincorporated association, corporation or other body corporate and a government or statutory body or authority;
 - (ii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified, consolidated, re-enacted or replaced;
 - (iii) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (iv) a right includes a benefit, remedy, discretion and power;
 - (v) time is to local time in Brisbane, Queensland;
 - (vi) \$ or dollars is a reference to Australian currency;
 - (vii) this Agreement or any other document includes this Agreement or the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmission;
 - (ix) a notice to, or consent from, an Other Study Funder in this Agreement is a reference to a notice to, or consent from, that Other Study Funder under its Other Funding Agreement; and
 - (x) a Party includes that Party's successors according to law and permitted assigns and any person to whom it novates its rights and obligations.

2 Conditions precedent

2.1 Conditions

All of the obligations of the Parties under this Agreement (except for those under this **clause 2** and **clauses 4, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24.2** to **24.18** and **25**) are subject to the Conditions.

2.2 Waiver of Conditions

- (a) The Conditions are for the benefit of Aurizon Network.
- (b) The Conditions can only be waived in whole or in part by the written waiver of the party set out next to that Condition in **item 4** of **schedule 1**.

2.3 Conditions Date

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

2.4 Effect of termination

- (a) If this Agreement is terminated under this **clause 2**, this Agreement (except for this **clause 2.4** and **clauses 4, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24** and **25**) is of no further effect.
- (b) If the Rail Study is a Feasibility Study and, prior to the termination of this Agreement under **clause 2.3(a)**, the Study Funder has paid to Aurizon Network the Study Funder's Share of Prefeasibility Costs, then Aurizon Network must promptly after the termination of this Agreement, repay the Study Funder's Share of Prefeasibility Costs to the Study Funder.

2.5 Termination of Other Funding Agreement

If the Rail Study is a Pre-feasibility Study and an Other Funding Agreement terminates under clause 2 of that agreement, then for the purposes of this Agreement:

- (a) that Other Funding Agreement will cease to be an Other Funding Agreement; and
- (b) the Other Study Funder under that Other Funding Agreement will cease to be an Other Study Funder (including for the purposes of the definition of "All Study Funders") on and from the date of termination of that Other Funding Agreement.

2.6 Aurizon Network may vary Target Study Cost and Estimated Total Study Costs if Other Funding Agreement terminates

- (a) If the Rail Study is a Feasibility Study and:
 - (i) Condition 1 is satisfied or waived by the Conditions Date for Condition 1 in accordance with this **clause 2**; but
 - (ii) on the Business Day immediately after the Conditions Date for Condition 1:
 - (A) one or more Other Funding Agreements have terminated under **clause 2** of those agreements; or
 - (B) a person who was an Other Study Funder on the Commencement Date is no longer an Other Study Funder,

then Aurizon Network must, by notice to All Study Funders within 10 Business Days after the Commencement Date, propose to consistently vary:

- (iii) the description of the Expansion under this Agreement and the description of the “Expansion” (as defined in each Other Funding Agreement) under each Other Funding Agreement, to remove any works which relate solely to components of the Expansion which are only required to create sufficient capacity for Aurizon Network to provide the access (or additional access) to the Railway Network that had been requested by the persons (or their nominees) who have ceased to be Other Study Funders; and
 - (iv) the Target Study Cost and Estimated Total Study Costs (so that it equals the Target Study Cost) under this Agreement and the “Target Study Cost” and “Estimated Total Study Costs” (so that it equals the “Target Study Cost”) (each as defined in each Other Funding Agreement) under each Other Funding Agreement to reflect the variations referred to in **clause 2.6(a)(iii)**,
- (b) Aurizon Network must promptly arrange a meeting of All Study Funders and Aurizon Network to discuss options for continuing to fund and the continued carrying out of the Rail Study after the variation proposed in **clause 2.6(a)** in accordance with the process outlined in **clause 5.3(b) to 5.3(d)(ii)**.
- (c) The Study Funder may, by notice to Aurizon Network terminate this Agreement within 10 Business Days after:
- (i) the receipt of Aurizon Network’s notice under clause 2.6(a); or
 - (ii) completion of the process under clause **5.3(b) to 5.3(d)(ii)**,
in which case **clause 2.4** applies.
- (d) If one or more Other Funding Agreements have terminated under **clause 2** of those agreements after completion of the process under clause **5.3(b) to 5.3(d)(ii)** and a person who was an Other Study Funder on the Commencement Date is no longer an Other Study Funder, then Aurizon Network must, by notice to All Study Funders terminate this Agreement and each Other Funding Agreement (unless otherwise agreed), in which case **clause 2.4** applies.

2.7 Revision of Study Funder’s Study Percentage

If the Rail Study is a Pre-feasibility Study, then:

- (a) immediately after the last Condition is satisfied, or waived in accordance with **clause 2.2**, the Study Funder’s Study Percentage is taken to be varied to be the amount calculated in accordance with the following formula:

$$A / B$$

where:

A = the percentage specified for the Study Funder in row 1 column 3 of the table in **schedule 3**

B = the All Continuing Study Funders' Study Percentage, calculated immediately after the last Condition is satisfied or waived.

- (b) Aurizon Network must promptly provide All Study Funders with a notice confirming any change to the Study Funder's Study Percentage and "Study Funder's Study Percentage" under an Other Funding Agreement under **clause 0**.
- (c) If the change to the Study Funder's Study Percentage means that the Study Funder's Estimated Study Costs will be greater than the amount shown in **Schedule 3**, the Study Funder may, by notice to Aurizon Network terminate this Agreement within 10 Business Days after the receipt of Aurizon Network's notice under **clause 2.7(b)**, in which case **clause 2.4** applies.
- (d) If one or more Other Funding Agreements have terminated under **clause 2** of those agreements after receipt of the notice given by Aurizon Network under **clause 2.7(b)**, then Aurizon Network must, by notice to All Study Funders terminate this Agreement and each Other Funding Agreement (unless otherwise agreed), in which case **clause 2.4** applies.

3 Term

This Agreement commences on the Commencement Date and, unless earlier terminated in accordance with this Agreement, continues until the Loaned Amount is repaid to the Study Funder under **clause 6**.

4 Other Funding Agreements

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

5 Study Funder's funding

5.1 Funding commitment

- (a) Subject to **clause 5.1(b)**, the Study Funder agrees to provide interest free loans to Aurizon Network for:
 - (i) if the Rail Study is a Feasibility Study, the Study Funder's Share of Prefeasibility Costs; and
 - (ii) Drawdown Amounts specified in Drawdown Notices given by Aurizon Network under **clauses 5.2(a), 17.1(b)(ii) and 17.6(b)(iii)** from time to time.
- (b) The maximum aggregate amount that the Study Funder is obliged to lend to Aurizon Network under this Agreement at any time is:
 - (i) if the Rail Study is a Feasibility Study, the Study Funder's Share of Prefeasibility Costs; plus
 - (ii) the Study Funder's Study Commitment at that time.
- (c) For the avoidance of doubt, if the Rail Study is a Feasibility Study, the Study Costs for the Rail Study do not include the Study Funder's Share of Prefeasibility Costs.

5.2 Drawdown of Study Funder funding

- (a) After the end of each Month, Aurizon Network must give the Study Funder a notice (**Drawdown Notice**):
 - (i) specifying:
 - (A) the Drawdown Amount for that Month; and
 - (B) the Study Funder's Estimated Study Costs as at the end of that Month; and
 - (ii) setting out the basis upon which the amounts specified in the Drawdown Notice have been calculated (including evidence of those calculations).
- (b) Within ten Business Days after Aurizon Network gives the Study Funder a Drawdown Notice, the Study Funder must, subject to its rights under **clause 11.4**, pay the Drawdown Amount specified in that Drawdown Notice to Aurizon Network.
- (c) Subject to **clauses 7.2 and 11.4**, the Study Funder:
 - (i) is not required to pay the Drawdown Amount specified in a Drawdown Notice to Aurizon Network if the payment under the Drawdown Notice (and each Drawdown Notice given on or about the same date to the Other Study Funders) of that amount would mean the Total Study Costs exceed the Target Study Cost;
 - (ii) must pay the Drawdown Amount specified in a Drawdown Notice to Aurizon Network even if the Drawdown Notice indicates the

Total Study Costs are estimated to exceed the Target Study Cost and **clause 5.2(c)(i)** does not apply; and

- (iii) must pay the Drawdown Amount specified in a Drawdown Notice to Aurizon Network whether or not the Drawdown Notice indicates the date of completion of the Rail Study is later, or is estimated to be later, than the Target Date.

5.3 Total Study Commitment reached

- (a) If either:
 - (i) Aurizon Network, acting reasonably, anticipates the Study Funder's Estimated Study Costs may exceed the Study Funder's Study Commitment; or
 - (ii) the Study Funder's Estimated Study Costs specified in a Drawdown Notice exceed the Study Funder's Study Commitment, then Aurizon Network must notify All Study Funders and promptly organise a meeting of All Study Funders and Aurizon Network to discuss options for continuing to fund and the continued carrying out of the Rail Study after the Total Study Costs reach the Total Study Commitment.
- (b) A meeting referred to in **clause 5.3(a)** must be held at a time and place (as determined by Aurizon Network acting reasonably) in Brisbane on a Business Day during normal business hours not less than **[10]** Business Days, and not more than **[15]** Business Days, after the date that Aurizon Network gives the Study Funder the notice referred to in **clause 5.3(a)**.
- (c) If the Study Funder and/or one or more Other Study Funders (**Continuing Study Funders**) each:
 - (i) agree in writing to vary:
 - (A) in the case of the Study Funder, the Study Funder's Study Commitment; and
 - (B) in the case of any Other Study Funder, its "Study Funder's Study Commitment" (as defined in its Other Funding Agreements),so that, in aggregate, the Continuing Study Funders are obliged to fund, in addition to their Initial Commitments, at least 115% of the Funding Shortfall on the terms of, subject to **clause 5.3(c)(ii)**, this Agreement and/or their Other Funding Agreements (as applicable);
 - (ii) agree in writing to any consequential variations to this Agreement and/or their Other Funding Agreements (as applicable) required as a consequence of the Continuing Study Funders being obliged to fund, in addition to their Initial Commitments, at least 115% of the Funding Shortfall; and
 - (iii) provide Aurizon Network with additional Bank Guarantees that, in aggregate, equal at least 115% of the Funding Shortfall,

Aurizon Network must continue to carry out, or procure the carrying out of, the Rail Study after the Total Study Costs reach the Total Study Commitment.

