



AURIZON NETWORK'S 2017 DAU
QRC COLLABORATIVE
SUBMISSION

17 MARCH 2017

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Covering submission

1 Background

The Queensland Resources Council (**QRC**) provided its initial comments on Aurizon Network Pty Ltd's (**Aurizon Network**) draft 2017 access undertaking (**UT5**) to the Queensland Competition Authority (**QCA**) on 17 February 2017 (**QRC February Submission**). The QCA has provided an additional consultation period, which has given stakeholders an opportunity to discuss issues and to seek to develop collaborative submissions.

The QRC thanks the QCA for the opportunity to prepare collaborative submissions. This step in the process has been beneficial for the QRC and Aurizon Network, and has resulted in agreed compromises in a number of areas. The additional consultation period has also enabled the QRC and Aurizon Network to propose what we believe to be improved and clearer drafting of a number of provisions of the undertaking.

The QRC understands the purpose of the additional consultation period is to allow stakeholders to provide further submissions only for the purpose of identifying areas of collaboration with other stakeholders. These additional submissions should not be treated as an opportunity to provide rebuttal of any other stakeholder's position. If another stakeholder treats this as a rebuttal opportunity or seeks to raise additional issues, the QRC reserves the right to respond to those submissions going forward.

The QRC would welcome the opportunity to discuss this submission with the QCA secretariat. We confirm that this submission does not contain confidential information, and may be published.

2 Engagement with Aurizon Network

The QRC and Aurizon Network have engaged extensively over the past month in order to prepare collaborative submissions. Aurizon Network's approach has been constructive, positive and has reflected a genuine desire to reach agreement. Both Aurizon Network and the QRC have accepted compromises in a number of areas in order to develop approaches which can be supported by both parties. We thank Aurizon Network for its positive approach and look forward to continuing this positive engagement in the future.

3 Matters progressed

Given the limited time available for the preparation of collaborative submissions, the QRC and Aurizon Network chose to prioritise areas in which the prospects of reaching agreement appeared strong. These areas included:

- (a) access conditions;
- (b) transfer provisions;
- (c) supply chain coordination;
- (d) assessment of system capacity;
- (e) changes in payload; and
- (f) review of Standard Rail Connection Agreement.

Among other matters, matters which the QRC and Aurizon Network considered could not be productively discussed during this period included:

- (a) capacity assessments (other than the QRC's proposal for a system capacity assessment);
- (b) first right to fund;
- (c) SUFA development;
- (d) expansion shortfalls; and
- (e) disputes.

In addition, the QRC and Aurizon Network agreed that any attempts to reach agreement on matters relating to Maximum Allowable Revenue and the development of tariffs would not be productive in the timeframe.

4 Issues agreed

4.1 Access Conditions

The QRC and Aurizon Network have agreed common drafting on Access Conditions as set out in annexure 1. That drafting reflects the QRC's proposed mark-up of the definition of Access Conditions and clause 6.13 included in the QRC February Submission except to:

- (a) clarify that clause 6.13 applies only to coal carrying train services; and
- (b) reinstate the definition of Access Charges.

The QRC has agreed to reinstate the definition of Access Charges to ensure there are no unintended consequences in the context of the remainder of the undertaking. The QRC's concerns in the context of Access Conditions are otherwise appropriately dealt with in the mark up of clause 6.13 included as part of the QRC February Submission. That mark-up broadens clause 6.13 to acknowledge Access Conditions may include other monetary consideration (not only Access Charges) whether levied under an Access Agreement or otherwise.

4.2 Transfer provisions

The QRC and Aurizon Network have agreed revised transfer provisions which seek to provide additional clarity, simplify and streamline processes and improving overall readability. The agreed transfer provisions are set out in clause 7.4 of annexure 3.

The proposed provisions preserve the substance of the existing UT4 provisions except to amend the period of a short term transfer from one to two years. This allows for greater flexibility in respect of rail access rights and only marginally departs from the position under UT4 which allowed multiple short term transfers (each less than 12 months) without payment of a transfer fee provided that cumulatively those transfers added up to no more than two years, over a three year period.

The QRC and Aurizon Network both agree the proposed amendments will allow for greater utility of the UT5 transfer provisions which is a key requirement of coal producers.

4.3 Supply chain coordination

The QRC has agreed to accept Aurizon Network's proposed amendments to clause 7A.3 of the undertaking regarding the obligation of Aurizon Network to adopt operational changes determined by a Supply Chain Group. The QRC withdraws the amendments it had proposed to clause 7A.3(d) and Clause 7A.3(e) of the undertaking as part of the QRC February Submission.

The QRC's updated drafting is set out in clause 7A.3 of annexure 5 and annexure 6.

4.4 Assessment of system capacity

Aurizon Network has agreed to commit to undertake a system capacity assessment for information purposes under UT5 on a regular basis. The purpose of the system capacity assessment is to

provide a more realistic measure of capacity by assessing the capacity of the network as an integrated element of the entire supply chain from mine to port. Unlike the general capacity assessment required under UT4 (and under UT5), the system capacity assessment will be modelled based on assumptions developed having regard to:

- (a) reasonable requirements in respect of maintenance and repair of each element of the supply chain (including loading facilities, load out facilities and coal export facilities);
- (b) reasonably foreseeable delays or failures occurring in the relevant supply chain (including mine, port and rolling stock associated losses);
- (c) the supply chain operating mode; and
- (d) such other assumptions as are agreed between Aurizon Network and any supply chain group for the relevant coal system.

In this way, the system capacity assessment is intended to be modelled based on reasonable and real life forecast assumptions rather than contractual requirements (as is Aurizon Network's current process). The QRC considers this information will be invaluable in the context of existing contracting practices and future planning processes for the supply chain as a whole.

The QRC has agreed to depart from its position in respect of the effect of the system capacity assessment as put forward in the QRC February Submission, to instead agree that the system capacity assessment will be undertaken for information purposes only. The QRC considers this will allow all stakeholders to participate openly in developing a system capacity assessment without the fear that such an assessment will impact negatively on existing contractual obligations or future contracting rights.

The QRC's revised drafting is set out clause 7A.4 of annexure 5 and annexure 6.

4.5 Changes in payload

The QRC and Aurizon Network have agreed drafting in respect of the new payload provisions proposed under UT5. Those payload provisions operate in two distinct circumstances:

- (a) First, to allow an Access Holder to increase its contracted maximum payload. In these circumstances the Access Holder can elect to either maintain its existing contracted train service entitlements or relinquish any additional train service entitlements which it may no longer require.
- (b) Second, to allow Aurizon Network to notify an Access Holder and Operator where an Operator is exceeding its contracted maximum payload. In these circumstances the Access Holder has the ability to voluntarily increase its maximum payload consistent with the principles above. In the event the Access Holder fails to do so, certain deeming provisions lead to an increase in maximum payload and a relinquishment of excess train service entitlements.

The QRC continues to oppose any right for Aurizon Network to force an increase in payloads. Aurizon Network has agreed to withdraw that proposal.

The QRC's revised drafting is set out in clause 7.4.8 of annexure 3 and annexure 4 and in the revised drafts of the Standard Access Agreement and Standard Train Operations Deed set out in annexures 8 to 11. However, the QRC's agreement to the capacity test in clause 10.2(a)(ii) is subject to Aurizon Network providing a list of examples of the way in which capacity may be affected by a change in payloads. This is required to allow the QRC to better understand what the capacity assessment will involve in this context. As at the time of providing this submission, that list of examples is still outstanding.

4.6 Review of Standard Rail Connection Agreement

The QRC February Submission included a revised draft of the Standard Rail Connection Agreement (**SRCA**). That draft was prepared with the intention of simplifying the drafting of the agreement whilst substantially preserving the existing risk allocation between Aurizon Network and the Private Infrastructure Owner. The current approved SRCA is not useable without significant amendment. This undermines the purpose of having a standard document.

Although the QRC had discussed this proposal with Aurizon Network prior to submitting the QRC February Submission, during the collaboration period, the parties have not had the opportunity to discuss the proposal in further detail. Aurizon Network's view (which the QRC support) is that any review of the SRCA is best undertaken after the approval of UT5. This will avoid causing any delay to the approval of UT5 and will allow time for consultation regarding any proposed changes. Aurizon Network proposes to commit, under the revised draft of UT5, to conduct such a review. This proposal is supported by the QRC and reflected in the revised drafting of clause 9.2 set out in annexure 7.

The QRC otherwise withdraws its proposed draft of the SRCA from the QRC February Submission and does not require the QCA to respond to that draft.

5 Maximum Allowable Revenue and tariffs

5.1 Overview

As was discussed in section 3, the QRC and Aurizon Network agreed that any attempts to reach agreement on matters relating to Maximum Allowable Revenue and the development of tariffs during the collaborative submissions stage would not be productive.

This is clearly a critical issue for the QRC and its members. We rely on the QCA to conduct a thorough investigation of Aurizon Network's claims and to prepare a detailed draft decision which goes some way towards addressing the information shortfalls which the QRC faced when preparing the initial submission, particularly in regard to maintenance and operating cost claims.

The QRC was unable to obtain sufficient information through its engagement with Aurizon Network during the collaboration period to allow it to reach any further conclusions regarding MAR and tariffs. The QRC reaffirms its initial submission in respect of pricing and the inappropriateness of Aurizon Network's proposed approach to pricing matters in UT5.

The QRC intends to meet with Aurizon Network following release of the QCA draft decision in order to explore whether the Draft Decision may provide a basis for productive discussions on these matters.

5.2 MAR and tariffs: Confirm QRC February submission

Consultations with Aurizon Network since lodgement of the QRC February Submission have not altered the QRC's views on any issues in respect of the appropriate approach to pricing.

Engagement with Aurizon Network on these matters was limited to:

- (a) discussion of the elements of WACC; and
- (b) a maintenance presentation provided by Aurizon Network to stakeholders on 13 March 2017.

These engagements are discussed in further detail below.

WACC discussion

The QRC and Aurizon Network had a brief discussion on the elements of WACC during one of the meetings the parties had together throughout the collaboration period. This discussion confirmed that both the QRC and Aurizon Network understand the positions of the other party, however, both parties remain firm in their views as previously submitted.

Maintenance presentation

Aurizon Network provided a maintenance presentation to stakeholders on 13 March 2017. That presentation included reporting of FY16 scope and costs, as is required under UT4, as well as some explanation of the plans and expense estimates for UT5. The presentation was useful and was a positive starting point for improving transparency. However, the level of information provided

remains insufficient for the QRC to reach any conclusions regarding an appropriate maintenance cost allowance.

The QRC's concerns as set out in the QRC February Submission remain. These include:

- (a) The lack of any clear cost savings resulting from the changed market conditions and lower cost inputs which have been experienced by miners.
- (b) The apparent lack of cost savings flowing from Aurizon Network's claimed process and efficiency improvements, and from the investment in new capital equipment.
- (c) New infrastructure appearing to result in no reduction in overall maintenance requirements.
- (d) Costs being justified on the basis of being reasonably stable in real terms per gtk. Given Aurizon Network's assertions (which we accept) that a large proportion of its maintenance costs are fixed, we do not consider that stable costs per gtk is a positive result. Declining unit costs should be expected unless there are specific factors which can be demonstrated to have offset the volume benefits.

Reference Table

Topic	Undertaking reference	Annexure
Access Conditions	Clause 6.13	Annexure 1: Clause 6.13 marked up against UT5 Annexure 2: Clause 6.13 marked up against QRC February Submission
Transfers provisions	Clause 7.4	Annexure 3: Part 7 marked up against UT5 Annexure 4: Part 7 marked up against QRC February Submission
Supply chain coordination	Clause 7A.3	Annexure 5: Part 7A marked up against UT5 Annexure 6: Part 7A marked up against QRC February Submission
Assessment of system capacity	Clause 7A.4.3	Annexure 5: Part 7A marked up against UT5 Annexure 6: Part 7A marked up against QRC February Submission
Changes in payload	Clause 7.4.8 Standard Access Agreement Standard Train Operations Deed	Annexure 3: Part 7 marked up against UT5 Annexure 4: Part 7 marked up against QRC February Submission Annexure 8: SAA marked up against UT5 Annexure 9: SAA marked up against QRC February Submission Annexure 10: STOD marked up against UT5 Annexure 11: STOD marked up against QRC February Submission
Review of the Standard Rail Connection Agreement	Clause 9.2	Annexure 7: Part 9 marked up against UT5 / QRC February Submission

Glossary of terms

Any capitalised term used in this submission (or the annexures thereto) not defined in the table below, has the meaning given to it in UT4 or UT5 (as relevant).