- (d) If the Study Funder's Estimated Study Costs specified in a Drawdown Notice exceed the Study Funder's Study Commitment, the Study Funder does not agree to be a Continuing Study Funder and:
 - (i) Other Study Funders have agreed to be Continuing Study Funders, then this Agreement will automatically terminate without the need for either Party to give notice of termination to the other Party on the date that the sum of:
 - (A) the Loaned Amount; and
 - (B) any amounts which are due for payment, but not yet paid, by the Study Funder under a Drawdown Notice given by Aurizon Network,equals the maximum aggregate amount that the Study Funder is obliged to lend to Aurizon Network under this Agreement; or
 - (ii) all Other Study Funders have not agreed to be Continuing Study Funders, then Aurizon Network:
 - (A) will have no obligation to continue to carry out, or to procure the carrying out of, the Rail Study; and
 - (B) the Study Funder and each Other Study Funder will be taken to have jointly given Aurizon Network a notice of termination under **clause 17.1(a)**.

6 Repayment of Loaned Amount

6.1 Repayment if Feasibility Study

If the Rail Study is a Pre-feasibility Study and:

- (a) Aurizon Network subsequently enters into a Study Funding Agreement for a Feasibility Study of the proposed Expansion;
- (b) the Study Funding Agreement becomes unconditionally binding on all of the parties to them; and
- (c) Aurizon Network is paid funds under the Study Funding Agreement which it is permitted to apply in repaying loans made by the Study Funder under this Agreement and by Other Study Funders under Other Funding Agreements,

then, within ten Business Days after Aurizon Network is paid the funding referred to in **clause 6.1(c)**, Aurizon Network must repay, in cleared funds, the Loaned Amount to the Study Funder.

6.2 Repayment if Project Agreement

- (a) This clause 6.2 applies if the Rail Study is a Feasibility Study.

- (b) If:
- (i) Aurizon Network subsequently enters into the Project Agreements for the proposed Expansion;
 - (ii) the Project Agreements become unconditionally binding on all of the parties to them; and
 - (iii) under the Project Agreements, Aurizon Network is solely responsible for funding the applicable Rail Study Works to be carried out under the Project Agreements,

then, within ten Business Days after the Project Agreements become unconditionally binding on all of the parties to them, Aurizon Network must promptly repay, in cleared funds, the Loaned Amount to the Study Funder.

- (c) If:
- (i) Aurizon Network enters into the Project Agreements;
 - (ii) the Project Agreements become unconditionally binding on all of the parties to them;
 - (iii) under the Project Agreements, Aurizon Network is not solely responsible for funding the applicable Rail Study Works to be carried out under the Project Agreements; and
 - (iv) Aurizon Network is paid funds under the Project Agreements which it is permitted to apply in repaying loans made by the Study Funder under this Agreement and by Other Study Funders under Other Funding Agreements (other than the amount of Land Acquisition Costs),

then, within ten Business Days after Aurizon Network is paid the funding referred to in **clause 6.2(c)(iv)**, Aurizon Network must repay, in cleared funds, a proportion of the funds received under **clause 6.2(c)(iv)** to the Study Funder calculated as the proportion of the Loaned Amount to the aggregate of the Loaned Amount and loans by Other Study Funders under Other Funding Agreements.

6.3 Other repayment

- (a) If, within nine years and 11 months after the Commencement Date, Aurizon Network does not become obliged to repay the Loaned Amount to the Study Funder under **clause 6.1 or 6.2**, then:
- (i) Aurizon Network is, subject to **clause 6.3(a)(iv)**, obliged to repay the Loaned Amount;
 - (ii) Aurizon Network will grant the Study Funder a Rail Study Licence;
 - (iii) the Study Funder will be obliged to pay the Licence Fee to Aurizon Network;

- (iv) the Study Funder will deduct from the Licence Fee payable to Aurizon Network under **clause 6.3(a)(iii)** the Loaned Amount repayable by Aurizon Network; and
- (v) on the grant of the Rail Study Licence by Aurizon Network to the Study Funder under **clause 6.3(a)(i)**:
 - (A) the Loaned Amount is taken to be fully repaid by Aurizon Network to the Study Funder; and
 - (B) the Study Funder will have no Claim against Aurizon Network in respect of the Loaned Amount.
- (b) The Study Funder's right to repayment of the Loaned Amount is subject and subordinate to the rights of, and will rank in priority of point of payment after, all other debts and liabilities of Aurizon Network (other than any liability of Aurizon Network to Other Study Funders in respect of the repayment of loans made under Other Funding Agreements).
- (c) Despite any other clause in this Agreement, the Study Funder:
 - (i) will have no entitlement to have resort or recourse to any asset of Aurizon Network; and
 - (ii) agrees that its right to recourse is limited to the grant of the Rail Study Licence under **clause 6.3(a)(ii)**.
- (d) For the avoidance of doubt, the Study Funder will not have any right to be repaid the Loaned Amount (or any part of it) except as expressly provided in this **clause 6** and **clauses 11.4(d)(ii)** and **13.3**.

7 Rail Study

7.1 Conduct of Rail Study

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

7.2 Target Study Cost and Target Date

Subject to clause 18.1, Aurizon Network must ensure that:

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

7.3 Monthly Progress Report

Within 5 Business Days after the end of each Month, Aurizon Network must give the Study Funder a report (**Progress Report**) specifying reasonable details of the progress in relation to the carrying out of the Rail Study as at the end of that Month, which must include, at a minimum, details of progress against:

- (a) the Target Study Costs, including any calculations and evidence of costs overruns or underruns; and

- (b) the Target Date, including details of any delays caused or contributed to by Aurizon Network or otherwise.

7.4 Provision of Rail Study Report

- (a) Subject to **clause 7.4(c)**, Aurizon Network must:
 - (i) notify All Study Funders of completion of the Rail Study within 2 Business Days after the Completion Date (**Completion Notice**); and
 - (ii) prepare, and deliver to the Study Funder a copy of, the Rail Study Report, within 20 Business Days after the date of the Completion Notice.
- (b) The Rail Study Report delivered to the Study Funder under **clause 7.4(a)** must:
 - (i) comply with the requirements specified in **schedule 3**; and
 - (ii) include the information required for the relevant Rail Study in the Access Undertaking.
- (c) Aurizon Network may delete from the copy of the Rail Study Report which Aurizon Network is required to deliver to the Study Funder under **clause 7.4(a)** any information which, if disclosed to the Study Funder, would give rise to a breach of a contractual or other obligation (including an equitable obligation of confidence) by Aurizon Network.
- (d) The Study Funder may, within 20 Business Days after Aurizon Network delivers the Rail Study Report to the Study Funder under **clause 7.4(a)**, give Aurizon Network a Dispute Notice which Disputes:
 - (i) that the Rail Study Report complies with the requirements specified in clause 7.4(b); or
 - (ii) the contents of the Rail Study Report,
- (e) (or both) (**Report Dispute**). If a Report Dispute is not resolved in accordance with **clause 16.2**, the Study Funder may refer the Dispute to an Expert to determine the Report Dispute.
- (f) If the Study Funder does not give Aurizon Network a Dispute Notice referred to in **clause 7.4(d)** within the time referred to in **clause 7.4(d)**, then:
 - (i) the Study Funder may not give Aurizon Network a Dispute Notice in respect of the Report Dispute; and
 - (ii) any such Dispute Notice which is given by the Study Funder will be taken to be of no effect.

7.5 Prefeasibility Study Report

- (a) If the Rail Study is a Feasibility Study, then on or before the date that is 5 Business Days after the Commencement Date, Aurizon Network must provide the Study Funder with a copy of the final rail study report

prepared by Aurizon Network for the Pre-feasibility Study for the Expansion. Intellectual Property Rights

- (b) The Study Funder acknowledges and agrees that the Intellectual Property Rights in any information or materials which are created by or for Aurizon Network in the conduct of the Rail Study will not be owned by the Study Funder.
- (c) Except as provided under **clause 6.3** and **7.5(d)**, nothing under this Agreement grants to the Study Funder a licence to, or transfers to the Study Funder, any Intellectual Property Rights.
- (d) Aurizon Network grants the Study Funder a non-exclusive irrevocable licence to:
 - (i) use any information, materials or reports (including the report referred to in **clause 7.5**, if relevant) and the Rail Study Report (once in existence) or any interim or draft reports disclosed to it or its employees, consultants or contractors by Aurizon Network under this Agreement solely for the Study Funder's business purposes related to its rights and obligations under this Agreement and to make necessary copies; and
 - (ii) sub-licence the rights referred to in **clause 7.5(d)(i)** to any Related Body Corporate, consultant or contractor of the Study Funder, until, subject to **clause 6.3**, the earlier of:
 - (iii) the date the Loaned Amount is repaid to the Study Funder in accordance with **clause 6.1**; and
 - (iv) the date of termination of this Agreement.

7.6 No obligation to construct Rail Study Works

- (a) For the avoidance of doubt, nothing in this Agreement or the exercise of rights or performance of obligations in accordance with this Agreement obliges Aurizon Network to proceed with, or requires the Study Funder to agree to proceed with, the Rail Study Works.
- (b) For the avoidance of doubt, nothing in this Agreement or the exercise of rights or the performance of obligations in accordance with this Agreement obliges Aurizon Network or the Study Funder to enter into a Study Funding Agreement for a Feasibility Study (if the Rail Study is a Pre-feasibility Study) or a Project Agreement.

7.7 No restriction on Aurizon Network's business activities

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

- (a) to enter into agreements with third parties;
- (b) to grant access rights to third parties to operate train services on the Railway Network; or

- (c) to undertake infrastructure enhancements and upgrades on the Railway Network.