Term	Meaning
Aurizon Network	Aurizon Network Pty Ltd
QRC	Queensland Resources Council
QRC February Submission	The QRC's submission on UT5 dated 17 February 2017
QCA	Queensland Competition Authority
SRCA	Standard Rail Connection Agreement
UT5	Aurizon Network draft 2017 access undertaking
UT4	2016 access undertaking approved by the QCA on 11 October 2016

Annexure 1 – Clause 6.13 marked up against UT5

6.13 Access Conditions

This clause 6.13 only applies to coal carrying Train Services.

6.13.1 *Negotiation of Access Conditions*

- (a) Aurizon Network and an Access Seeker, each acting reasonably, may agree to Access Conditions under this **clause 6.13** before the Access Seeker is granted Access Rights, to the extent that this is reasonably required in order to mitigate Aurizon Network's or the Access Seeker's exposure to any additional costs or risks associated with providing Access for the Access Seeker's proposed Train Service and which are not, or would not, be included in the calculation of the Reference Tariff based on the Approved WACC., ~~provided that those Access Conditions have no effect until the QCA approves them in accordance with this clause 6.13.~~

6.13.2 *Approval of Access Conditions*

- (a) If Aurizon Network intends to commence negotiating Access Conditions (or continue doing so where negotiations for the provision of Access were already underway at the Approval Date) it must issue to all relevant Access Seekers, Customers and the QCA a report which details ~~Where clause 6.13.1 applies, after the Access Conditions are agreed between Aurizon Network and the Access Seeker, but before they become binding, Aurizon Network and the Access Seeker must seek the approval of the Access Conditions by the QCA and the QCA must approve the Access Conditions, unless the QCA is satisfied that:~~
- (i) the Access Conditions that Aurizon Network is seeking from any Access Seeker;
 - (ii) quantification of the additional costs or risks Aurizon Network is exposed to (the **Additional Risks**), which it is seeking to mitigate through the Access Conditions;
 - (iii) why Aurizon Network's exposure to the Additional Risks would not be:
 - (A) reasonably mitigated by an Access Agreement which permits Aurizon Network to charge Access Charge(s) calculated in accordance with a Reference Tariff based on the Approved WACC and 100% Take or Pay commitments; or
 - (B) more efficiently mitigated through insurance or other financial instruments;

- (iv) to the extent that the Access Conditions being sought indicate Access Charges or any other monetary consideration (whether under an Access Agreement or other agreement) being payable, evidence that:

 - (A) there are risks not mitigated by the other Access Conditions being sought, and the adjustments are reflective of the possible outcomes and probabilities of the outcomes as a consequence of such risks; and/or
 - (B) there is either a materially different risk-free rate or debt margin, the cost of funding in anyway or that, as a result of the Aurizon Network funding a capital expenditure project, Aurizon Network would have a materially different gearing ratio or credit rating, from that which was assessed at the time the Approved WACC was determined by the QCA; and
- (v) confirmation that Aurizon Network considers the proposed Access Conditions would not contravene a provision of this Undertaking or the Act.
- (b) If the QCA has reason to believe that Aurizon Network has commenced negotiating Access Conditions in respect of the provision of Access prior to providing a report as required by **clause 6.13.2(a)**, it may require Aurizon Network to:

 - (i) produce a report in accordance with **clause 6.13.2(a)** within ten (10) Business Days; and
 - (ii) cease negotiating Access Conditions until such a report has been provided.
- (c) Aurizon Network and the Access Seekers may, after Aurizon Network has provided the report required by **clause 6.13.2(a)**, negotiate for sixty (60) days on the terms of those Access Conditions, provided that:

 - (i) either Aurizon Network or any Access Seeker may apply to the QCA for an extension to the negotiation period (subject to the period not being extended to more than one hundred and twenty (120) days unless a majority of Access Seekers request such an extension); and
 - (ii) an Access Seeker may refer the proposed Access Conditions to the QCA for a determination at any time during the negotiation period (although the QCA may decline to make a determination until the negotiation period has expired where it considers a prior referral is

vexatious or the referring party has not engaged in the negotiation of Access Conditions in good faith).

- (d) Following receipt of the report required by **clause 6.13.2(a)**, the QCA will invite and consider comments from relevant stakeholders regarding the proposed Access Conditions.
- (e) To the extent that all Access Seekers agree to the Access Conditions sought by Aurizon Network during the period in **clause 6.13.2(c)**, the QCA will approve the proposed Access Conditions, unless the QCA is satisfied:
- (i) it would be contrary to the public interest, including the public interest in having competition in markets;
 - (ii) it is reasonably expected to disadvantage Access Seekers, Access Holders, or other stakeholders which will not be parties to the Access Agreements containing the Access Conditions;
 - (iii) Aurizon Network has failed to provide Access Seekers with the report required by **clause 6.13.2(a)**; or
 - (iv) it would contravene a provision of this Undertaking or the Act.
- (f) To the extent that only some or none of the Access Seekers agree to the Access Conditions sought by Aurizon Network during the period in **clause 6.13.2(c)**, the QCA may approve the proposed Access Conditions if it is satisfied that:
- (i) the Access Conditions are reasonably required in order to mitigate Aurizon Network's exposure to the Additional Risks associated with providing Access;
 - (ii) Aurizon Network's exposure to the Additional Risks would not be:
 - (A) reasonably mitigated by an Access Agreement which permits Aurizon Network to charge Access Charge calculated in accordance with a Reference Tariff based on the Approved WACC and 100% Take or Pay commitment; or
 - (B) more efficiently mitigated through insurance or other financial instruments;
 - (iii) to the extent there are risks not mitigated by other Access Conditions being sought, and Aurizon Network will receive monetary compensation for them, that the compensation is reflective of the possible outcomes and probabilities of the outcomes as a consequence of such risks;

- (iv) the proposed Access Conditions would not be contrary to the public interest, including the public interest in having competition in markets;
 - (v) the proposed Access Conditions would not be reasonably expected to disadvantage Access Seekers, Access Holders, or other stakeholders which will not be parties to the Access Agreements containing the Access Conditions;
 - (vi) Aurizon Network has provided Access Seekers with the report required by **clause 6.13.2(a)**; and
 - (vii) the proposed Access Conditions would not contravene a provision of this Undertaking or the Act.
- (g) To the extent that the QCA refuses to approve some or all of the Access Conditions sought by Aurizon Network:
- (i) the QCA must publish its decision regarding the Access Conditions it approves (which may include Access Conditions not initially sought by Aurizon Network); and ~~Access Conditions will, in relation to the provision of Access, materially disadvantage Access Seekers or Access Holders who will be directly affected by the Access Conditions but will not be parties to the agreements containing the Access Conditions; or~~
 - (ii) Aurizon Network may, within thirty (30) days of the QCA's decision, give notice to the QCA, copied to the relevant Access Seeker, that Aurizon Network will proceed to negotiate Access with Access Seekers on the basis of the Access Conditions which have been approved by the QCA under this **clause 6.13**; and ~~the Access Conditions contravene the Act.~~
 - ~~(ii)~~(iii) unless Aurizon Network provides the notice in **clause 6.13.2(g)(ii)**, Aurizon Network will be deemed to have rejected the Access Conditions (if any) proposed by the QCA and the parties must recommence negotiations on the terms of the Standard Agreement, subject to **clause 8.2.1**.

6.13.3 *Prohibited Access Conditions*

Aurizon Network must not seek to impose, and the QCA will not approve under **clause 6.13.2**, any Access Condition that:

- (a) restricts Access Seekers from raising disputes with the QCA or disclosing proposed Access Conditions or other contract terms to the QCA; ~~or~~

(b) requires Access Seekers or Access Holders, to disclose information that is confidential to one or more of them, ~~or~~ to any other Access Holder or Access Seeker, in circumstances other than those permitted by this Undertaking; ~~or~~

~~(b)~~(c) results in Aurizon Network earning an Access Charge or any other monetary consideration (whether under an Access Agreement or other agreement) based on a Varied WACC or otherwise earning above the return provided by Reference Tariffs based on the Approved WACC, other than as approved by the QCA under **clause 6.13.2.**

Part 12 Definitions (extract)

- Access Charge** The price paid to Aurizon Network for Access under an Access Agreement and for clarity includes:
- (a) any:
 - (i) Take or Pay charges;
 - (ii) revenue cap adjustments;
 - (iii) charges and penalties associated with the operation of a Train Service on the Rail Infrastructure (including, for example, overload charges); and
 - (b) amounts paid to Aurizon Network in accordance with any Access Conditions, Studies Funding Agreement, User Funding Agreement or Rail Connection Agreement, where such amounts are included in the cost build up for Reference Tariffs or are otherwise included in Access Charges for Train Services.

**Access
Conditions**

~~Conditions which:~~

- ~~(c) are additional to those in the Standard Access Agreement, whether the conditions are contained in an Access Agreement or a separate agreement;~~
- ~~(d) mitigate Aurizon Network's or the relevant Access Seeker's exposure to any additional material costs or risks associated with providing Access for that Access Seeker's proposed Train Service(s);~~
- ~~(e) relate to costs or risks that are not included in the calculation of the Reference Tariff based on the Approved WACC; and~~
- ~~(f) are material, in that they:~~
 - ~~(i) result in a significant increase in costs to either Aurizon Network or the contracting Access Seeker;~~
 - ~~(ii) result in a significant variation in risk allocation as between Aurizon Network and the contracting Access Seeker relative to the risk allocation which applies under the Standard Access Agreement;~~
 - ~~(iii) result in material adverse impact, in terms of increased cost or risk, on other users of the Rail Infrastructure; or~~
 - ~~(iv) are otherwise deemed by the contracting Access Seeker to be material.~~

~~Access Conditions include conditions requiring:~~

- ~~(c) an upfront contribution;~~
- ~~(d) a payment of an Access Facilitation Charge;~~
- ~~(e) a prepayment of all or part of an Access Facilitation Charge;~~
- ~~(f) a bank guarantee or other security that is unconditional, irrevocable, payable on demand and otherwise in a form acceptable to Aurizon Network, acting reasonably, to support payment of an amount not reflected in the Standard Access Agreement (including, for example, payment of an Access Facilitation Charge);~~
- ~~(g) the forfeiting of any right to relinquish Access Rights that may arise under this Undertaking; or~~
- ~~(h) Access Charges being calculated on the basis of a Varied WACC or other risk adjustments to projected cash flows;~~

~~Such Access Conditions are subject to approval by the QCA in accordance with **clause 6.13.2** of this Undertaking and must not be inconsistent with the Act. Conditions which are additional to those in the Standard Access Agreement (which conditions are not immaterial), whether the conditions are contained in an Access Agreement or a separate agreement, including conditions requiring:~~

- ~~(a) an upfront contribution;~~
- ~~(b) a payment of an Access Facilitation Charge;~~
- ~~(c) a prepayment of all or part of an Access Facilitation Charge;~~
- ~~(d) a bank guarantee or other security that is unconditional, irrevocable, payable on demand and otherwise in a form acceptable to Aurizon Network, acting reasonably, to support payment of an amount not reflected in the Standard Access Agreement (including, for example, payment of an Access Facilitation Charge);~~
- ~~(e) the forfeiting of any right to relinquish Access Rights that may arise under this Undertaking; or~~
- ~~(f) in respect of a Reference Train Service, Access Charges and all other monetary consideration (whether under an Access Agreement or another agreement) being calculated other than in accordance with the Reference Tariffs.~~

It is acknowledged that any conditions additional to that contained in the Standard Access Agreement which an Access Seeker (or an affected Access Holder) consider are material are deemed to be material for the purposes of this definition (and therefore are Access Conditions).

Subject to the foregoing, conditions that are immaterial and are therefore not Access Conditions include minor amendments to the terms of the Standard Access Agreement such as:

- (a) a minor variation to payment terms (for example, changing the time period for payment of an invoice to fit with an Access Holder's payment cycle);
- (b) an amendment to insurance requirements to take account of a counterparty's existing insurance policies.