8 Study Funder Committee

8.1 Study Funder Committee

- (a) The Study Funder Committee will be the forum for All Study Funders to carry out consideration of, consultation on and, where required, decision making in respect of, the undertaking of the Rail Study and addressing matters otherwise contemplated by this Agreement as being addressed by the Study Funder Committee.
- (b) Aurizon Network must, within 10 Business Days after the date of this Agreement:
 - (i) establish the Study Funder Committee as contemplated by this clause 8; and
 - (ii) procure each Participating Funding User to approve the rules set out in **schedule 7**;
 - (iii) keep the Study Funder informed of progress in respect of the matters in clauses 8.1(b)(i) and 8.1(b)(ii),and the rules so approved shall be the Study Funder Committee Rules of the Study Funder Committee (**Study Funder Committee Rules**).
- (c) Subject to clause 8.1(d) and the Study Funder Committee Rules, the Study Funder Committee will comprise the Representative of each of the All Study Funders from time to time.
- (d) The parties acknowledge and agree that the treatment of a Representative of the Study Funder or Other Study Funder for the purposes of determining a quorum and in respect to voting rights may be affected by certain matters, including payment default under this Agreement or an Other Funding Agreement or insolvency affecting a Study Funder or an Other Study Funder, but only if and to the extent set out in the Study Funder Committee Rules.
- (e) Aurizon Network must promptly notify All Study Funders as soon as it becomes aware of any event or circumstance which may impact on any Study Funder and/or Other Study Funder's right to be a member or otherwise participate and/or vote in respect of the Study Funder Committee.

8.2 Funding User's Representative

- (a) The Study Funder's initial Representative is the person listed as such in **schedule 1**.
- (b) The Study Funder may replace its Representative from time to time in accordance with the Study Funder Committee Rules.
- (c) The parties acknowledge and agree that a Representative may vote in the best interests of its appointing party.

- (d) A Representative cannot amend any of the terms or conditions of this Agreement.

8.3 Study Funder Committee Rules

- (a) Aurizon Network warrants that, as at the Commencement Date, **schedule 8** of each Other Funding Agreement is on the same terms as the terms of **schedule 8** of this Agreement.
- (b) Aurizon Network must not agree to vary the terms of **schedule 8** of an Other Funding Agreement if the variation would result in the terms of **schedule 7** of each Other Funding Agreement ceasing to be on the same terms as the terms of **schedule 7** of this Agreement.
- (c) The Study Funder agrees, for the benefit of each Other Study Funder, to comply with the terms of **schedule 7**.
- (d) For the avoidance of doubt, the Parties acknowledge and agree that nothing in **schedule 7** imposes any obligations on Aurizon Network.

9 Variations to Scope of Works

9.1 Variation to Scope of Works initiated by Aurizon Network

- (a) If Aurizon Network proposes to vary the Scope of Works, then Aurizon Network must:
 - (i) by notice to All Study Funders (**Variation Notice**), request the consent of All Study Funders to vary the Scope of Works which Variation Notice must specify:
 - (A) the proposed variation of the Scope of Works;
 - (B) the reasons for the variation; and
 - (C) confirmation of whether and how the variation will impact on the Target Date and/or the Target Study Cost if the proposed variation were consented to; and
 - (ii) invite All Study Funders' Representatives to attend a meeting with Aurizon Network to discuss the variation proposed in the Variation Notice.
- (b) A meeting referred to in **clause 9.1(a)(ii)** must be held at a time and place (as determined by Aurizon Network acting reasonably) in Brisbane on a Business Day during normal business hours not less than **[5]** Business Days, and not more than **[10]** Business Days, after the date that Aurizon Network gives the Study Funder a Variation Notice.
- (c) Within **[3]** Business Days after the conclusion of the meeting referred to in **clause 9.1(b)**, Aurizon Network must prepare and deliver to All Study Funders:
 - (i) a copy of the meeting minutes;
 - (ii) a report outlining any variations of the Scope of Works discussed by the Study Funder and Aurizon Network in the meeting;

- (iii) if required, a revised Variation Notice outlining the variations of the Scope of Works discussed in the meeting (**Revised Variation Notice**); and
 - (iv) any other information reasonably requested by the Study Funder and/or an Other Study Funder.
- (d) The Study Funder must notify Aurizon Network whether or not it consents to the Variation Notice or Revised Variation Notice (as applicable) within **2** Business Days of receipt under **clause 9.1(c)**.
- (e) If the Study Funder does not notify Aurizon Network under and within the time required by **clause 9.1(d)**, then the Study Funder will be deemed to have not agreed to the variation(s) proposed in the Variation Notice or the Revised Variation Notice (as applicable).

9.2 Variation to Scope of Works due to Scope Change Event

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

- (a) may, by notice to All Study Funders (also a **Variation Notice**), vary the Scope of Works as a result of the Scope Change Event as specified in the Variation Notice; and
- (b) must, if Aurizon Network gives a Variation Notice under **clause 9.2(a)**, provide in that Variation Notice reasonable details of the Scope Change Event and the effect of the Scope Change Event on the Scope of Works.

9.3 Consequential variations to Target Date and Target Study Cost

- (a) If Aurizon Network considers that a proposed variation or a variation (as applicable) to the Scope of Works under **clauses 9.1** or **9.2** requires a consequential variation to the Target Date and/or the Target Study Cost:
 - (i) the applicable Variation Notice may also request the consent of All Study Funders to vary the Target Date and/or the Target Study Cost (as applicable) as proposed in the Variation Notice; and
 - (ii) for the avoidance of doubt, where clause 9.1 applies, the process outlined in clause 9.1 also applies to the proposed consequential variation to the Target Date and/or the Target Study Cost.
- (b) A notice given under **clause 9.3(a)(i)** must include details of:
 - (i) the proposed variation of Target Date and/or the Target Study Cost (as applicable); and
 - (ii) why Aurizon Network considers that the variation(s) is or are (as applicable) reasonable as a result of the variation of the Scope of Works.

9.4 Variations arising under a Variation Notice given under clause 9.1

- (a) If All Study Funders consents to a variation to the Scope of Works proposed in a Variation Notice given under **clause 9.1**, then:
 - (i) the Scope of Works will be taken to be varied as proposed in that Variation Notice with effect on the date on which the last of such consent is obtained; and
 - (ii) Aurizon Network must notify All Study Funders of the variation to the Scope of Works.
- (b) If **clause 9.4(a)** applies and All Study Funders also consents to a variation to the Target Date and/or Target Study Cost (as applicable) proposed in the Variation Notice given under **clause 9.1**, then:
 - (i) the Target Date and/or Target Study Cost (as applicable) will be taken to be varied as proposed in the Variation Notice with effect on the date on which the last such consent is obtained; and
 - (ii) Aurizon Network must notify All Study Funders of the variation to the Target Date and/or Target Study Cost (as applicable).
- (c) If All Study Funders do not all consent (or is deemed to have not consented under this Agreement or an Other Funding Agreement) to a variation to the Scope of Works proposed in a Variation Notice given under **clause 9.1**, Aurizon Network must invite All Study Funders to attend a meeting with Aurizon Network to discuss options for continuing to fund and the continued carrying out of the Rail Study after the proposed variation of the Scope of Works and the Target Date and/or Target Study Cost (as applicable) in accordance with the process outlined in **clause 9.5**.

9.5 Meeting process

- (a) A meeting referred to in **clause 9.4(c)** must be held at a time and place (as determined by Aurizon Network acting reasonably) in Brisbane on a Business Day during normal business hours not less than 10 Business Days, and not more than 15 Business Days, after the date that Aurizon Network gives the Study Funder a meeting invitation under **clause 9.4(c)**.
- (b) At the meeting, the Study Funder, the Other Study Funders and Aurizon Network must agree in writing upon:
 - (i) whether the Study Funder and/or one of more of the Other Study Funders (**Continuing Study Funders**) continue to fund and Aurizon Network will continue carrying out the Rail Study after the proposed variation of the Scope of Works and the Target Date and/or Target Study Cost (as applicable); and
 - (ii) any necessary amendments to vary:
 - (A) in the case of the Study Funder, the Study Funder's Study Commitment; and

(B) in the case of any Other Study Funder, its “Study Funder’s Study Commitment” (as defined in its Other Funding Agreements),

so that, in aggregate, the Continuing Study Funders are obliged to fund, in addition to their Initial Commitments, at least 115% of the Funding Shortfall on the terms of, subject to **clause 9.5(b)(iii)**, this Agreement and/or their Other Funding Agreements (as applicable);

- (iii) agree in writing to any consequential variations to this Agreement and/or their Other Funding Agreements (as applicable) required, including as a consequence of the Continuing Study Funders being obliged to fund, in addition to their Initial Commitments, at least 115% of the Funding Shortfall; and
 - (iv) provide Aurizon Network with additional Bank Guarantees that, in aggregate, equal at least 115% of the Funding Shortfall.
- (c) If **clause 9.5** applies but the Study Funder is not a Continuing Study Funder, then this Agreement will automatically terminate without the need for either Party to give notice of termination to the other Party on the date that the sum of:
- (i) the Loaned Amount; and
 - (ii) any amounts which are due for payment, but not yet paid, by the Study Funder under a Drawdown Notice given by Aurizon Network,
- equals the maximum aggregate amount that the Study Funder is obliged to lend to Aurizon Network under this Agreement.
- (d) If **clause 9.5** applies but the Study Funder and all Other Study Funders are not Continuing Study Funders, then Aurizon Network:
- (i) will have no obligation to continue to carry out, or to procure the carrying out of, the Rail Study; and
 - (ii) the Study Funder and each Other Study Funder will be taken to have jointly given Aurizon Network a notice of termination under **clause 17.1(a)**.

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

If the Study Funder notifies Aurizon Network under **clause 9.1(b)** that it does not consent or is deemed to not consent to a variation proposed under **clause 9.3**, then:

- (a) Aurizon Network must, within 10 Business Days, refer the matter to an Expert to determine whether Aurizon Network’s proposed variation to the Target Date and/or Target Study Cost (as applicable) proposed in the Variation Notice is reasonable as a result of the variation to the Scope of Works; and
- (b) if the Expert determines that the variation to the Target Date and/or Target Study Cost (as applicable) proposed in the Variation Notice:

- (i) is reasonable as a result of the variation to the Scope of Works, the Target Date and/or Target Study Cost (as applicable) will be taken to be varied as proposed in the Variation Notice with effect on the date the Expert notifies the Parties of their determination; or
- (ii) is not reasonable as a result of the variation to the Scope of Works:
 - (A) the Expert must determine the variation to the Target Date and/or Target Study Cost (as applicable) which is or are reasonable as a result of the variation to the Scope of Works; and
 - (B) the Target Date and/or Target Cost (as applicable) will be taken to be varied as determined by the Expert with effect on the date the Expert notifies the Parties of their determination.

9.7 Variations to Scope of Works requested by Study Funder

- (a) The Study Funder may, by notice to Aurizon Network, request Aurizon Network to propose variations to the Scope of Works under **clause 9.1**.
- (b) If the Study Funder provides a request to Aurizon Network **under clause 9.7(a), clause 9.1** applies as if Aurizon Network were the Study Funder (and vice versa).

10 Variations to Target Date and Target Study Cost

10.1 Variations due to Adjustment Event

- (a) If an Adjustment Event occurs, then Aurizon Network:
 - (i) must notify All Study Funders of the Adjustment Event as soon as reasonably practicable after Aurizon Network becomes aware of the occurrence of the Adjustment Event, such notice to include details of the Adjustment Event as are known by Aurizon Network at the time of the notice; and
 - (ii) may, by notice to All Study Funders, given as soon as reasonably practicable after the full effects of the Adjustment Event have been determined by Aurizon Network, acting reasonably:
 - (A) vary the Target Date by extending it by the period that Aurizon Network considers is reasonable as a result of the Adjustment Event; and/or
 - (B) vary the Target Study Cost by increasing it by the amount that Aurizon Network considers is reasonable as a result of the Adjustment Event,

with effect from the date of the notice.
- (b) A notice given under **clause 10.1(a)(ii)** must include reasonable details of:
 - (i) the Adjustment Event; and

- (ii) why Aurizon Network considers that the variation(s) is or are (as applicable) reasonable as a result of the Adjustment Event.
- (c) Where notice is given by Aurizon Network under **clause 10.1(a)(ii)**, Aurizon Network must invite All Study Funders' Representatives to attend a meeting with Aurizon Network to discuss options for funding and carrying out of the Rail Study after the variation proposed in **clause 10.1(a)(ii)** in accordance with the process outlined in **clause 9.5**.

10.2 Expert determination

- (a) The Study Funder may, if no agreement is reached within 20 Business Days after Aurizon Network convenes a meeting with All Study Funders under **clause 9.5**, give Aurizon Network a Dispute Notice which Disputes a variation to the Target Date and/or Target Study Cost (as applicable) specified in the notice given by Aurizon Network under **clause 10.1(a)(ii)**.
- (b) If a Dispute referred to in **clause 10.2(a)** is not resolved in accordance with **clause 16.2**:
 - (i) the Study Funder may refer the Dispute to an Expert to determine whether the variation to the Target Date and/or Target Study Cost (as applicable) is reasonable as a result of the Adjustment Event; and
 - (ii) if the Dispute is referred to an Expert and the Expert determines that the variation to the Target Date and/or Target Study Cost (as applicable):
 - (A) is reasonable as a result of the Adjustment Event, then the Target Date and/or Target Study Cost (as applicable) will be taken to be varied as specified in the notice given under **clause 10.1(a)(ii)** with effect on the date the notice is given; or
 - (B) is not reasonable as a result of the Adjustment Event then:
 - (1) the Expert must determine the variation (extension) to the Target Date and/or variation (increase) to the Target Study Cost (as applicable) which is reasonable as a result of the Adjustment Event; and
 - (2) the Target Date and/or Target Study Cost (as applicable) will be taken to be varied as determined by the Expert with effect on the date that the Expert notifies the Parties of their determination.
- (c) If the Study Funder does not give Aurizon Network a Dispute Notice referred to in **clause 10.2(a)** within the time referred to in **clause 10.2(a)**, then:
 - (i) the Study Funder may not give Aurizon Network a Dispute Notice Disputing the variation to the Target Date and/or Target Study Cost

(as applicable) specified in the notice given by Aurizon Network under **clause 10.1(a)(ii)**; and

- (ii) any such Dispute Notice which is given by the Study Funder will be taken to be of no effect.

11 Allocation, records, Audit and Capacity Review

11.1 When costs and expenses Incurred

- (a) A cost or expense will be taken to be **Incurred** by Aurizon Network if the cost or expense is reasonable and:
 - (i) in the case of a cost or expense payable by the Aurizon Network to a third party (other than a Related Body Corporate of Aurizon Network), when the cost or expense is paid by Aurizon Network; and
 - (ii) in any other case, when Aurizon Network becomes liable to pay the relevant cost or expense.
- (b) In the case of a margin specified in the definition of Internal Costs, External Costs, Additional Costs and Study Costs, the margin is taken to be **Incurred** by Aurizon Network when the relevant cost or expense, in respect of which the margin is calculated, is taken to be Incurred under **clause 11.1(a)**.

11.2 Keeping of records

- (a) Aurizon Network must maintain complete books of account and records of and relating to the Study Costs.
- (b) Aurizon Network must preserve and maintain the books of account and records referred to in **clause 11.2(a)** for five years following the expiration or termination of this Agreement.

11.3 Audit of Study Costs

- (a) When required under **clause 11.3(d)**, Aurizon Network must appoint an independent firm of accountants nominated by it (**Auditor**) to carry out an audit in order to verify:
 - (i) the amount of the Study Costs Incurred by Aurizon Network;
 - (ii) the Drawdown Amounts specified in Drawdown Notices; and/or
 - (iii) the Provisional Project Management Fee, the Project Management Fee and the Adjustment Amount (if any) specified in a notice given under **clause 13.1**,

(Audit).
- (b) Aurizon Network must:
 - (i) give the Auditor reasonable access during normal business hours to the books, accounts and records of Aurizon Network relevant to an Audit; and

- (ii) otherwise provide reasonable assistance and co-operation to the Auditor in relation to the conduct of the Audit.
- (c) Aurizon Network must provide a copy of the Auditor's report of the results of an Audit conducted in accordance with **clause 11.3(a)** to the Study Funder (excluding any confidential information of Aurizon Network or any Other Study Funders which will be redacted from the Auditor's report).
- (d) Aurizon Network will cause an Audit to be conducted in accordance with **clause 11.3(a)**:
 - (i) within 20 Business Days after the date that Aurizon Network determines, acting reasonably, that no further Study Costs will be Incurred;
 - (ii) if this Agreement and each Other Funding Agreement is terminated, within 40 Business Days after the date of termination of this Agreement and each Other Funding Agreement;
 - (iii) within 20 Business Days of reasonable request from the Study Funder Committee, provided that the Study Funder Committee does not make such a request more than once every 3 Months; and
 - (iv) if an Audit has not otherwise been conducted in accordance with this **clause 11.3**, then at least once in every twelve month period during the term of this Agreement.

11.4 Disputes about Drawdown Amounts

- (a) In the event of a Dispute between the Parties about the Drawdown Amount specified in a Drawdown Notice, the Study Funder may give Aurizon Network a Dispute Notice under **clause 16.1**.
- (b) If a Dispute referred to in **clause 11.4(a)** is not resolved in accordance with **clause 16.2**, either Party may refer the Dispute to an Expert to determine the Drawdown Amount.
- (c) If the Dispute arises prior to the due date for payment of the Drawdown Amount then, despite the Dispute, the Study Funder must nevertheless pay, by the due date for payment of the Drawdown Amount, the undisputed portion of the Drawdown Amount plus 50% of the disputed portion of the Drawdown Amount.
- (d) Upon resolution of a Dispute referred to in **clause 11.4(a)**, if the Drawdown Amount as agreed or determined under the Dispute Resolution Process is:
 - (i) more than the amount that was paid by the Study Funder, then the amount of the difference must be paid by the Study Funder to Aurizon Network within 5 Business Days after the resolution of the Dispute; or
 - (ii) less than the amount that was paid by the Study Funder, then the amount of the difference must be repaid by Aurizon Network to the

Study Funder within 5 Business Days after the resolution of the Dispute.

- (e) If the Study Funder does not give a Dispute Notice in respect of a Dispute about the Drawdown Amount for a Month within 10 Business Days after Aurizon Network gives the Study Funder, in accordance with **clause 11.3(c)**, a copy of the Auditor's report in respect of an Audit of the Drawdown Amount:
 - (i) the Study Funder may not give Aurizon Network such a Dispute Notice;
 - (ii) any such Dispute Notice which is given by the Study Funder will be taken to be of no effect; and
 - (iii) the Study Funder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.
- (f) For the avoidance of doubt, if Aurizon Network repays an amount to the Study Funder under **clause 11.4(d)(ii)**, the Loaned Amount will be reduced by the amount of the repayment to the Study Funder under **clause 11.4(d)(ii)**.