Access Conditions are subject to approval by the QCA in accordance with **clause 6.13.2** of this Undertaking and must not be inconsistent with the Act.

Annexure 2 - Clause 6.13 marked up against QRC
February Submission

QRC mark-up 17 March 2017 (collaboration draft marked up against QRC February Submission)

6.13 Access Conditions

[This clause 6.13 only applies to coal carrying Train Services.](#)

6.13.1 *Negotiation of Access Conditions*

- (a) Aurizon Network and an Access Seeker, each acting reasonably, may agree to Access Conditions under this **clause 6.13** before the Access Seeker is granted Access Rights, to the extent that this is reasonably required in order to mitigate Aurizon Network's or the Access Seeker's exposure to any additional costs or risks associated with providing Access for the Access Seeker's proposed Train Service and which are not, or would not, be included in the calculation of the Reference Tariff based on the Approved WACC.

6.13.2 *Approval of Access Conditions*

- (a) If Aurizon Network intends to commence negotiating Access Conditions (or continue doing so where negotiations for the provision of Access were already underway at the Approval Date) it must issue to all relevant Access Seekers, Customers and the QCA a report which details:
 - (i) the Access Conditions that Aurizon Network is seeking from any Access Seeker;
 - (ii) quantification of the additional costs or risks Aurizon Network is exposed to (the **Additional Risks**), which it is seeking to mitigate through the Access Conditions;
 - (iii) why Aurizon Network's exposure to the Additional Risks would not be:
 - (A) reasonably mitigated by an Access Agreement which permits Aurizon Network to charge Access Charge(s) calculated in accordance with a Reference Tariff based on the Approved WACC and 100% Take or Pay commitments; or
 - (B) more efficiently mitigated through insurance or other financial instruments;
 - (iv) to the extent that the Access Conditions being sought indicate Access Charges or any other monetary consideration (whether under an Access Agreement or other agreement) being payable, evidence that:
 - (A) there are risks not mitigated by the other Access Conditions being sought, and the adjustments are reflective of the possible

- outcomes and probabilities of the outcomes as a consequence of such risks; and/or
- (B) there is either a materially different risk-free rate or debt margin, the cost of funding in anyway or that, as a result of the Aurizon Network funding a capital expenditure project, Aurizon Network would have a materially different gearing ratio or credit rating, from that which was assessed at the time the Approved WACC was determined by the QCA; and
 - (v) confirmation that Aurizon Network considers the proposed Access Conditions would not contravene a provision of this Undertaking or the Act.
- (b) If the QCA has reason to believe that Aurizon Network has commenced negotiating Access Conditions in respect of the provision of Access prior to providing a report as required by **clause 6.13.2(a)**, it may require Aurizon Network to:
- (i) produce a report in accordance with **clause 6.13.2(a)** within ten (10) Business Days; and
 - (ii) cease negotiating Access Conditions until such a report has been provided.
- (c) Aurizon Network and the Access Seekers may, after Aurizon Network has provided the report required by **clause 6.13.2(a)**, negotiate for sixty (60) days on the terms of those Access Conditions, provided that:
- (i) either Aurizon Network or any Access Seeker may apply to the QCA for an extension to the negotiation period (subject to the period not being extended to more than one hundred and twenty (120) days unless a majority of Access Seekers request such an extension); and
 - (ii) an Access Seeker may refer the proposed Access Conditions to the QCA for a determination at any time during the negotiation period (although the QCA may decline to make a determination until the negotiation period has expired where it considers a prior referral is vexatious or the referring party has not engaged in the negotiation of Access Conditions in good faith).
- (d) Following receipt of the report required by **clause 6.13.2(a)**, the QCA will invite and consider comments from relevant stakeholders regarding the proposed Access Conditions.
- (e) To the extent that all Access Seekers agree to the Access Conditions sought by Aurizon Network during the period in

clause 6.13.2(c), the QCA will approve the proposed Access Conditions, unless the QCA is satisfied:

- (i) it would be contrary to the public interest, including the public interest in having competition in markets;
 - (ii) it is reasonably expected to disadvantage Access Seekers, Access Holders, or other stakeholders which will not be parties to the Access Agreements containing the Access Conditions;
 - (iii) Aurizon Network has failed to provide Access Seekers with the report required by **clause 6.13.2(a)**; or
 - (iv) it would contravene a provision of this Undertaking or the Act.
- (f) To the extent that only some or none of the Access Seekers agree to the Access Conditions sought by Aurizon Network during the period in **clause 6.13.2(c)**, the QCA may approve the proposed Access Conditions if it is satisfied that:
- (i) the Access Conditions are reasonably required in order to mitigate Aurizon Network's exposure to the Additional Risks associated with providing Access;
 - (ii) Aurizon Network's exposure to the Additional Risks would not be:
 - (A) reasonably mitigated by an Access Agreement which permits Aurizon Network to charge Access Charge calculated in accordance with a Reference Tariff based on the Approved WACC and 100% Take or Pay commitment; or
 - (B) more efficiently mitigated through insurance or other financial instruments;
 - (iii) to the extent there are risks not mitigated by other Access Conditions being sought, and Aurizon Network will receive monetary compensation for them, that the compensation is reflective of the possible outcomes and probabilities of the outcomes as a consequence of such risks;
 - (iv) the proposed Access Conditions would not be contrary to the public interest, including the public interest in having competition in markets;
 - (v) the proposed Access Conditions would not be reasonably expected to disadvantage Access Seekers, Access Holders, or other stakeholders which will not be parties to the Access Agreements containing the Access Conditions;

- (vi) Aurizon Network has provided Access Seekers with the report required by **clause 6.13.2(a)**; and
 - (vii) the proposed Access Conditions would not contravene a provision of this Undertaking or the Act.
- (g) To the extent that the QCA refuses to approve some or all of the Access Conditions sought by Aurizon Network:
- (i) the QCA must publish its decision regarding the Access Conditions it approves (which may include Access Conditions not initially sought by Aurizon Network); and
 - (ii) Aurizon Network may, within thirty (30) days of the QCA's decision, give notice to the QCA, copied to the relevant Access Seeker, that Aurizon Network will proceed to negotiate Access with Access Seekers on the basis of the Access Conditions which have been approved by the QCA under this **clause 6.13**; and
 - (iii) unless Aurizon Network provides the notice in **clause 6.13.2(g)(ii)**, Aurizon Network will be deemed to have rejected the Access Conditions (if any) proposed by the QCA and the parties must recommence negotiations on the terms of the Standard Agreement, subject to **clause 8.2.1**.

6.13.3 Prohibited Access Conditions

Aurizon Network must not seek to impose, and the QCA will not approve under **clause 6.13.2**, any Access Condition that:

- (a) restricts Access Seekers from raising disputes with the QCA or disclosing proposed Access Conditions or other contract terms to the QCA;
- (b) requires Access Seekers or Access Holders, to disclose information that is confidential to one or more of them, to any other Access Holder or Access Seeker, in circumstances other than those permitted by this Undertaking; or
- (c) results in Aurizon Network earning an Access Charge or any other monetary consideration (whether under an Access Agreement or other agreement) based on a Varied WACC or otherwise earning above the return provided by Reference Tariffs based on the Approved WACC, other than as approved by the QCA under **clause 6.13.2**.

Part 12 Definitions (extract)

Access Charge

The price paid to Aurizon Network for Access ~~whether contained in~~under an Access Agreement, ~~a separate agreement, or any other arrangement~~ and for clarity includes:

- (a) any:
 - (i) Take or Pay charges;
 - (ii) revenue cap adjustments;
 - (iii) charges and penalties associated with the operation of a Train Service on the Rail Infrastructure (including, for example, overload charges); and
- (b) amounts paid to Aurizon Network in accordance with any Access Conditions, Studies Funding Agreement, User Funding Agreement or Rail Connection Agreement, where such amounts are included in the cost build up for Reference Tariffs or are otherwise included in Access Charges for Train Services.

Access Conditions

Conditions which are additional to those in the Standard Access Agreement (which conditions are not immaterial), whether the conditions are contained in an Access Agreement or a separate agreement, including conditions requiring:

- (a) an upfront contribution;
- (b) a payment of an Access Facilitation Charge;
- (c) a prepayment of all or part of an Access Facilitation Charge;
- (d) a bank guarantee or other security that is unconditional, irrevocable, payable on demand and otherwise in a form acceptable to Aurizon Network, acting reasonably, to support payment of an amount not reflected in the Standard Access Agreement (including, for example, payment of an Access Facilitation Charge);
- (e) the forfeiting of any right to relinquish Access Rights that may arise under this Undertaking; or
- (f) in respect of a Reference Train Service, Access Charges and all other monetary consideration (whether under an Access Agreement or another agreement) being calculated other than in accordance with the Reference Tariffs.

It is acknowledged that any conditions additional to that contained in the Standard Access Agreement which an Access Seeker (or an affected Access Holder) consider are material are deemed to be material for the purposes of this definition (and therefore are Access Conditions).

Subject to the foregoing, conditions that are immaterial and are therefore not Access Conditions include minor amendments to the terms of the Standard Access Agreement such as:

- (a) a minor variation to payment terms (for example, changing the time period for payment of an invoice to fit with an Access Holder's payment cycle);
- (b) an amendment to insurance requirements to take account of a counterparty's existing insurance policies.

Access Conditions are subject to approval by the QCA in accordance with **clause 6.13.2** of this Undertaking and must not be inconsistent with the Act.

Annexure 3 – Part 7 marked up against UT5

[QRC Note: clause references throughout this section will require updating. The QRC has not sought to update all clause references in this submission.]

Part 7: Available Capacity allocation and management

7.1 Application

- (a) This **Part 7** addresses the allocation and management of Capacity, including in circumstances where there is insufficient Available Capacity to satisfy all of the Access Applications submitted to Aurizon Network. In particular, under its provisions:
- (i) Aurizon Network may refuse to grant Access Rights if the relevant Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that it can utilise those Access Rights (**clause 7.2.1**).
 - (ii) Aurizon Network must maintain a Capacity Notification Register and a Committed Capacity Register (**clause 7.2.2** and **clause 7.2.3**).
 - (iii) Aurizon Network will be obliged to give priority to the granting of Access Rights to a Renewing Access Seeker in respect of a Renewal in certain circumstances (**clause 7.3**).
 - (iv) Standard Access Agreements permit an Access Holder or an Access Holder's Customer to Transfer Access Rights in accordance with this Undertaking. Aurizon Network has obligations in relation to the allocation of Capacity to facilitate a Transfer (**clause 7.4.2**).
 - (v) Short Term Transfers will be required to meet specified requirements (**clause 0**).
 - (vi) Standard Access Agreements permit an Access Holder to relinquish Access Rights in accordance with this Undertaking. Aurizon Network has obligations in relation to the management of that relinquishment (**clause 7.4.3**).
 - (vii) Aurizon Network will notify Access Seekers if their Access Applications are Mutually Exclusive Access Applications and assist them to modify their Access Applications to seek to avoid them being Mutually Exclusive Access Applications (**clause 7.5.1**).

- (viii) Where Aurizon Network has received Mutually Exclusive Access Applications, Aurizon Network will form a queue to determine which Access Seeker will be allocated Available Capacity (**clause 7.5.2**).

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

- (b) A diagrammatic representation of the Capacity allocation process for Mutually Exclusive Access Applications is set out in **Schedule H**.
- (c) For the purposes of the Act, the treatment of Access Seekers differently as a result of, or in accordance with, **clause 7.3, 7.4.2 or 7.5.2** is permitted and to that extent does not offend the Act.
- (d) Except where otherwise expressly provided in this **Part 7** and without limitation to **clause 7.1(c)**, in the performance of its obligations and the exercise of its rights under this **Part 7**, Aurizon Network must not unfairly differentiate between Access Seekers (or, as applicable, Customers) on the basis of the identity of a funder of a Pre-feasibility Study, a Feasibility Study or an Expansion. For example, Aurizon Network will not provide an Access Seeker (or, as applicable, a Customer) with priority in the allocation of Capacity in respect of an Expansion on the basis that Aurizon Network is providing funding for the Expansion, over another Access Seeker (or, as applicable, a Customer) with a different source of funding.
- (e) Nothing in **clauses 7.3, 7.4.2 or 7.5.2** obliges Aurizon Network to grant Access Rights if there is insufficient Available Capacity to provide those Access Rights.
- (f) Nothing in **clauses 7.4.2 (Transfers), 7.4.3 (Relinquishments) and 7.6 (Capacity resumption)** affects the terms of an Access Agreement or Train Operations Deed executed before the Approval Date, unless the parties to the relevant document expressly agree to vary that document and adopt **clauses 7.4.2, 7.4.3 or 7.6**.

7.2 Capacity allocation and registers

7.2.1 *General requirement for allocation*

Despite any other provision in this Undertaking, Aurizon Network may refuse to allocate Available Capacity in respect of an Access Application if the Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that the Access Seeker has a reasonable likelihood of being able to utilise the Access Rights requested from the time when the Access Rights are proposed by the Access Seeker to commence, based on the following factors:

- (a) whether the Access Seeker:
- (i) (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights;
 - (ii) if not a Railway Operator, has secured, or is reasonably likely to secure, a rail haulage agreement for the operation of the Train Services the subject of the Access Application;
 - (iii) if a Railway Operator, has entered into, or is reasonably likely to enter into, a rail haulage agreement with a Customer to enable it to run Train Services to utilise the Access Rights sought (provided that any consideration of reasonable likelihood must disregard the effect of granting the Access Rights to the Railway Operator or the Railway Operator's ability to attract a Customer in the future);
 - (iv) (or Railway Operator) is reasonably likely to have access to facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to utilise the Access Rights sought;
 - (v) (or its Customer) is reasonably likely to have sufficient product (whether through the anticipated output of a mine or otherwise) to utilise the Access Rights sought (taking into account any other Access Rights held by the Access Seeker or its Customer in respect of product from the same origin);
 - (vi) has been actively participating in the negotiation process in accordance with **Part 4**; and
- (b) where the only party that has applied for Access is a Railway Operator, whether the Railway Operator no longer meets the criteria outlined in **clause 4.9(a)(ii)(A) and (B)**.

7.2.2 Capacity Notification Register

- (a) Aurizon Network must maintain a Capacity Notification Register which contains an Access Seeker's (and, if applicable, its Customer's) details if:
- (i) Aurizon Network has ceased negotiations with an Access Seeker in accordance with **clauses 4.5(e) 4.5(j) or 4.8(d)** (in respect of all or part of the Access Rights sought by the Access Seeker);
 - (ii) the Access Seeker (and, if applicable, its Customer) requests Aurizon Network to include it in the Capacity Notification Register; and

- (iii) Aurizon Network, acting reasonably, is satisfied the Access Seeker (or its Customer) has, or is in a queue to obtain, Supply Chain Rights in respect of an unloading facility.
- (b) The Capacity Notification Register must contain:
 - (i) the identity of each Access Seeker (or its Customer) which has requested it be included;
 - (ii) the nature of the Access Seeker's interest;
 - (iii) the date on which the applicable Access Application was received, or was deemed to have been received, in accordance with **clause 4.4(b)** by Aurizon Network.
- (c) Every six (6) Months after forming the Capacity Notification Register, Aurizon Network must confirm with each Access Seeker (or Customer) on the register that:
 - (i) it wishes to remain on the Capacity Notification Register; and
 - (ii) it has, or is in a queue to obtain, Supply Chain Rights in respect of an unloading facility.
- (d) If there is Available Capacity or a proposed Expansion which, if constructed, would create Available Capacity, then Aurizon Network must notify each person in the Capacity Notification Register who could utilise that existing or potential Available Capacity (as applicable) of the nature and extent of that existing or potential Available Capacity.
- (e) If a person notified under **clause 7.2.2(d)** submits an Access Application within one (1) Month after being given that notice, then that Access Application is deemed, for the purposes of **clause 4.4(b)** and in respect of the Access Rights the Access Seeker nominated for inclusion in the Capacity Notification Register, to have been received by Aurizon Network on the date Aurizon Network notified the relevant Access Seeker under **clause 7.2.2(d)**.
- (f) A person will remain on the Capacity Notification Register until:
 - (i) that person fails to comply with **clause 7.2.2(c)**; or
 - (ii) Aurizon Network notifies that person in accordance with **clause 7.2.2(d)**.

7.2.3 Committed Capacity Register

- (a) Aurizon Network must maintain a Committed Capacity Register that identifies:
 - (i) each Access Holder with Access Rights under an Access Agreement;

- (ii) DTMR in respect of its Committed Capacity;
 - (iii) any other party that has an interest in existing Access Rights and wishes to be included in the Committed Capacity Register and has notified Aurizon Network of that interest, in which case, the register must include:
 - (A) the Committed Capacity or Access Rights in which they have an interest; and
 - (B) the nature of that interest.
- (b) Where an Access Seeker requests Access which will:
- (i) commence within two (2) Years after the expiration of an existing Access Right (other than an Access Right in respect of coal carrying Train Services); and
 - (ii) utilise Capacity that will only become available following the expiration of that Access Right,

Aurizon Network will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the Committed Capacity Register as having an interest in the existing Access Rights of the existence of the Access Application. Failure to give such notification is not a default under this Undertaking and does not invalidate or prejudice any Access Agreement that may have been entered into by Aurizon Network provided that Aurizon Network has acted reasonably and in good faith.

7.3 Renewals

- (a) This **clause 7.3** sets out provisions that apply where all or any part of an Access Holder's existing Access Rights will expire and:
- (i) that Access Holder (where the Access Holder has no Customer); or
 - (ii) the person nominated by the Access Holder's Customer in writing to Aurizon Network (and, for clarity, that Customer may nominate itself),

(Renewing Access Seeker) wishes to hold or to continue to hold (as applicable) equivalent Access Rights (based on the Access Holder's Access Rights immediately prior to that expiry), subject to **clause 7.3(b)**, for a further term commencing immediately after those existing Access Rights will expire (that is, a **Renewal**).

- (b) For the purpose of **clause 7.3(a)**, Aurizon Network will disregard any change to the origin or destination of the relevant Train Services in considering whether the relevant Access Rights are equivalent Access Rights so long as the Train Services for the Renewal:

- (i) continue to have substantially the same Train Paths as the existing Train Services. For clarity, the Train Services for the Renewal may include a longer haul than the existing Train Services;
- (ii) do not adversely affect the ability of existing Access Holders to use their Access Rights;
- (iii) have an origin which is located in the same Track Segment as the origin of the Train Services under the existing Access Rights; and
- (iv) are not in excess of those existing Access Rights under the relevant Access Holder's existing Access Agreement. For clarity, the Train Services for the Renewal may include a longer haul than the existing Train Services and will not be considered to be in excess of the existing Access Rights if **paragraphs (i), (ii) and (iii)** above are satisfied.

(c) For clarity:

- (i) a Renewing Access Seeker may elect to renew only part of its existing Access Rights;
- (ii) that part of the Renewing Access Seeker's existing Access Rights not Renewed will become Available Capacity on the expiry of those existing Access Rights;
- (iii) an Access Holder does not have Access Rights beyond the term of its Access Agreement; and
- (iv) a Renewal includes Access Rights that were granted to the Renewing Access Seeker as a Transferee if the Renewing Access Seeker's existing Access Agreement includes those transferred Access Rights at the date of expiry of that Access Agreement.

(d) Despite any provision in **Part 4**, Aurizon Network must not:

- (i) negotiate the provision of Access that will use Capacity that will become Available Capacity on the expiry of an existing Access Right; and
- (ii) enter into an Access Agreement in relation to such Capacity,

with a person other than the relevant Renewing Access Seeker unless and until:

- (iii) the relevant Access Holder, where the Access Holder has no Customer, or otherwise the relevant Access Holder's Customer, has notified Aurizon Network that the Access Holder does not intend to seek a Renewal; or

- (iv) the Renewing Access Seeker has not (other than because of a delay by or breach of this Undertaking by Aurizon Network) executed an Access Agreement for that Capacity with Aurizon Network under this **clause 7.3** at least twelve (12) Months prior to the expiry of the Access Rights (or such later date as agreed between Aurizon Network and the Renewing Access Seeker).
- (e) Aurizon Network may refuse to negotiate, or to enter into, an Access Agreement with a Renewing Access Seeker for a Renewal more than five (5) years prior to the expiry of the Access Rights. For clarity, a refusal by Aurizon Network to negotiate an Access Agreement as a result of the operation of this **clause 7.3(e)** does not affect the Renewing Access Seeker's right to seek a Renewal under this **clause 7.3** within the period that is five (5) years prior to the expiry of the Access Rights.
- (f) If a Renewing Access Seeker is seeking a Renewal at least twelve (12) Months (or such other later date as agreed between Aurizon Network and the Renewing Access Seeker) but no more than sixty (60) Months (or such earlier date as agreed between Aurizon Network and the Renewing Access Seeker) prior to the expiry of the relevant Access Rights, then:
 - (i) the term of an Access Agreement relating to the Renewal must be:
 - (A) for coal carrying Train Services, the lesser of ten (10) years and the remaining life of the relevant mine (as evidenced to Aurizon Network's satisfaction (acting reasonably) by the Renewing Access Seeker); or
 - (B) for other Train Services, the lesser of ten (10) years and the same length of time as the term of the relevant current Access Agreement; and
 - (ii) if:
 - (A) the Renewing Access Seeker's Access Application is not seeking a Renewal for; or
 - (B) the Renewing Access Seeker does not agree to an Access Agreement for,

a term referred in **clause 7.3(f)(i)**, then the Renewing Access Seeker's Access Application will not be treated as an Access Application for a Renewal under this **clause 7.3**.

- (g) While this **clause 7.3** sets out how Aurizon Network will differentiate in the treatment of a Renewing Access Seeker as compared to other Access Seekers, this **clause 7.3** does not affect the rights and obligations of the Renewing Access Seeker or Aurizon Network under **Part 4** or **Part 5** or the remaining provisions of this **Part 7** except as set out in this **clause 7.3**.
- (h) For clarity:
 - (i) a Renewing Access Seeker must complete and submit an Access Application for Access Rights it is seeking to renew; and
 - (ii) subject to this **Part 7**, the negotiations for those Access Rights will be conducted in accordance with **Part 4** and **Part 5**, including:
 - (A) the Negotiation Cessation Notice provisions under **clause 4.13**;
 - (B) the Renewing Access Seeker and Aurizon Network beginning negotiations as soon as reasonably possible once the relevant Negotiation Period has commenced under **clause 4.11.1(a)**; and
 - (C) both the Renewing Access Seeker and Aurizon Network negotiating the terms of the relevant Access Agreement for the Renewal acting reasonably and in good faith under **clauses 5.1(c)** and **5.1(d)**.
- (i) Aurizon Network acknowledges that any provision under **Part 4** which permits Aurizon Network:
 - (i) to treat an Access Application as being withdrawn (except where the Access Seeker expressly withdraws the Access Application); or
 - (ii) to cease negotiation under **clause 4.11.1(c)(v)** or otherwise issue a Negotiation Cessation Notice because there is insufficient Available Capacity,does not apply in respect of a Renewal.

7.4 Dealing with Access Rights

7.4.1 *Assignments* Transfers

- (a) An Access Holder may only assign, novate or otherwise transfer the Access Holder's interest in an Access Agreement to a third party in accordance with the terms of that Access Agreement.
- (b) Subject to **clause 7.4.1(a)**, an Access Holder (**Transferor**) may undertake a Transfer to another Access Holder or an Access Seeker (or a Customer) (**Transferee**) in accordance with this clause 7.4.
- (c) Schedule **[insert]** shows, diagrammatically, the process to effect a Long Term Transfer and Short Term Transfer.
- (d) For the purpose of this Part 7:
- (i) a Transfer is a transfer of any of an Access Holder's Access Rights (or the Access Rights held for the purpose of providing Train Services for a Customer) for a term which is no longer than the remaining term of the Access Agreement but excluding:
- (A) a Customer Initiated Transfer; or
- (B) a change in the nomination of a Train Operator by an Access Holder;
- (ii) a Short Term Transfer is a Transfer of Access Rights:
- (A) for a Transfer Period of two (2) years or less; and
- (B) in respect of which the Transferee (or its Customer) has an existing Access Agreement under which the Transferred Access Rights can be added,
- but excluding a Customer Initiated Transfer;
- (iii) a Long Term Transfer is a Transfer of Access Rights which is not a Short Term Transfer; and
- (iv) Port Precinct means each of the following:
- (A) Port of Abbot Point;
- (B) Port of Hay Point (including Hay Point Coal Services Coal Terminal and Dalrymple Bay Coal Terminal); and
- (C) Port of Gladstone (including the RG Tanna Coal Terminal,

Wiggins Island Coal Export Terminal and domestic coal terminals in the vicinity of Gladstone).