11.5 Capacity Review

- (a) Within 20 Business Days after Aurizon Network delivers the Rail Study Report to the Study Funder under **clause 7.4**, All Study Funders may jointly appoint a suitability skilled and experienced consultant approved by Aurizon Network (acting reasonably) (**Capacity Reviewer**) to review the Capacity Model (**Capacity Review**).
- (b) The costs and expenses of a Capacity Reviewer and of the Capacity Review must be borne solely by All Study Funders.
- (c) Prior to undertaking a Capacity Review, the Study Funder must ensure that the Capacity Reviewer provides Aurizon Network with a signed undertaking from the Capacity Reviewer in favour of Aurizon Network in a form reasonably acceptable to Aurizon Network in relation to the use, disclosure and confidentiality of information.
- (d) For a period of 20 Business Days after the date the Capacity Reviewer provides Aurizon Network with the undertaking referred to in **clause 11.5(c)**, Aurizon Network must:
 - (i) give the Capacity Reviewer reasonable access during normal business hours to the Capacity Model and all records of Aurizon Network relevant to the Capacity Review; and
 - (ii) otherwise provide reasonable assistance and co-operation to the Capacity Review in relation to the conduct of the Capacity Review.
- (e) The Study Funder acknowledges that the undertaking referred to in **clause 11.5(c)** will, amongst other matters, require the Capacity Reviewer to keep confidential, and not disclose to the Study Funder, any information which, if disclosed to the Study Funder by Aurizon Network,

would give rise to a breach of a contractual or other obligation (including an equitable obligation of confidence) by Aurizon Network.

- (f) If the Capacity Reviewer determines, during the period specified in **clause 11.5(d)**, that the Capacity Model is incorrect, then Aurizon Network must, within 10 Business Days of the Capacity Reviewer's determination, prepare and re-issue the Rail Study Report on the basis of the correct Capacity Model.

12 Bank Guarantee

[Drafting note: Aurizon Network agrees to remove the obligation to provide a Bank Guarantee if:

- the Study Funder agrees to remedy any non-payment by any Other Study Funder (and vice versa); or
- Aurizon Network is permitted to cease carrying out the Rail Study in the event of non-payment by the Study Funder or any Other Study Funder.]

12.1 Requirements of Bank Guarantee

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

- (a) be an unconditional and irrevocable bank guarantee in favour of Aurizon Network;
- (b) be issued by an authorised deposit-taking institution under the *Banking Act 1959* (Cth) which holds a long-term credit rating by Standard & Poors Rating Services of at least BBB (or the equivalent rating by another internationally recognised ratings agency) (**Issuer**);
- (c) require the Issuer to pay on demand by Aurizon Network, without recourse to the Study Funder or any other person, an amount or amounts up to the amount specified in the Bank Guarantee;
- (d) have no expiry date, or have an expiry date no earlier than 12 Months after the date of issue of the Bank Guarantee;
- (e) state that it is assignable by Aurizon Network to an assignee from Aurizon Network under **clause 19** (subject to the relevant authorised deposit-taking institution and the Study Funder being given notice of the identity of the assignee); and
- (f) otherwise be in a form, and upon terms, acceptable to Aurizon Network (acting reasonably).

12.2 Recourse to Bank Guarantee

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

- (a) the Study Funder fails to pay any amount that is payable by the Study Funder to Aurizon Network under this Agreement; or

- (b) where this Agreement otherwise gives Aurizon Network the express right to draw on the Bank Guarantee.

12.3 Decrease in Bank Guarantee Amount

- (a) Within ten Business Days after the end of each Quarter, Aurizon Network must:
 - (i) determine if the then current Bank Guarantee Amount exceeds the amount which is:
 - (A) the Study Funder's Study Commitment as at the end of that Quarter; less
 - (B) the Loaned Amount as at the end of that Quarter, **(Reviewed Amount)**; and
 - (ii) if the then current Bank Guarantee Amount exceeds the Reviewed Amount, by notice to the Study Funder, decrease the amount of the Bank Guarantee required to be given by the Study Funder to the Reviewed Amount.
- (b) If Aurizon Network gives a notice decreasing the amount of the Bank Guarantee required to be given by the Study Funder under **clause 12.3(a)(ii)**, then the Study Funder may deliver to Aurizon Network a replacement Bank Guarantee for the Reviewed Amount in exchange for the existing Bank Guarantee.

12.4 Replacement Bank Guarantee

- (a) If a Bank Guarantee has an expiry date, the Study Funder must, at least 20 Business Days prior to the expiry of that Bank Guarantee, deliver to Aurizon Network a replacement Bank Guarantee in exchange for the existing Bank Guarantee.
- (b) If the Study Funder fails to provide a replacement Bank Guarantee as required by **clause 12.4(a)**, then:
 - (i) Aurizon Network may draw down on the existing Bank Guarantee prior to its expiry, and hold the cash drawn down as a cash security in place of the Bank Guarantee; and
 - (ii) the provisions of this **clause 12** will apply to the cash security with any necessary amendments.
- (c) The Study Funder will be entitled to recover from Aurizon Network the amount of the cash security held by Aurizon Network under **clause 12.4(b)** at any time upon delivery to Aurizon Network of a Bank Guarantee for the then current Bank Guarantee Amount.

12.5 Return of Bank Guarantee

Aurizon Network must, subject to its rights of recourse to the Bank Guarantee under this **clause 12**, return the Bank Guarantee to the Study Funder:

- (a) if this Agreement is terminated under **clause 2.3(a)**, promptly after the date of termination;

- (b) if this Agreement is terminated under **clause 5.3(d) or 9.5(c)**, promptly after the date on which the Study Funder pays to Aurizon Network all amounts which are due for payment by the Study Funder under any Drawdown Notices given by Aurizon Network;
- (c) if this Agreement is terminated under **clause 17**, within four months after the date of termination; or
- (d) otherwise, within two months after the date Aurizon Network provides the Rail Study Report to the Study Funder under **clause 7.4**.

13 Project Management Fee

13.1 Statement

Within 10 Business Days after the Rail Study has been completed, Aurizon Network must give the Study Funder a notice setting out:

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

13.2 Dispute

- (a) The Study Funder may, within ten Business Days after Aurizon Network gives the Study Funder, in accordance with **clause 11.3(c)**, a copy of the Auditor's report in respect of the Audit, give Aurizon Network a Dispute Notice which Disputes the amount of the Provisional Project Management Fee, the Project Management Fee and/or the Adjustment Amount (as applicable) specified in the notice given by Aurizon Network under **clause 13.1**.
- (b) If a Dispute referred to in **clause 13.2(a)** is not resolved in accordance with **clause 16.2** the Study Funder may refer the Dispute to an Expert to determine the Provisional Project Management Fee, the Project Management Fee and/or the Adjustment Amount (as applicable).
- (c) If the Study Funder does not give Aurizon Network a Dispute Notice referred to in **clause 13.2(a)** within the time referred to in **clause 13.2(a)**, then:
 - (i) the Study Funder must not give Aurizon Network a Dispute Notice Disputing the Provisional Project Management Fee, the Project Management Fee or the Adjustment Amount; and
 - (ii) any such Dispute Notice which is given by the Study Funder will be taken to be of no effect; and
 - (iii) the Study Funder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

13.3 Repayment of Adjustment Amount

- (a) Within:

- (i) 20 Business Days after Aurizon Network gives the Study Funder a copy of the Auditor's report referred to in **clause 13.2(a)**; or
 - (ii) if the Study Funder gives Aurizon Network a Dispute Notice referred to in **clause 13.2(a)**, 10 Business Days after that Dispute is resolved accordance with the Dispute Resolution Process,
Aurizon Network must repay the Adjustment Amount (if any), in cleared funds, to the Study Funder.
- (b) For the avoidance of doubt, if Aurizon Network repays the Adjustment Amount to the Study Funder under **clause 13.3(a)**, the Loaned Amount will be reduced by the Adjustment Amount.

14 Payments

14.1 Method of payment

All payments to be made under or in connection with this Agreement must be paid in Australian currency, without set-off or deduction (subject to **clause 14.2**), by:

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

14.2 Right of set off

A Party may deduct from any amounts which are due and payable by that Party to the other Party under this Agreement any amounts which are due and payable by the second Party to the first Party under this Agreement.

14.3 Interest on overdue payments

- (a) If, for any reason, a Party does not pay an amount payable under or in connection with this Agreement on or before the due date for payment, it must pay interest to the other Party (who is entitled to receive the payment).
- (b) Interest will accrue on the outstanding amount from the due date for payment until that amount, together with the interest thereon, has been paid.
- (c) Interest will be calculated at the Interest Rate, and any interest accrued but unpaid at the end of each Month will be capitalised and will thereafter itself bear interest.
- (d) If an amount payable under or in connection with this Agreement is disputed by a Party, for the purposes of this **clause 14.3** the amount resolved or determined as payable does not become due for payment until 10 Business Days after the dispute is resolved or determined.

15 Force majeure

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

16 Disputes

16.1 Notification of Disputes

- (a) If any Claim, dispute or question (**Dispute**) arises between the Parties under this Agreement, a Party may give to the other Party a notice in writing (**Dispute Notice**) specifying the Dispute and referring it for resolution in accordance with this **clause 16**.
- (b) Unless otherwise expressly provided to the contrary in this Agreement, a Dispute must be resolved in accordance with this **clause 16**.

16.2 Chief executive officer resolution

- (a) Within ten Business Days after the giving of a Dispute Notice any Dispute must be referred in the first instance to the chief executive officer of Aurizon Network (or their nominee) and the chief executive officer of the Study Funder (or their nominee) for the purposes of this **clause 16.2** for resolution.
- (b) If the Dispute is not resolved within ten Business Days after the referral under **clause 16.2(a)** or in the event that any chief executive officer appoints a nominee that is unacceptable to the other Party, then the relevant Dispute:
 - (i) must, where this Agreement expressly requires referral to an expert; and
 - (ii) may, by agreement of the Parties in any other case, be referred for resolution by an expert (**Expert**) in accordance with **clause 16.3**.