7.4.2 Transfer Notice

- (a) A Transferor and Transferee must provide written notice of a proposed Transfer to Aurizon Network (**Transfer Notice**) which specifies:
- (i) the date on which the Transfer is to take effect (**Transfer Date**) and to terminate (if any):
 - (ii) the Access Rights which the Transferor proposes to Transfer (**Nominated Access Rights**) by describing:
 - (A) the number and type of Train Services to be transferred (which must be an even number of Train Services (each service being a one way Train Service)); and
 - (B) the existing origin and destination of the Nominated Access Rights;
 - (iii) the Access Rights the Transferee proposes to acquire from the Transferor (**Transferred Access Rights**) by describing:
 - (A) the number and type of Train Services;
 - (B) the proposed origin and destination; and
 - (C) any Capacity which is required in addition to the Available Capacity that will be created by the relinquishment of the Nominated Access Rights as part of the proposed Transfer (**Ancillary Access Rights**);
 - (iv) the Access Agreement which the Nominated Access Rights are proposed to be transferred from, which must be the Transferor's Access Agreement which has been entered into first in time relating to the origin and destination of the Nominated Access Rights (to the extent sufficient to satisfy the Transfer);
 - (v) either:
 - (A) the Access Agreement under which the Transferred Access

Rights are proposed to be added which must:

- (1) have existing Train Service Entitlements from the origin for the Transferred Access Rights; and
- (2) where there is more than one agreement that satisfies **clause 7.4.2(a)(v)(A)(1)**, must be the most recently executed Access Agreement; or
 - (B) if there is no existing Access Agreement which has Train Service Entitlements from the origin for the Transferred Access Rights, a short form Access Application must be completed by the Transferee which includes the information listed in **Schedule B, Part 6** in respect of the Transferred Access Rights;
- (vi) evidence that the Transferor's and Transferee's Customers (as applicable) have consented to the Transfer; and
- (vii) evidence that the Transferee (or its Customer) will be reasonably likely to be able to utilise the Transferred Access Rights based on whether:
 - (A) the Transferee (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights for the Transferred Access Rights from the Transfer Date;
 - (B) unless the Transferee is a Railway Operator, the Transferee (or its Customer) has secured or is reasonably likely to secure, a rail haulage agreement for the Transferred Access Rights from the Transfer Date;
 - (C) the Transferee or its Railway Operator is reasonably likely to have access to facilities (including Rollingstock, provisioning facilities, maintenance facilities and

storage facilities) to enable it to run Train Services to utilise the Transferred Access Rights; and

(D) the Transferee (or its Customer) is reasonably likely to have sufficient product (whether through the anticipated output of a mine or otherwise) to utilise the Transferred Access Rights.

(b) If a Transfer Notice includes a short form Access Application in accordance with clause 7.4.2(a)(v)(B), subject to this Part 7, the negotiation process for those Transferred Access Rights will be conducted on an expedited basis in accordance with Part 4.

(c) A Transfer Notice for a Short Term Transfer must be provided:

(i) if Ancillary Access Rights are not required, at least five (5) Business Days prior to close of Train Orders for the period commencing on the Transfer Date; and

(ii) if Ancillary Access Rights are required, at least seven (7) Business Days prior to close of Train Orders for the period commencing on the Transfer Date.

(d) A Transfer Notice for a Long Term Transfer must be provided:

(i) if no Ancillary Access Rights are required, 20 Business Days prior to the Transfer Date; or

(ii) if Ancillary Access Rights are required, 25 Business Days prior to the Transfer Date.

7.4.3 Criteria for a Transfer to take effect

(a) Subject to clause 7.4.3(b) and clause 7.4.3(c), a Transfer must meet the following conditions:

(i) the origin for the Transferred Access Rights is on the same Mainline Path as the origin for the Nominated Access Rights;

(ii) the destination for the Transferred Access Rights is the same as the destination for the Nominated Access Rights or is in the same Port Precinct as the destination for the Nominated Access Rights;

(iii) the Train Services for the Transferred Access Rights are the same as the nature or type of Train Services for the Nominated Access Rights; and

(iv) the information or evidence required by **clause 7.4.2(a)** has been provided.

(b) If a Long Term Transfer:

(i) satisfies the conditions of clause 7.4.3(a); and

(ii) requires Ancillary Access Rights.

Aurizon Network must determine whether the Ancillary Access Rights cause the Transfer and another Access Application(s) to become Mutually Exclusive Access Applications. If the Transfer and another Access Application(s) are Mutually Exclusive Access Applications:

(iii) Aurizon Network must promptly provide written notice to the Transferee;

(iv) if:

(A) the Transfer Notice included a short form Access Application in accordance with clause 7.4.2(a)(v)(B), the part of that Access Application that relates to the Ancillary Access Rights will be subject to clause 7.5; or

(B) otherwise, the Transferee must submit a short form Access Application in respect of the Ancillary Access Rights which will be deemed to have been submitted on the date of the Transfer Notice and that Access Application will be subject to clause 7.5;

and, to the extent that Aurizon Network requires further information in respect of the Ancillary Access Rights in order to determine whether there is sufficient Available Capacity, it may request such additional information from the Transferee; and

(v) the transfer will not take effect unless and until the Ancillary Access Rights are granted to the Transferee in accordance with **clause 7.5**. Aurizon Network must provide written notice to the Transferor and Transferee once the Ancillary Access Rights are granted.

(c) If a Short Term Transfer:

(i) satisfies the conditions of clause 7.4.3(a); and

(ii) requires Ancillary Access Rights.

Aurizon Network must undertake a Rapid Capacity Assessment to determine whether there is sufficient Available Capacity for the Ancillary Access Rights. Aurizon Network must promptly provide written notice to the Transferor and Transferee of the outcomes

of the Rapid Capacity Assessment including full details of the assessment and the transfer will not take effect unless and until the Ancillary Access Rights are granted to the Transferee. Aurizon Network must provide written notice to the Transferor and Transferee that the Ancillary Access Rights are granted to the extent the Rapid Capacity Assessment determines there is sufficient Available Capacity.

- (d) If Aurizon Network determines (acting reasonably) a Transfer does not comply with this **clause 7.4.3** (including if there is insufficient Available Capacity under **clause 7.4.3(c)**), it must promptly provide written notice (including reasons) to the Transferor and the Transferee.

7.4.4 Effect of Short Term Transfers

If a Short Term Transfer meets the requirements of **clause 7.4.3** (and there is sufficient Available Capacity under **clause 7.4.3(c)**, if applicable), Aurizon Network must promptly provide the Transferor and Transferee (and their respective Operators, if any) with written notice approving the Short Term Transfer and providing that;

- (a) no Transfer Fee or Relinquishment Fee is payable;
- (b) the Transferred Access Rights will be taken to be Access Rights for additional Train Service Entitlements for the relevant Train Service Type under the Transferee's nominated Access Agreement for the Transfer Period;
- (c) the Nominated Access Rights will be taken to have been relinquished for the Train Service Type specified in the Transfer Notice for the Transfer Period;
- (d) the Transferor and the Transferee will be taken to have varied the relevant Access Agreement (and Train Operations Deeds (or train operations agreement) (if any)) by the issue of replacement schedules to those relevant agreements to the relevant Transferor and Transferee (and Train Operator if applicable) to (as applicable) exclude the Nominated Access Rights and include the Transferred Access Rights for the Transfer Period; and
- (e) the Transferee's Access Agreement will be taken to be varied by the issue of replacement schedules to include, in respect of the Transferred Access Rights, an Access Charge Rate that is set by reference to the same Reference Tariff as the Nominated Access Rights.

7.4.5 Effect of Long Term Transfers

- (a) If a Long Term Transfer meets the requirements of **clause 7.4.3** (and the Ancillary Access Rights are granted in accordance with **clause 7.4.3(b)**), Aurizon Network must promptly provide the Transferor and Transferee (and their respective Operators, if any) written notice approving the Long Term Transfer and then on and

from the Transfer Date (or such later date as agreed by the Transferor, Transferee and Aurizon Network):

- (i) the Nominated Access Rights will be taken to have been relinquished for the Train Service Type specified in the Transfer Notice for the Transfer Period; and
- (ii) the Transferred Access Rights will be taken to be Access Rights for Train Service Entitlements for the relevant Train Service Type under the Transferee's nominated Access Agreement for the Transfer Period,

provided that each of the matters in **clause 7.4.5(b)** are complied with.

(b) Each of the parties to a Long Term Transfer referred to in **clause 7.4.5(a)** will promptly after the approval of the Long Term Transfer do the following:

- (i) Aurizon Network and the Transferor enter into an agreement to vary the terms of the Transferor's Access Agreement to address the relinquishment of the Nominated Access Rights (including any variations to the Access Charge Rates);
- (ii) if the Transferred Access Rights are being granted under an existing Access Agreement between Aurizon Network and the Transferee, Aurizon Network and the Transferee enter into an agreement to vary the terms of that Access Agreement to accommodate the Transferred Access Rights (including any variations to the Access Charge Rates and the term of the agreement);
- (iii) if the Transferred Access Rights are being granted under a new Access Agreement between Aurizon Network and the Transferee, that Access Agreement:

(A) has been negotiated and agreed in accordance with **clause 7.4.2(b)**; and

(B) (except for a condition in relation to the grant of the Transferred Access Rights taking effect under this **clause 7.4.5(b)**) is unconditional and binding upon the Transferee;

- (iv) with the consent of the Transferor and the Transferee, Aurizon Network and the relevant Train Operator(s) (if any) vary the relevant Train Operations Deeds (or train operations agreements) (if any) by the issue of replacement schedules to those relevant agreements

to the relevant Train Operator(s) (if applicable) to (as applicable) exclude the Nominated Access Rights and include the Transferred Access Rights for the Transfer Period;

(v) the Transferee provides Aurizon Network with security in respect of the Transferred Access Rights to the extent reasonably requested by Aurizon Network in accordance with this Undertaking; and

(vi) payment of a Transfer Fee (if applicable).

~~7.4.2 Transfers~~

~~(a) If:~~

~~(i) an Access Holder (**Transferor**) intends to undertake a Transfer of all or part of its Access Rights; or~~

~~(ii) an Access Holder utilises Access Rights to provide Train Services for or on behalf of a Customer, and that Customer (also a **Transferor**) intends to undertake a Transfer of all or part of those Access Rights,~~

~~to itself or a third party (each a **Transferee**), the Transferor must give Aurizon Network reasonable notice of its intention to do so (**Notice of Intention to Transfer**).~~

~~(b) A Notice of Intention to Transfer must:~~

~~(A) specify full details of the proposed **Transfer** including:~~

~~(B) the Access Rights which the Transferor proposes to Transfer (**Nominated Access Rights**) by describing:~~

~~(1) the number and type of Train Services to be transferred (which must be an even number of Train Services (each service being a one-way Train Service)); and~~

~~(2) the existing origin and destination of the Nominated Access Rights;~~

~~(C) the details of any changes to any nominations of a Train Operator previously given to take into account the proposed Transfer of the Nominated Access Rights;~~

~~(D) the date on which the Transfer of the Nominated Access Rights is to take effect (**Transfer Date**) which:~~

~~(1) for a transfer under clause 7.4.2(f), is:~~

- ~~where the Notice of Intention to Transfer is received at least five (5) Business Days prior to close of Train Orders for the first day of the proposed Short Term Transfer Period, no earlier than the first day of the Relevant Period for those Train Orders; or~~
 - ~~where a Notice of Intention to Transfer is received less than five (5) Business Days prior to close of Train Orders for the first day of the proposed Short Term Transfer Period, no earlier than the first day of the next Relevant Period; and~~
- (2) ~~for a transfer under clause 7.4.2(g), is:~~
- ~~where the Notice of Intention to Transfer is received at least seven (7) Business Days prior to close of Train Orders for the first day of the proposed Short Term Transfer Period, no earlier than the first day of the Relevant Period for those Train Orders; and~~
 - ~~where a Notice of Intention to Transfer is received less than seven (7) Business Days prior to close of Train Orders for the first day of the proposed Short Term Transfer Period, no earlier than the first day of the next Relevant Period; and~~
- (E) ~~the date on which the Transfer of the Nominated Access Rights is to terminate (if any); and~~
- (F) ~~all Access Agreements the Transferor may have relating to the origin and destination of the Nominated Access Rights; and~~
- (ii) ~~if it is a Transfer under clause 7.4.2(f) or clause 7.4.2(g) be accompanied by a notice completed by the Transferee which must, as a minimum, contain:~~

- ~~(A) the Access Rights the Transferee proposes to acquire from the Transferor (**Transferred Access Rights**) by describing:
 - ~~(1) the number and type of Train Services the Transferee proposes to acquire;~~
 - ~~(2) the origin and destination for the Transferred Access Rights;~~~~
 - ~~(3) if the Transferred Access Rights require Capacity in addition to the Available Capacity that will be created by the relinquishment of the Nominated Access Rights as part of the proposed Transfer;
 - ~~(B) evidence that the Transferee (or its Customer, if any) has secured, or is reasonably likely to secure, Supply Chain Rights for the Transferred Access Rights from the Transfer Date;~~
 - ~~(C) either:
 - ~~(1) evidence that the Transferee has secured or is reasonably likely to secure a rail haulage agreement for the Transferred Access Rights from the Transfer Date; or~~
 - ~~(2) the details of any changes to any nominations of a Train Operator previously given to take into account the proposed Transfer of the Transferred Access Rights; and~~~~
 - ~~(D) all Access Agreements the Transferee (or its Customer or Train Operator, as applicable) may have to which the Transferred Access Rights could be added (if any); or~~~~
 - ~~(iii) if it is not a Transfer under **clause 7.4.2(f)** or **clause 7.4.2(g)** be accompanied by an Access Application completed by the Transferee which must, as a minimum, contain the information listed in **Schedule B, Part 6**.~~
- ~~(c) The Access Application to be completed and submitted by the Transferee under **clause 7.4.2(b)(iii)**:~~
- ~~(i) must be an Access Application in the form required to satisfy **Part 4** for the Transferred Access Rights if the Transferee (or its Customer or Train Operator) does not have an existing Access Agreement to which the Transferred Access Rights could be added; or~~
 - ~~(ii) may be a short form Access Application that provides the information required in **clause 7.4.2(b)(ii)** if the Transferee (or its Customer or Train Operator) does~~

~~have an existing Access Agreement to which the Transferred Access Rights could be added.~~

~~(d) If either:~~

~~(i) the Transferee does not have an existing Access Agreement to which the Transferred Access Rights could be added; or~~

~~(ii) clause 7.4.2(f) or clause 7.4.2(g) does not apply;~~

~~then,~~

~~subject to this Part 7, the negotiation process for those Transferred Access Rights will be conducted in accordance with Part 4. For clarity and without limiting the provisions of Part 4 that apply to the Access Application, nothing in this clause 7.4.2 affects the application of clauses 4.3(f) and 4.13(a)(ii) to the Access Application.~~

~~Customer Initiated Transfers~~

~~(e) If clause 7.4.2(a)(ii) applies:~~

~~(i) the Notice of Intention to Transfer must be given to the Access Holder at the same time it is given to Aurizon Network;~~

~~(ii) a Transfer (including a Short Term Transfer) will only be effective under this clause 7.4.2 if:~~

~~(A) the origin and destination of, and commodity for, the Transferred Access Rights are the same as the origin and destination of, and commodity for, the Nominated Access Rights;~~

~~(B) the Transferee's new or varied Access Agreement includes a provision, on terms and conditions satisfactory to Aurizon Network, under which the Transferee agrees to pay all Adjustment Charges (Transferred Adjustment Charges) that, but for the Transfer of the Nominated Access Rights under this clause 7.4.2, are, or would have become, payable by the Access Holder in relation to Train Services operated for the Access Holder utilising the Nominated Access Rights prior to the commencement of the Transferee's new or varied Access Agreement (whether or not those Adjustment Charges are approved by the QCA before or after the commencement of the Transferee's new or varied Access Agreement);~~

~~(C) the Customer (including for the avoidance of doubt, if the Customer is comprised of more than one entity, each entity comprised in the Customer) has warranted to Aurizon Network that it is the sole end Customer of the Train Services utilising the Nominated Access Rights;~~

~~(D) — if the Customer is comprised of more than one entity, each entity comprised in the Customer has confirmed to Aurizon Network that it agreed to the giving of the Notice of Intention to Transfer; and~~

~~(E) — the Customer has provided Aurizon Network with a legally enforceable written undertaking (including, if required by Aurizon Network, security for the due and proper performance of that undertaking) indemnifying Aurizon Network for all Claims (including consequential loss) of any nature suffered or incurred by, or made or brought against, Aurizon Network in connection with:~~

~~(1) — the Transfer (including any costs arising in respect of any Claim by the Access Holder); and~~

~~(2) — any failure by the Transferee to pay all Transferred Adjustment Charges when due.~~

~~Transfer — no additional Access Rights required~~

~~(f) — Unless Aurizon Network notifies the Transferor and the Transferee under **clause 7.4.2(m)** within five (5) Business Days after receipt of the Notice of Intention to Transfer, the Transfer of the Nominated Access Rights to the Transferee will take effect in accordance with **clause 7.4.2(k)** if:~~

~~(i) — the Transferee (or its Customer or Train Operator) has an existing Access Agreement in respect of the nominated origin and destination for the Transferred Access Rights (which has Transfer provisions which are consistent with **clause 7.4.2**);~~

~~(ii) — the Transferee has provided evidence reasonably establishing it (or its Customer) will have Supply Chain Rights;~~

~~(iii) — the Transferee has provided the details of any changes to any nominations of a Train Operator previously given to take into account the Transferred Access Rights on and from the Transfer Date;~~

~~(iv) — the origin for the Transferred Access Rights is on the same Mainline Path as the Nominated Access Rights and is either the same origin as the Nominated Access Rights or closer to the destination for the Nominated Access Rights;~~

~~(v) the destination for the Transferred Access Rights is the same as the destination for the Nominated Access Rights; and~~

~~(vi) the Train Services for the Transferred Access Rights is the same as the nature or type of Train Services for the Nominated Access Rights.~~

~~**Transfer – additional Access Rights and Rapid Capacity Assessment**~~
required

~~(g) Aurizon Network must, within five (5) Business Days after receipt of the Notice of Intention to Transfer, notify the Transferor and the Transferee:~~

~~(i) under **clause 7.4.2(m)**; or~~

~~(ii) that a Rapid Capacity Assessment is required;~~

~~and, if it provides a notice under **clause 7.4.2(g)(ii)**, commence that Rapid Capacity Assessment if:~~

~~(iii) the Transferee (or its Customer or Train Operator) has an existing Access Agreement in respect of the nominated origin and destination for the Transferred Access Rights (which has Transfer provisions which are consistent with **clause 7.4.2**);~~

~~(iv) the Transferee has provided evidence reasonably establishing it (or its Customer) will have Supply Chain Rights;~~

~~(v) the Transferee has provided the details of any changes to any nominations of a Train Operator previously given to take into account the Transferred Access Rights on and from the Transfer Date;~~

~~(vi) the Transferred Access Rights use the same Mainline Path as the Nominated Access Rights;~~

~~(vii) the origin for the Transferred Access Rights requires Access Rights in addition to the Nominated Access Rights;~~

~~(viii) the destination for the Transferred Access Rights is in the same port precinct as the destination for the Nominated Access Rights; and~~

~~(ix) the Train Services for the Transferred Access Rights is the same as the nature or type of Train Services for the Nominated Access Rights,~~

~~and on completion of the Rapid Capacity Assessment (which must be completed within two (2) Business Days from the commencement of the Rapid Capacity Assessment):~~

~~(i) Aurizon Network must promptly notify the Transferor and the Transferee of:~~

- ~~(A) — the result of the Rapid Capacity Assessment;~~
- ~~(B) — if the Rapid Capacity Assessment indicates there is sufficient Available Capacity (if the Nominated Access Rights is deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment) for the Transferred Access Rights:~~
 - ~~(1) — that the Transfer of the Nominated Access Rights to the Transferee will take effect in accordance with clause 7.4.2(k); and~~
 - ~~(2) — details of the calculation of the Transfer Fee (if any) that is payable in respect of the Transfer; and~~
- ~~(C) — if the Rapid Capacity Assessment indicates there is insufficient Available Capacity (if the Nominated Access Rights is deemed to be Available Capacity for the purposes of the Rapid Capacity Assessment) for the Transferred Access Rights, the Transferor may request Aurizon Network to conduct a detailed assessment of the Notice of Intention to Transfer, in which case, **clause 7.4.2(b)(iii) and 7.4.2(d)** will apply.~~

Short Term Transfers

- ~~(h) — If:~~
 - ~~(i) — a Transfer is to take effect in accordance with **clause 7.4.2(f) or 7.4.2(g)(xi)** (as applicable); and~~
 - ~~(ii) — the Transfer Period:~~
 - ~~(A) — is for twelve (12) Months or less (Short Term Transfer Period); and~~
 - ~~(B) — does not extend beyond the end of the term of the Transferor's Access Agreement referred to in **clause 7.4.2(k)(iii)**:~~
- ~~(Short Term Transfer) then, for the Short Term Transfer Period, subject to **clause 7.4.2(q)**:~~
 - ~~(iii) — no Transfer Fee or Relinquishment Fee is payable in respect of a Short Term Transfer;~~
 - ~~(iv) — the Access Rights will be taken to be Access Rights for an additional Train Service Type under the Transferee's nominated Access Agreement;~~

~~(A) — the Nominated Access Rights will be taken to have been relinquished for the Train Service Type specified in the Notice of Intention to Transfer for the Short Term Transfer Period as specified in the Short Term Transfer Notice;~~

~~the Train Service Entitlement(s) for the Nominated Access Rights will be taken to be removed from Appendix B to Schedule 2 (or the corresponding clause in a Pre-Approval Date Coal Access Agreement) of the Transferor's Access Agreement referred to in **clause 7.4.2(k)(iii)**, and the Nominated Monthly Train Services for each Month during the Short Term Transfer Period reduced accordingly; and~~

~~(v) — the Transferred Access Rights will be taken to be additional Train Service Entitlement(s) for the relevant Train Service Description(s) under the Transferee's Access Agreement referred to in **clause 7.4.2(k)(iv)** as specified in the Notice of Intention to Transfer, except that:~~

~~(A) — in item 1.2 of Schedule 2 (or the corresponding clause in a Pre-Approval Date Coal Access Agreement):~~

~~(1) — 'Train Service Compliance Date' and 'Train Service Commitment Date' will be taken to be the Transfer Date;~~

~~(2) — 'Train Service Expiry Date' will be taken to be the last day of the Short Term Transfer Period;~~

~~(B) — in item 1.3 of Schedule 2 (or the corresponding clause in a Pre-Approval Date Coal Access Agreement):~~

~~(1) — 'Origin' will be taken to be the 'Origin'; and~~

~~(2) — 'Destination' will be taken to be the 'Destination';~~

~~(3) — 'Loading Facility' will be the 'Loading Facility';~~

~~(4) — 'Unloading Facility' will be the Unloading Facility; and~~

~~(5) — the 'Maximum Time at Loading Facility' and 'Maximum Time at Unloading Facility' will be the periods,~~

~~(vi) — specified in the Notice of Intention to Transfer;~~

~~(A) — in item 1.3 of Schedule 2 (or the corresponding clause in a Pre-Approval Date Coal Access Agreement), the 'Loaded distance from Origin to Destination (km)' and the 'Empty distance from Destination to Origin (km)' will be the distances from the 'Short Term Origin' specified in the Notice of Intention to Transfer to the 'Short Term Destination' specified in the Notice of Intention to Transfer;~~