16.3 Expert determination

Where any matter is referred to an Expert pursuant to **clause 16.2** or otherwise in accordance with the terms of this Agreement then the following provisions of this **clause 16.3** will apply:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within ten Business Days after the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at any Party's request by:
 - (i) where the Parties agree the Dispute is purely of a technical nature, the President for the time being of the [Institute of Arbitrators and Mediators Australia];
 - (ii) where the Parties agree the Dispute is purely of a financial or accounting nature, the President for the time being of [The Institute of Chartered Accountants in Australia]; and
 - (iii) in any other case, the President for the time being of the [Queensland Law Society, Inc];
- [Drafting note: References to nominating entities to be reviewed and, if required, updated prior to the execution of this document.]**
- (b) if the Expert is to be nominated by a person referred to in **clause 16.3(a)** and that person declines to nominate a person as the Expert but provides a list of people that could be appointed as the Expert:
 - (i) the first person specified in that list will be taken to be nominated as the Expert;
 - (ii) if the first person specified in that list does not accept the appointment as the Expert, the next person specified in that list will be taken to be the first person specified in that list and will be nominated as the Expert; and
 - (iii) the process specified in **clause 16.3(b)(ii)** will apply to the next and each subsequent person specified in that list until a person that is taken to be nominated as the Expert accepts the appointment as the Expert;
 - (c) subject to **clause 16.3(b)**, if the Expert is to be nominated by a person referred to in **clause 16.3(a)** and the person nominated as the Expert does not accept the appointment as the Expert, then an alternative person is to be nominated as the Expert at either Party's request by the same person referred to in **clause 16.3(a)**;
 - (d) if the Expert is to be nominated by a person referred to in **clause 16.3(a)** the Parties must comply with, and do all things necessary to satisfy and to give effect to, the reasonable requirements of that person (including providing relevant indemnities and paying any charges or fees (which charges or fees will be borne equally by the Parties)) that must be satisfied or complied with as a condition of that person agreeing to nominate an Expert;

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

16.4 Parties to assist Expert

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

16.5 Decision of Expert

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

16.6 Costs

- (a) The costs of the Expert and any advisers engaged by the Expert will be borne:
 - (i) by the Parties in the proportions determined by the Expert having regard the respective merit of the positions taken by the parties in the Dispute; or
 - (ii) if the Expert does not make a determination under **clause 16.6(a)(i)**, equally by the parties to the Dispute.
- (b) Each Party to the Dispute will bear its own legal costs and the costs of any advisers to it in respect of the Dispute Resolution Process under this **clause 16**.

16.7 Determination by court

- (a) If any Dispute is not otherwise resolved in accordance with this **clause 16**, then the Dispute may be referred to one of the courts of the State having jurisdiction, and sitting in Brisbane.
- (b) Each Party irrevocably and unconditionally:
 - (i) agrees that the courts of the State, and any courts which have jurisdiction to hear appeals from any of those courts, are to have exclusive jurisdiction to settle disputes which may arise out of or in connection with this Agreement and that accordingly any suit, action or proceeding (**Proceedings**) arising out of or in connection with this Agreement may be brought in, and only in, such courts;
 - (ii) waives any objection which it may have now or hereafter to the laying of the venue of any Proceedings in such courts and any Claim that any such Proceedings have been brought in an inconvenient forum; and
 - (iii) agrees that a final judgment in any Proceedings brought in such courts will be final and binding upon such Party and may be enforced in the courts of any other jurisdiction.

16.8 Injunctive relief

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

16.9 Disputes involving Study Funders under Other Funding Agreements

If:

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

then:

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

16.10 Time bar

If a Party does not give a Dispute Notice under **clause 16.1(a)** in respect of a Dispute within 12 Months after the date it becomes aware or ought reasonably to have become aware of the occurrence of the event or circumstance giving rise to the Dispute:

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

17 Termination and step-in

17.1 Termination for convenience by All Study Funders

- (a) The Study Funder and each Other Study Funder may jointly terminate this Agreement and each Other Funding Agreement without cause by notice (jointly given by All Study Funders) to Aurizon Network.
- (b) If this Agreement is terminated under **clause 17.1(a)** (including, for the avoidance of doubt, by operation of **clause 5.3(d)(ii)**), then:
 - (i) Aurizon Network will cease to carry out, or to procure the carrying out of, the Rail Study;
 - (ii) Aurizon Network may give a notice (also a **Drawdown Notice**) to the Study Funder for the amount of the Study Funder's Study Percentage of any Study Costs Incurred by Aurizon Network:
 - (A) prior to the date of termination; or
 - (B) after the date of termination:
 - (1) in respect of work undertaken prior to the date of termination; or
 - (2) as a consequence of the cessation of the Rail Study (including demobilisation costs and early termination fees payable to contractors),

which have not already been included in a Drawdown Notice previously given by Aurizon Network; and
 - (iii) without limiting **clause 24.1**, **clause 6.3** will be taken to apply on the date of termination as if the reference to Rail Study Licence in **clause 6.3** is a reference to the licence granted under **clause 7.5(d)** (but with such licence becoming an irrevocable licence).

17.2 Termination for convenience by Study Funder or Other Study Funder

- (a) The Study Funder may terminate this Agreement without cause by notice to Aurizon Network and the Other Study Funders.
- (b) If this Agreement is terminated under **clause 17.2(a)**, then:
 - (i) Aurizon Network may give a notice (also a **Drawdown Notice**) to the Study Funder for the amount of the Study Funder's Study Percentage of any Study Costs Incurred by Aurizon Network:
 - (A) prior to the date of termination; or
 - (B) after the date of termination:
 - (1) in respect of work undertaken prior to the date of termination; or
 - (2) as a consequence of the cessation of the Rail Study (including demobilisation costs and early termination fees payable to contractors),

which have not already been included in a Drawdown Notice previously given by Aurizon Network; and

- (ii) without limiting **clause 24.1**, **clause 6.3** will be taken to apply on the date of termination as if the reference to Rail Study Licence in **clause 6.3** is a reference to the licence granted under **clause 7.5(d)** (but with such licence becoming an irrevocable licence).
- (c) Where an Other Study Funder terminates this Agreement under this **clause 17.2**, Aurizon Network must invite All Study Funders' Representatives to attend a meeting with Aurizon Network to discuss options for funding and carrying out of the Rail Study after the termination of this Agreement in accordance with the process outlined in **clause 9.5**.

17.3 Termination under clause 5.3(d)

If this Agreement is terminated under **clause 5.3(d)** then, without limiting **clause 24.1**, **clause 6** will survive the termination of this Agreement and **clause 6.3** will be taken to apply on the date of termination as if the reference to Rail Study Licence in **clause 6.3** and the definition of Licence Fee is a reference to the licence granted under **clause 7.5(d)** (but with such licence becoming an irrevocable licence).

17.4 No other rights of termination

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

17.5 No prejudice as to right to damages

Subject to **clause 18**, nothing in this **clause 17** prejudices in any way a Party's right to Claim and recover damages for any breach of this Agreement by the other Party.

17.6 Step-in

- (a) If:
 - (i) the Access Regulator determines under the Access Undertaking that:
 - (A) Aurizon Network has been the cause of a "Performance Delay" (as defined in the Access Undertaking); and
 - (B) the Rail Study may be undertaken by an appropriately qualified and experienced nominee of All Study Funders; and
 - (ii) All Study Funders have jointly appointed an appropriately qualified and experienced nominee of All Study Funders (**Nominee**),
then this Agreement will automatically terminate without the need for either Party to give notice of termination to the other Party.
- (b) If this Agreement is terminated under this **clause 17.6**, then:

- (i) Aurizon Network will cease to carry out, or to procure the carrying out of, the Rail Study;
- (ii) Aurizon Network must provide the Nominee with all information that can be lawfully provided by Aurizon Network which is reasonably required by the Nominee to undertake the Rail Study (provided that the Nominee has first undertaken in writing to Aurizon Network to only use such information in connection with the performance of the Rail Study);
- (iii) Aurizon Network may give a notice (also a **Drawdown Notice**) to the Study Funder for the amount of the Study Funder's Study Percentage of any Study Costs Incurred by Aurizon Network prior to the date of termination which have not already been included in a Drawdown Notice previously given by Aurizon Network; and
- (iv) without limiting **clause 24.1**, **clause 6** will survive the termination of this Agreement under this **clause 17.6** (provided that if **clause 6.3** applies, the reference to Rail Study Licence in **clause 6.3** will be taken to be a reference to the licence granted under **clause 7.5(d)** (but with such licence becoming an irrevocable licence)).

18 Liability

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

- (a) The Study Funder acknowledges and agrees that a failure by Aurizon Network to comply with **clause 7.2** will reduce (potentially to zero) the amount of the Project Management Fee payable by the Study Funder to Aurizon Network under this Agreement.
- (b) Aurizon Network will have no other liability to the Study Funder (except for the consequence referred to in **clause 18.1(a)**) arising out of, or in any way related to, a failure by Aurizon Network to comply with **clause 7.2**.

18.2 Limitation of Aurizon Network's liability

Subject to **clauses 18.1** and **18.3**, except the extent:

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

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

18.3 Exclusion of Consequential Loss

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

18.4 Scope of Claim, liability or loss

For the avoidance of doubt, references in this **clause 18** to a Claim, liability or loss include:

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

18.5 Claims against Aurizon Network

The Study Funder will not have, and must not make, any Claim against Aurizon Network in relation to, or arising out of, the entry into or the performance or non-performance of this Agreement, or give a Dispute Notice to Aurizon Network in respect of such a Claim under **clause 16.1**, unless:

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

19 Assignment

19.1 Assignment

Subject to **clauses 19.2** and **19.3**, a Party must not assign, transfer, mortgage, charge, make the subject of a trust or otherwise deal with or encumber all or any of its rights or obligations under this Agreement (or procure or permit any of those things) without the prior consent of the other Party.

19.2 Assignment by Aurizon Network

- (a) Aurizon Network may assign or transfer (**Assign**) the whole or any part of its rights and obligations under this Agreement with the prior consent of the Study Funder, provided that such consent will not be withheld if:
 - (i) the Study Funder, acting reasonably, is satisfied that the assignee is financially sound and is otherwise capable of performing the obligations of Aurizon Network under this Agreement; and
 - (ii) the assignee covenants with the Study Funder by deed in a form acceptable to the Study Funder (acting reasonably), to be bound by and to perform all of the obligations of Aurizon Network under this Agreement.

- (b) Any Assignment by Aurizon Network of its rights and obligations under **clause 19.2(a)** will be conditional upon, and will not take effect until, the requirements of **clause 19.2(a)** have been satisfied. Aurizon Network will be released and discharged from further liability under this Agreement in respect of the obligations which the assignee has undertaken to be bound by and to perform.