~~(B) — in item 1 of Appendix B to Schedule 2 (or the corresponding clause in a Pre-Approval Date Coal Access Agreement), the Nominated Monthly Train Services for each Month during the Short Term Transfer Period will be taken to include the Train Service Entitlements for the Nominated Access Rights.~~

~~(i) — **The Transferred Access Rights under a Short Term Transfer must be subject to an Access Charge Rate that is set by reference to the same Reference Tariff as the relevant Nominated Access Rights, and Schedule 4 (or the corresponding Schedule in a Pre-Approval Date Coal Access Agreement) of the Transferee's Access Agreement referred to in clause 7.4.2(k)(iv) will be taken to be varied to include this Access Charge Rate. Nothing in this clause 7.4.2(j) permits Aurizon Network to set the Access Charge Rate relating to Transferred Access Rights by reference to a Reference Tariff other than the Reference Tariff that would be applicable in accordance with Part 6 and Schedule F.**~~

~~(j) — The Transferor and the Transferee will be taken to have varied the relevant Train Operations Deeds (or for a Pre-Approval Date Coal Access Agreement, the Train Operations Agreement) (if any) specified in the Notice of Intention to Transfer to (as applicable) to exclude the Nominated Access Rights and include the Transferred Access Rights.~~

~~**Transition of Nominated Access Rights to Transferee**~~

~~(k) — If the criteria outlined in either **clause 7.4.2(f)** or **(g)** is satisfied, or **clause 7.4.2(c)(ii)** applies, then on and from the later of:~~

~~(i) — the Transfer Date; and~~

~~(ii) — the date the last of the conditions set out in **clause 7.4.2(l)** is satisfied;~~

~~(or such later date agreed by the Transferor, the Transferee and Aurizon Network):~~

~~(iii) — the Nominated Access Rights are removed from the Transferor's (or its Customer's or Train Operator's, as applicable) Access Agreement which:~~

~~(A) — relates to Train Services in respect of the origin and destination of the Nominated Access Rights; and~~

~~(B) — was entered into first in time as determined on the following basis:~~

~~(1) — a Pre-30 June 2006 Coal Access Agreement is deemed to have been entered into prior to any other Access Agreement;~~

~~(2) — a Pre-1 October 2010 Coal Access Agreement is deemed to have been entered into prior to any other Access~~

Agreement excluding a Pre-30 June 2006 Goal Access Agreement; and

~~(3) — a Pre-Approval Date Goal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Goal Access Agreement or a Pre-1 October 2010 Goal Access Agreement; and~~

~~(iv) — the Transferred Access Rights are granted to the Transferee for the Transfer Period under the Access Agreement nominated by or entered into by the Transferee except if the Transferee has more than one existing Access Agreement to which the Transferred Access Rights could be added, the Transferred Access Rights must be added to the Access Agreement that was entered into last in time as determined on the following basis:~~

~~(A) — a Pre-30 June 2006 Goal Access Agreement is deemed to have been entered into prior to any other Access Agreement;~~

~~(B) — a Pre-1 October 2010 Goal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Goal Access Agreement;~~

~~(C) — a Pre-Approval Date Goal Access Agreement is deemed to have been entered into prior to any other Access Agreement excluding a Pre-30 June 2006 Goal Access Agreement or a Pre-1 October 2010 Goal Access Agreement.~~

Variations to relevant Access Agreement

~~(l) — Except where the Transfer of Nominated Access Rights is a Short Term Transfer, a Transfer of the Nominated Access Rights under any of **clauses 7.4.2(f) or (g)** or a Transfer where **clause 7.4.2(d)** applies, is conditional on the following being satisfied:~~

~~(i) — Aurizon Network and the Access Holder entering into an agreement, in a form reasonably acceptable to the Access Holder and Aurizon Network, to vary the terms of the Access Holder's Access Agreement to address the relinquishment of the Nominated Access Rights (including any variations to the Access Charge Rates);~~

- ~~(ii) — if the Transferred Access Rights are being granted under an existing Access Agreement between Aurizon Network and the Transferee, Aurizon Network and the Transferee entering into an agreement, in a form reasonably acceptable to the Transferee and Aurizon Network, to vary the terms of that Access Agreement to accommodate the Transferred Access Rights including:
 - ~~(A) — any variations to the Access Charge Rates; and~~
 - ~~(B) — the provision of security or additional security in respect of the Transferred Access Rights as a result of the transfer of the Transferred Access Rights, to the extent that Aurizon Network, acting reasonably, requires that security or additional security;~~~~
- ~~(iii) — if the Transferred Access Rights are being granted under a new Access Agreement between Aurizon Network and the Transferee, that Access Agreement:
 - ~~(A) — has been negotiated and agreed in accordance with the requirements of this Undertaking; and~~
 - ~~(B) — (except for a condition in relation to the grant of the Transferred Access Rights taking effect under this clause 7.4.2) is unconditional and binding upon the Transferee;~~~~
- ~~(iv) — the Transferee providing Aurizon Network with security in respect of the Transferred Access Rights to the extent that Aurizon Network, acting reasonably, requires that security or additional security; and~~
- ~~(v) — payment of a Transfer Fee (if applicable).~~
- ~~(m) — If Aurizon Network determines it cannot effect the proposed Transfer under any of **clauses 7.4.2(f) or (g)**, it must provide reasons with its notice to the Transferor and the Transferee to explain its decision.~~
- ~~(n) — If an Access Holder requests Aurizon Network to amend an Access Agreement to permit the Transfer of its Access Rights in accordance with this **clause 7.4.2** and Aurizon Network agrees, within three (3) Months of that request, Aurizon Network and the Access Holder must negotiate in good faith and enter into an agreement, in a form reasonably acceptable to Aurizon Network and the Access Holder, to vary the terms of the Access Agreement to incorporate the terms of this **clause 7.4.2** (including a right to require security or additional security in~~

respect of Transferred Access Rights if the Access Holder's Access Rights are increased as a result of a Transfer of Access Rights). For clarity, Aurizon Network is not obliged to amend Access Agreements executed prior to the Approval Date in a manner which is inconsistent with this **clause 7.4.2**.

Workability of Transfer provisions

~~(o) Within three (3) Months of the anniversary of the Approval Date, Aurizon Network must:~~

~~(i) undertake a review of the operation of this **clause 7.4.2**;~~

~~(ii) consult with Access Holders (and their Customers) and Train Operators about the workability of this **clause 7.4.2**; and~~

~~(iii) submit to the QCA either:~~

~~(A) proposed amendments to this **clause 7.4.2** that Aurizon Network (acting reasonably) considers necessary to improve the workability of the transfer of Access Rights; or~~

~~(B) detailed written reasons for not making amendments to this **clause 7.4.2**;~~

~~in which event:~~

~~(iv) the QCA must assess Aurizon Network's submission and, if deemed appropriate, seek submissions from stakeholders in respect of Aurizon Network's submission;~~

~~(v) if the QCA approves the amendments proposed by Aurizon Network, it must give notice to Aurizon Network of its approval, in which case Aurizon Network should submit a voluntary draft amending access undertaking on those terms in accordance with section 142 of the Act, or otherwise under Division 7 of Part 5 of the Act, within a reasonable period of time; and~~

~~(vi) if either:~~

~~(A) the QCA does not approve the amendments proposed by Aurizon Network;~~

~~(B) Aurizon Network does not make any submission under **clause 7.4.2(o)(iii)** within the applicable timeframe; or~~

~~(C) — the QCA disagrees with Aurizon Network's reasons provided under clause 7.4.2(e)(iii)(B);~~

~~then the QCA may commence the process under Division 7 of Part 5 of the Act, including section 139 and 141 of the Act to seek and subsequently develop amendments to this clause 7.4.2 to improve the workability of the transfer of Access Rights.~~

~~(p) — Nothing in clause 7.4.2(o) prevents Aurizon Network from seeking amendments to this clause 7.4.2 to improve its workability, even if the QCA has previously refused to approve proposed amendments to this clause.~~

7.4.37.4.6 Transfer Fee and Adjustment Charges

(a) Subject to **clause 7.4.6(d)**, a Transferor must pay a Transfer Fee to Aurizon Network if:

- (i) a Transfer is ~~for a period of more than twelve (12) Months in length~~ Long Term Transfer; ~~or~~
- ~~(ii) — despite clause 7.4.7(a)(i), the Transfer Period for the Nominated Access Rights, when aggregated with the sum of the Transfer Periods of all previous Transfers of Access Rights for Train Services for Train Service Types with the same origin and destination and which occur (for each such Transfer) within the three (3) year period ending on the last day of the Transfer Period for the Nominated Access Rights, is two (2) years or more;~~
- ~~(iii) — both the Nominated Access Rights and the Transferred Access Rights are not for coal carrying services; or~~
- ~~(iv) (ii) — the Reference Tariff used to calculate the Access Charge for the Nominated Access Rights is not the same as that used to calculate the Access Charge for the Transferred Access Rights.~~

(b) Aurizon Network must:

- (i) calculate the Transfer Fee; and
- (ii) notify the Transferor of the amount of the Transfer Fee and how the Transfer Fee was calculated, including details of any assumptions made when calculating the Transfer Fee and reasons for those assumptions,

at the following times:

- ~~(iii) — if the Transferor is considering Transferring some or all of the~~ a Transfer Notice has been provided;

(A) where no Ancillary Access Rights but has not given Aurizon Network a Notice are required, within two (2) Business Days of Intention to the Transfer in respect of those Access Rights Notice; or

(B) where Ancillary Access Rights are required, within three (3) Business Days of Aurizon Network determining that there is sufficient Available Capacity for the Ancillary Access Rights; and;

~~(iii)~~ (iv) otherwise, promptly following a request by the Transferor; an Access Holder considering a transfer.

~~(iv) — if the Transferor has given Aurizon Network a Notice of Intention to Transfer for a Transfer under **clause 7.4.2(f)**, provide details of the calculation of the Transfer Fee two (2) Business Days after receiving the Notice of Intention to Transfer; and~~

~~(v) — if the Transferor has given a Notice of Intention to Transfer for a Transfer under **clause 7.4.2(g)**, will provide details of the calculation of the Transfer Fee in accordance with **clause 7.4.2(g)(x)**.~~

(c) The Transfer Fee is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges for the relevant Train Service Types that would have been payable for the Transfer Period assuming:

(i) the Nominated Access Rights were not transferred; and

(ii) the Train Services were not operated for the Transferor for a reason other than Aurizon Network Cause,

(PV Amount) less the amount which is the product of the PV Amount and the Reduction Factor.

(d) Despite any other provision in this **clause 7.4.27.4**, if no Transfer Fee is payable:

(i) where the Transfer Fee is calculated to be an amount that is less than zero; ~~or~~ or

~~(ii) — in the case of a if the Transfer is a Short Term Transfer, the Transfer Period for the Nominated Access Rights, when aggregated with the sum of the Transfer Periods of all previous Transfers of Access~~

~~Rights for Train Services for Train Service Types with the same origin and destination and which occur (for each such Transfer) within the three (3) year period ending on the last day of the Transfer Period for the Nominated Access Rights, is less than two (2) years; or a Customer Initiated Transfer.~~

~~(iii)(ii) then the Transfer Fee will be zero.~~

- (e) If the Transferor has not paid (or commenced a dispute in respect of the calculation of) the Transfer Fee within twenty (20) Business Days after the latest of:
- (i) the Transfer Date;
 - (ii) the date Aurizon Network gives the Transferor a notice under **clause 7.4.2(f)(iii)7.4.6(b)(iii)**;
 - (iii) the date that Aurizon Network gives the Transferor a valid tax invoice in respect of the Transfer Fee; and
 - (iv) in respect of payment only, the date any dispute regarding the calculation of the Transfer Fee is determined,

then Aurizon Network may give the Transferor a notice (**Transfer Cancellation Notice**) with respect to Nominated Access Rights specified in the Notice of Intention to Transfer in which case:

- (v) the Notice of Intention to Transfer is deemed to have never been given by the Transferor; and
- (vi) the Nominated Access Rights that were the subject of the Notice of Intention to Transfer will not be Transferred to the Transferee.

General

~~(f)~~ The For the avoidance of doubt, the giving of a Transfer Cancellation Notice in respect of the Transfer of Nominated Access Rights does not prevent the Transferor from subsequently giving Aurizon Network a new Notice of Intention to Transfer Notice in respect of the same Nominated Access Rights.