19.3 Assignment by the Study Funder

- (a) The Study Funder may, provided it is not in breach of any of its obligations under this Agreement, Assign the whole of its rights and obligations under this Agreement to a third party (**Assignee**) with the prior written consent of Aurizon Network, provided that such consent will not be withheld if:
 - (i) Aurizon Network, acting reasonably, is satisfied that the Assignee is financially sound and is otherwise capable of performing the obligations of the Study Funder under this Agreement;
 - (ii) the Assignee provides to Aurizon Network a Bank Guarantee for the Bank Guarantee Amount; and
 - (iii) the Assignee covenants with Aurizon Network by deed in a form acceptable to Aurizon Network (acting reasonably), to be bound by and to perform all of the obligations of the Study Funder under this Agreement.
- (b) Any Assignment by the Study Funder of its rights and obligations under **19.3(a)** will be conditional upon, and will not take effect until, the requirements of **clause 19.3(a)** have been satisfied. The Study Funder will be released and discharged from further liability under this Agreement in respect of the obligations which the assignee has undertaken to be bound by and to perform.

19.4 Provisional Capacity Allocation

The Study Funder (or, if applicable, its nominated "Access Seeker" (as defined in the Access Undertaking)) may only transfer its Provisional Capacity Allocation in accordance with the Access Undertaking.

20 Confidentiality

20.1 Confidentiality obligations

A Party (**Recipient**):

- (a) may use Confidential Information of the other Party (**Disclosing Party**) only for the purposes of this Agreement; and
- (b) must keep confidential all Confidential Information of a Disclosing Party except for disclosures permitted under **clause 20.2**.

20.2 Disclosure of Confidential Information

A Recipient may disclose Confidential Information of a Disclosing Party:

- (a) to any person, where the Disclosing Party has consented in writing to such disclosure (such consent not to be unreasonably withheld or delayed, and may be given subject to reasonable conditions, such as the signing of an appropriate confidentiality undertaking);
- (b) to the extent necessary to progress negotiations with any other person relevant to matters contemplated in this Agreement who executes a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (c) to the extent necessary to effect the administration or enforcement of this Agreement, or further negotiations pursuant to this Agreement, by employees, professional advisers (including legal advisers) and consultants of the Recipient;
- (d) to any Related Body Corporate of the Recipient to the extent necessary for reporting purposes within a relevant group of companies, governance and oversight of the relevant group of companies and obtaining any approval or consent (whether or not directly from that Related Body Corporate) in relation to the Recipient entering into this Agreement;
- (e) to potential purchasers, assignees or transferees of the shares in the Recipient or a Related Body Corporate of it or of the rights or obligations of the Recipient under this Agreement who execute a confidentiality undertaking in favour of the Disclosing Party on terms reasonably acceptable to it;
- (f) to a bank or other financial institution (and its professional advisers and any security trustee or agent for it) in connection with and for the purpose of any loan or other financial accommodation sought to be arranged by, or provided to, the Recipient or a Related Body Corporate of it;
- (g) to legal, accounting and financial or other advisers or consultants to the Recipient or a Related Body Corporate of it:
 - (i) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (ii) who are under a duty of confidentiality to the Recipient; and
 - (iii) who have been advised of the confidential nature of the Confidential Information;
- (h) to any officers or employees of the Recipient or a Related Body Corporate of the Recipient who:
 - (i) have a need to know for the purposes of this Agreement (and only to the extent that each has a need to know); and
 - (ii) before disclosure, have been directed by the Recipient to keep confidential all Confidential Information of the Disclosing Party;
- (i) if, and to the extent that, the Recipient is required to do so by law (other than by section 275 of the *Personal Property Securities Act 2009* (Cth)), any taxation authority or by any rules or regulations of a recognised

stock exchange (including where the disclosure is to a Related Body Corporate of the Recipient that is responsible for making such disclosures for the relevant group of companies and for the purpose of such a Related Body Corporate determining whether, and the extent to which, such a disclosure is required to be made);

- (j) to any Authority to the extent required by law;
- (k) if disclosure is lawfully required by the Access Regulator, or in accordance with the Access Undertaking; or
- (l) to an Auditor or Expert or an “Auditor” or “Expert” (as defined in an Other Funding Agreement).

20.3 Conditions of disclosure

If a Recipient discloses Confidential Information of a Disclosing Party to a person under **clause 20.2 (Disclosee)**, the Recipient must:

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

21 Notices

21.1 General

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

21.2 How to give a Notice

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the Party’s current business address for Notices;
- (c) sent to the Party’s current postal address for Notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the Party’s current fax number for Notices; or
- (e) in the case of a Notice to the Study Funder referred to in **clause 21.6(a)**, emailed to the Study Funder’s current email address for Notices.

21.3 Particulars for giving of Notices

- (a) Each Party’s particulars for the giving of Notices are initially the particulars set out in **item 7 of schedule 1**.
- (b) Each Party may change its particulars for the giving of Notices by Notice to each other Party.
- (c) A Notice given to a Party which is signed is evidence that the Notice has been signed by a person duly authorised by the sender and that Party is entitled to rely on that Notice without further inquiry or investigation.

21.4 Notices by post

Subject to **clause 21.6**, a Notice is given if posted:

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

21.5 Notices by fax

Subject to **clause 21.6**, a Notice is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

21.6 Notices by email

- (a) A Progress Report may be given by Aurizon Network to the Study Funder by email to the Study Funder's email address for Notices.
- (b) A Notice specified in **clause 21.6(a)** is given by email, on the next Business Day after being sent (as recorded on the device from which Aurizon Network sent the email) unless Aurizon Network receives an automated message that the email has not been delivered.

21.7 After hours Notices

If a Notice is given:

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

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

21.8 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Agreement may be served by any method contemplated by this **clause 21** or in accordance with any applicable law.

22 Warranties

22.1 Warranties

Each Party warrants that:

- (a) it is a corporation validly existing under the laws applicable to it;
- (b) it is able to pay its debts as and when they fall due;
- (c) it has the power to enter into and perform this Agreement and has obtained all necessary consents to enable it to do so;
- (d) its obligations under this Agreement are enforceable in accordance with their terms;

- (e) no litigation, arbitration or administrative proceeding has been commenced before, and no judgment or award has been given or made by, any court, arbitrator, other tribunal or governmental agency against it which would have a material adverse effect on its ability to observe its obligations under this Agreement; and
- (f) it is not in breach or default under any agreement to which it is a party to an extent or in a manner which would have a material adverse effect on its ability to perform its obligations under this Agreement.

22.2 Reliance

Each Party acknowledges that the other Party has entered (or will enter) into this Agreement in reliance upon the warranties contained in **clause 22.1**.

23 GST

23.1 Construction

In this **clause 23**:

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

23.2 Consideration GST exclusive

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

23.3 Payment of GST

If GST is payable on any supply made by a party (or any entity through which that Party acts) (**Supplier**) under or in connection with this Agreement, the recipient will pay to the Supplier an amount equal to the GST payable on the supply.

23.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 23.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

23.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to payment of an amount under **clause 23.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

23.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Agreement, the amount payable by the recipient under **clause 23.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

23.7 Reimbursements

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

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

24 General

24.1 Survival

This **clause 24** and **clauses 5.2, (a), 7.6, 11, 12, 14, 16, 17, 18, 20, 21, 23** and **25** survive the termination of this Agreement.

24.2 Applicable law

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

24.3 Waiver

- (a) Waiver of any right arising from a breach of this Agreement or any right arising from a default under this Agreement must be in writing and signed by the Party granting the waiver.
- (b) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (c) A failure or delay in the exercise, or partial exercise, of a right arising from a breach of this Agreement does not result in a waiver of that right.

24.4 Duty

- (a) As between the Parties, the Study Funder is liable for and must pay all duty (including any fine or penalty except where it arises from default by the Aurizon Network) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If the Aurizon Network pays any duty (including any fine or penalty) which the Study Funder is liable to pay under **clause 24.4(a)**, the Study Funder must pay that amount to the Aurizon Network on demand.

24.5 Legal costs

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

24.6 Amendments to be in writing

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

24.7 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

24.8 Consents

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

24.9 Further assistance

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

24.10 Counterparts

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

24.11 Entire understanding

- (a) This Agreement contains the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. Neither Party is liable to the other Party in respect of those matters.
- (c) No oral explanation or information provided by a Party to the other Party:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between the Parties.

24.12 Relationship of Parties

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

24.13 Severability

- (a) Subject to **clause 24.13(b)**, if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) **Clause 24.13(a)** does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or
 - (B) relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

24.14 Survival of representations and warranties

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

24.15 Enurement

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

24.16 Merger

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

24.17 Powers of attorney

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

24.18 Indemnity

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

25 JV Participants and liability

25.1 Applicability

This **clause 25** only applies if **item 1.2** of **schedule 1** states that it applies.

25.2 Warranty

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

25.3 JV Participants and percentage interests

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

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

25.4 Liability of JV Participants

- (a) The liability of each JV Participant under this Agreement will, subject to **clause 25.4(c)**, be several in respect of Financial Obligations in proportion to their respective percentage interests.
- (b) Each JV Participant will be jointly and severally liable in respect of the performance of any obligations under this Agreement that are not Financial Obligations.
- (c) If a JV Participant is in default of a Financial Obligation, and the Study Funder has not given notice to Aurizon Network identifying the defaulting JV Participant within five Business Days after the date of Aurizon Network giving a notice to the Study Funder identifying the default, all JV Participants will be jointly and severally liable for the performance of the Financial Obligation.
- (d) Any notice given by the Study Funder under **clause 25.4(c)** is conclusive evidence that the JV Participant specified in the notice is the JV Participant that is in default and the notice binds all JV Participants.

Executed as an agreement.

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

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

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

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date: / /

Schedule 1

Agreement details

1 Study Funder

1.1 Details

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

1.2 Application of clause 25

Does clause 25 apply?	[Yes / No]
-----------------------	------------

1.3 Joint Venture

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

1.4 JV Participants and percentage interests

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

2 Nature of Rail Study

[Pre- feasibility Study] [Feasibility Study]

3 Study Funder's Share of Prefeasibility Costs

Study Funder's Share of Prefeasibility Costs	[\$insert amount or "Not Applicable" if the Rail Study is a Pre-feasibility Study] [Drafting note: The "Study Funder's Share of Prefeasibility Costs" will be the Study Funder's Study Percentage of the total costs of the prefeasibility study.]
--	--

4 Conditions precedent

Condition number	Condition	Conditions Date	Party to Waive
1	The Study Funder delivers to Aurizon Network a Bank Guarantee for the Bank Guarantee Amount.	20 Business Days after the Commencement Date.	Aurizon Network
2	Each Other Study Funder delivers to Aurizon Network a "Bank Guarantee" for the "Bank Guarantee Amount" (each as defined in the Other Study Funder's Other Funding Agreement).	20 Business Days after the Commencement Date.	Aurizon Network
3	The Study Funder pays to Aurizon Network, in cleared funds, the Study Funder's Share of Prefeasibility Costs	20 Business Days after the Commencement Date.	Aurizon Network
4	Each Other Study Funder pays to Aurizon Network, in cleared funds, the "Study Funder's Share of Prefeasibility Costs" (as defined in the Other Study Funder's Other Funding Agreement).	20 Business Days after the Commencement Date.	Aurizon Network
5	The Study Funder's Study Commitment is equal to or greater than: $(CSP / ACCSP) \times TSC$ where: CSP = Study Funder's Study Percentage ACCSP = All Continuing Study Funders' Study Percentage TSC = Target Study Cost.	25 Business Days after the Commencement Date.	No party

5 Bank Guarantee Amount

Bank Guarantee Amount as at the $\$[\text{insert}]$

**Commencement
Date**

[Drafting note: The Bank Guarantee Amount will be the amount of the Study Funder's Study Commitment as at the Commencement Date.]

6 Target Study Cost and Target Date

Target Study Cost

[insert]

Target Date

[insert]

7 Particulars for notices

7.1 Aurizon Network

Business address

[insert]

Postal address

[insert]

Facsimile No.

[insert]

Attention

[insert]

7.2 Study Funder

Business address

[insert]

Postal address

[insert]

Facsimile No.

[insert]

Email

[insert]

Attention

[insert]

Schedule 2

Expansion details

[insert]

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

Schedule 3

Funding details

Row / column number	1	2	3	4	5
	Entity	Estimated Total Study Costs ²	Study Percentage	Estimated Study Costs ³	Study Commitment ⁴
1	Study Funder	\$[insert]	[insert]%	[\$insert]	[\$insert]
2	[Other Study Funder – [insert name]]		[insert]%	[\$insert]	[\$insert]
3	[Other Study Funder – [insert name]]		[insert]%	[\$insert]	[\$insert]
4	[Other Study Funder – [insert name]]		[insert]%	[\$insert]	[\$insert]
5	[Other Study Funder – [insert name]]		[insert]%	[\$insert]	[\$insert]
6	[Other Study Funder – [insert name]]		[insert]%	[\$insert]	[\$insert]
7	[Other Study Funder – [insert name]]		[insert]%	[\$insert]	[\$insert]

² As at the Commencement Date the Estimated Total Study Costs is equal to the Target Study Cost. Included for information purposes only.
³ For the Study Funder, as that the Commencement Date, this is the Estimated Total Study Costs multiplied by the Study Funder’s Study Percentage.
⁴ For the Study Funder, this is 115% of the Study Funder’s Estimated Study Costs as at the Commencement Date.

[Drafting note: The Study Funder's Study Percentage will be determined by Aurizon Network before the execution of this Agreement based on the number of train paths required by the Study Funder (calculated by dividing the annual tonnage of coal that the Study Funder (or its nominee) wishes to rail by the nominal payload of the Reference Train Service for the relevant Coal system) as a proportion of the total number of train paths required for All Study Funders (including the Study Funder) (or their nominees) that wish to utilise the Expansion.]

Schedule 4

Study Costs and Allocation Principles

1 Definitions

In this **schedule** Error! Reference source not found.:

Additional Costs means:

- (a) costs and expenses, other than Internal Costs and External Costs, to the extent reasonably and properly Incurred by Aurizon Network (whether before or after the date of this Agreement) in connection with the Rail Study:
 - (i) including those specified in **item 3.1** of this **schedule** Error! Reference source not found.; but
 - (ii) excluding those specified in **item 3.2** of this **schedule** Error! Reference source not found.; **plus**
- (b) a margin of [8]% on the amount of any costs and expenses referred to in **paragraph (a)** of this definition.

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

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

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

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

External Costs means:

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

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

Internal Costs for a Period means:

- (a) the amount calculated under **item 2.4** of this **schedule** Error! Reference source not found. for that Period; **plus**
- (b) a margin of **8**% on the amount of any costs and expenses referred to in **paragraph (a)** of this definition.

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

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

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

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

Personnel Costs for a Period means:

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

- (iv) personal expenses, where these are payable or reimbursable;
- (v) fringe benefits;
- (vi) worker's compensation insurance; and
- (vii) the cost of providing employee benefits including:
 - (A) superannuation; and
 - (B) employee's group life insurance, hospital benefit, pension, retirement and other similar benefit plans,

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

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

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

Remunerated Hours means:

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

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

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

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

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

Unit Cost Rate for a Billable Personnel Class for a Period means the hourly rate (expressed as dollars per hour) calculated for that Billable Personnel Class for that Period in accordance with **item 2.3** of this **schedule** Error! Reference source not found..

2 Internal Costs

2.1 Unit Cost Rates table

Aurizon Network must:

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

2.2 Billable Personnel Classification Table

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

2.3 Unit Cost Rates

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

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

where:

UCR = the Unit Cost Rate for the relevant Billable Personnel Class for the relevant Period (expressed as dollars per hour).

PC = Aurizon Network's reasonable estimate, as at the start of the relevant Period, of the sum of:

- (a) the Personnel Costs for each person who is Billable Personnel in the relevant Billable Personnel Class, as at the start of the relevant Period, for the relevant Period;
- (b) the Personnel Costs for each person who is Support Personnel that provides Support

Services to Billable Personnel in the relevant Billable Personnel Class (but only to the extent they will provide Support Services to Billable Personnel in the relevant Billable Personnel Class, as reasonably estimated by Aurizon Network), as at the start of the relevant Period, for the relevant Period; and

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

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

2.4 Calculation of Internal Costs

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

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

2.5 No double claims

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

3 Additional Costs

3.1 Costs and expenses that are Additional Costs

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

- (a) identifying and designing the Rail Study Works (including amounts paid to contractors, suppliers of materials, legal costs, statutory fees and charges, insurance premiums and any insurance excess or deductible payable on insurance);
- (b) compliance with:
 - (i) any law;
 - (ii) any Approvals; and
 - (iii) the conditions of any cultural heritage management plans or agreements,
to the extent they relate to the Rail Study;
- (c) organising, chairing, participating in and funding of any meetings to the extent that they relate to the Rail Study;
- (d) travel and accommodation costs to the extent that they relate to the Rail Study;
- (e) the preparation, negotiation and execution of any agreements (including this Agreement and Other Funding Agreements) entered into with any person to the extent that they relate to the Rail Study;
- (f) identifying any land required for the purpose of the carrying out the Rail Study or completing the Rail Study Works;
- (g) entering into or proceeding with, any acquisition, lease, sublease or licence of any land required for the purpose of the carrying out the Rail Study or completing the Rail Study Works (provided that the acquisition, lease, sublease or licence has first been approved by All Study Funders which, at the time of such approval, in aggregate have "Study Funder's Study Commitments" (in the case of an Other Study Funder, as defined in the Other Study Funder's Other Funding Agreement) which exceed 60% of the aggregate "Study Funder's Study Commitments" (in the case of an Other Study Funder, as defined in the Other Study Funder's Other Funding Agreement) of All Study Funders at that time);
- (h) the appointment of an Auditor and the conduct of an Audit; and
- (i) internal and overhead costs or expenses Incurred by Aurizon Network to the extent that they relate to the Rail Study.

3.2 Costs and expenses that are not Additional Costs

Additional Costs do not include the GST component of any costs or expenses Incurred by Aurizon Network which, but for this **item 3.2** of this **schedule** Error! Reference source not found., would otherwise be Additional Costs to the extent

that the Aurizon Network (or the representative member of the GST group of which Aurizon Network is part) is entitled to claim an input tax credit in respect of such costs or expenses.

4 Allocation Principles

- (a) Where costs or expenses relate to the Rail Study and other works, and those costs or expenses are reasonably attributable to the other works, then those costs or expenses will be allocated by Aurizon Network to the other works to which they are reasonably attributable.
- (b) Where:
 - (i) costs or expenses relate to the Rail Study and other works; and
 - (ii) **paragraph (a)** of this **item 4** of this **schedule** Error! Reference source not found. does not apply,

then Aurizon Network must allocate those costs or expenses to the other works on a pro-rata basis based on the proportion that the budgeted costs and expenses for the other works bears to the total of the budgeted costs and expenses for the other works and the Rail Study.

Schedule 5

Calculation of Drawdown Amount

The **Drawdown Amount** for a Month is calculated in accordance with the following formula:

$$\text{CSP} \times \text{SC}$$

where:

- CSP = The Study Funder's Study Percentage
- SC = The Study Costs Incurred by Aurizon Network prior to or during that Month which have not already been included in a Drawdown Notice previously given by Aurizon Network.

Schedule 6

Calculation of Project Management Fee

1 Adjustment Amount

Adjustment Amount means:

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

2 Calculation of Provisional Project Management Fee

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

3 Calculation of Project Management Fee

- (a) In this **item 3** of **schedule 6**:

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

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

where:

FSC = the total Study Costs for the Rail Study

TSC = the Target Study Cost.

Final Time Measure or **FTM** means:

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

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

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

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

Schedule 7

Study Funder Committee Rules

[Drafting note: Study Funder Committee Rules to be inserted.]