~~(f)(g)~~ Where, following a Transfer, the Transferor's Access Agreement terminates, the Transferee agrees to pay all Adjustment Charges (Transferred Adjustment Charges) that, but for the Transfer of the Access Rights, would have become payable by the Transferor in relation to Train Services operated for the Transferor prior to the commencement of the Transferee's new Access Agreement unless the Transferee and Transferor agree to some other arrangement (which is enforceable by Aurizon Network) in respect of the Transferred Adjustment Charges and provide notice of that agreement to Aurizon Network.

7.4.7 Customer Initiated Transfers

- (a) Where an Access Holder holds any of its Access Rights for the purpose of providing Train Services for a Customer, that Customer may seek to transfer those Access Rights to itself or to another Railway Operator so that the Customer or, if relevant, another Railway Operator, becomes the Access Holder in respect of those Access Rights provided that the Customer is not seeking any change to the origin and destination of, or the commodity for, the Access Rights (**Customer Initiated Transfer**).
- (b) Where a Customer seeks to undertake a Customer Initiated Transfer, the Customer must provide written notice to Aurizon Network and the Access Holder (**CIT Notice**) which:
- (i) specifies the date on which the Customer Initiated Transfer is to take effect (**CIT Date**) and to terminate (if any);
 - (ii) specifies the Access Rights which the Customer is seeking to transfer from the Access Holder to itself or, if relevant, another Railway Operator (**CIT Access Rights**) by describing:
 - (A) the number and type of Train Services to be transferred (which must be an even number of Train Services (each service being a one way Train Service)) from the Access Holder; and
 - (B) the origin and destination of the Access Rights; and
 - (iii) specifies any changes to the type of Train Services which the Customer requires once the Customer Initiated Transfer takes effect; and
 - (iv) where the Customer Initiated Transfer is to another Railway Operator, includes the consent of that Railway Operator.
- (c) A Customer Initiated Transfer must meet the following conditions:
- (i) the Customer, or if relevant the Railway Operator, agrees to pay all Adjustment Charges (**Transferred Adjustment Charges**) that, but for the transfer of the CIT Access Rights, would have become payable by the Access Holder in relation to Train Services operated for the Access Holder utilising the CIT Access Rights prior to the commencement of the Customer's (or Railway Operator's) new Access Agreement; and

- (ii) the Customer (or Customers where all Customers for the origin initiate the Customer Initiated Transfer) is the sole end Customer (or Customers) of the Train Services utilising the CIT Access Rights.
- (d) If a Customer Initiated Transfer complies with clause 7.4.7(b) and clause 7.4.7(c), Aurizon Network must promptly provide the Customer (and where the Customer Initiated Transfer is to another Railway Operator, that Railway Operator) and the Access Holder written notice approving the Customer Initiated Transfer and then on and from the CIT Date (or such later date as agreed by the Customer and Aurizon Network):
 - (i) the CIT Access Rights will be taken to have been relinquished for the Train Service Type specified in the CIT Notice from the Access Holder's Access Agreement; and
 - (ii) those CIT Access Rights will be taken to be Access Rights for Train Service Entitlements for the relevant Train Service Type under a new Access Agreement with either the Customer or, where the Customer Initiated Transfer is to another Railway Operator, that Railway Operator on the same terms as the Access Holder's Access Agreement.
- (e) Each of the parties to a Customer Initiated Transfer referred to in **clause 7.4.7(d)** will promptly after the approval of the Customer Initiated Transfer do the following:
 - (i) Aurizon Network and the Access Holder will enter into an agreement to vary the terms of the Access Holder's Access Agreement to address the relinquishment of the CIT Access Rights (including any variations to the Access Charge Rates);
 - (ii) Aurizon Network and the Customer will enter into a new Access Agreement on the same terms as the Access Holder's Access Agreement except to the extent the Customer notified Aurizon Network of any changes to the types of Train Services in the CIT Notice; and
 - (iii) the Customer will provide Aurizon Network with security in respect of the CIT Access Rights to the extent reasonably requested by Aurizon Network in accordance with this Undertaking.
- (f) For clarification, clauses 7.4.2, 7.4.3, 7.4.4, 7.4.5 and 7.4.6 do not apply to Customer Initiated Transfers.

~~(g) For clarity, a change in the nomination of a Train Operator by an Access Holder does not constitute a Transfer.~~

7.4.47.4.8 Relinquishments

- (a) If an Access Holder wishes to relinquish any of its Access Rights it must give Aurizon Network reasonable notice of its intention (**Notice of Intention to Relinquish**).
- (b) A Notice of Intention to Relinquish must specify:
 - (i) the Access Rights, by reference to each Train Service Type, which the Access Holder intends to relinquish (**Nominated Access Rights**); and
 - (ii) the date (**Relinquishment Date**) on which the Nominated Access Rights are to be relinquished (provided that such Relinquishment Date must not be more than two (2) Years after the date on which the Access Holder gives the Notice of Intention to Relinquish to Aurizon Network).
- (c) Nominated Access Rights the subject of a Notice of Intention to Relinquish will not be relinquished until the later of:
 - (i) the date upon which the Access Holder pays the Relinquishment Fee to Aurizon Network; and
 - (ii) the Relinquishment Date.
- (d) Aurizon Network must:
 - (i) calculate the Relinquishment Fee; and
 - (ii) notify the Access Holder of the amount of the Relinquishment Fee and how the Relinquishment Fee was calculated, including details of any assumptions made when calculating the Relinquishment Fee and reasons for those assumptions,at the following times:
 - (iii) if the Access Holder is considering relinquishing some or all of the Access Rights but has not given Aurizon Network a Notice of Intention to Relinquish in respect of those Access Rights, promptly following a request by the Access Holder; and
 - (iv) if the Access Holder has given Aurizon Network a Notice of Intention to Relinquish, not less than five (5) Business Days before the Relinquishment Date.
- (e) Subject to **clause 7.4.8(f)**~~7.4.3(k)~~, the Relinquishment Fee is the amount calculated as follows:
 - (i) for coal carrying Train Services included in a Pre-Approval Date Coal Access Agreement, in accordance with that Pre-Approval Date Coal Access Agreement; or

(ii) in all other cases, the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges for the relevant Train Service Types that would have been payable for the remainder of the term of the relevant Access Agreement assuming:

- (A) the Nominated Access Rights were not relinquished; and
- (B) the relevant Train Services were not operated for the Access Holder for a reason other than Aurizon Network Cause,

(PV Amount) less the amount which is the product of the PV Amount and the greater of:

- (C) 0.5; and
- (D) the Reduction Factor.

(f) ~~Despite any other provision in this clause 7.4.8, if the Relinquishment Fee is calculated to be an amount that is less than zero, then the Relinquishment Fee will be zero.~~

(f)(g) Aurizon Network may, in accordance, and subject to compliance, with clause ~~10-11~~ of the Standard Access Agreement, reduce the number of Nominated Monthly Train Services of an Access Holder for a Train Service Type if, at a point in time, the Average Annual Payload for that Train Service Type operated by the Train Operator exceeds the Maximum Payload for that Train Service Type and the Access Holder fails to respond to a notice from Aurizon Network as required by clause 11 of the Standard Access Agreement.

(g)(h) Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by **clause 7.4.8(f)** ~~7.3.4(f)~~, Aurizon Network will notify the Train Operator(s) in accordance with ~~clause 11.1(a)(ii)~~ of the Standard Train Operations Deed(s) of any changes to the Nominated Monthly Operational Rights.

(h)(i) If an Access Holder wishes to increase the Maximum Payload for any of its Train Service Types which would result in that Access Holder holding Surplus Access Rights under its Access Agreement:

- (i) the Access Holder may with the consent of each relevant Customer of the Access Holder (if any) or the consent of each relevant Train Operator where the Access Holder is not also the Train Operator, give Aurizon Network a notice ~~request the relinquishment of those Surplus Access Rights~~ in accordance with the

terms of clause 14.0 of the Standard Access Agreement specifying whether the Access Holder elects to relinquish or maintain the Surplus Access Rights for the relevant Train Service Type;

(ii) where the Access Holder elects to relinquish the Surplus Access Rights for the relevant Train Service Type, then, subject to compliance by each of the Access Holder and Aurizon Network with the terms of clause 11.10 of the Standard Access Agreement, including the payment of the SAR Relinquishment Fee by the Access Holder (but for the avoidance of doubt, no other Relinquishment Fee), some or all of those Surplus Access Rights may be relinquished;

~~(ii)~~(iii) where the Access Holder elects to maintain the Surplus Access Rights for the relevant Train Service Type, then, subject to compliance by each of the Access Holder and Aurizon Network with the terms of clause 10 of the Standard Access Agreement, the Surplus Access Rights for the Train Service Type will continue to form part of the Access Rights held by the Access Holder; and

~~(iii)~~(iv) Aurizon Network will notify the Train Operator of any changes to:

- (A) ~~the~~ the Nominated Monthly Operational Rights;
- (B) the Maximum Payload for the relevant Train Service Type; ~~and~~
- ~~(C)~~ (C) the Nominal Payload for the relevant Train Service Type; ~~and~~
- ~~(C)~~(D) (D) the Indicative Tonnage for the relevant Train Service Type,

as a result of the increase in the Maximum Payload for a Train Service Type in accordance with ~~clause 11.2(b) of~~ the Standard Train Operations Deed.

- ~~(i) Aurizon Network may, in accordance, and subject to compliance, with clause 12 of the Standard Access Agreement, give an Access Holder a notice of its intention to increase the Nominal Payload for a Train Service Type which may result in a reduction in the Nominated Monthly Train Services held by that Access Holder in respect of that Train Service Type.~~
- ~~(j) Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by clause 7.3.4(i), Aurizon Network will notify the Train Operator(s)~~

~~in accordance with clause 12.3(c) of the Standard Train Operations Deed(s) of any changes to the:~~

- ~~(i) — Nominal Payload for the Train Service Type;~~
- ~~(ii) — Maximum Payload for the Train Service Type; and~~
- ~~(iii) — Nominated Monthly Train Services for the Train Service Type;~~

~~— in each case as a result of the intention to increase the Nominal Payload for the Train Service Type.~~

~~(k)(j)~~ Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by ~~clause 7.3.7.4.8(f)4(f) or clause 7.3.4(i)~~ a SAR Relinquishment Fee will be payable by the relevant Access Holder to Aurizon Network. For the avoidance of doubt, no other ~~no~~ Relinquishment Fee will be payable by the relevant Access Holder to Aurizon Network.

~~(k)~~ ~~Despite any other provision in this clause 7.4.3, if the Relinquishment Fee is calculated to be an amount that is less than zero, then the Relinquishment Fee will be zero.~~ Promptly after the Commencement Date, Aurizon Network will notify all Access Holders with Access Agreements that provisions relating to payloads and relinquishments have been included in the Standard Access Agreement (being clauses 10, 11 and 13 of the Standard Access Agreement) and that, subject to receipt by Aurizon Network of a notice from an Access Holder under **clause 7.4.8(l)** it agrees to amend existing Access Agreements to include equivalent provisions.

~~(l)~~ Where, within 60 days after receiving a notice under **clause 7.4.8(k)**, an Access Holder notifies Aurizon Network that it wishes to amend the Access Holder's Access Agreement to include a provision that is in all material respects equivalent to clause 10, 11 and 13 of the Standard Access Agreement, Aurizon Network will prepare, and provide to the Access Holder, an appropriate variation agreement to the Standard Access Agreement and, if executed by the Access Holder, execute that variation agreement.

7.4.57.4.9 General provisions

- (a) Aurizon Network must act in a diligent and timely manner in dealing with a proposed Transfer under **clause 7.4.2** or relinquishment under **clause 7.4.87.4.3**.
- (b) If the calculation of the Transfer Fee or Relinquishment Fee changes after the date of the notice under **clause 7.4.6(b)(ii)** or **7.4.8(d)(ii)7.4.3(d)(iii)**, but before the Transferor or Access Holder (as applicable) (**Payor**) has paid the amount in the notice, then:

- (i) Aurizon Network must advise the Payor of the revised amount and full reasons for the change in the calculation; and
- (ii) the Payor must pay the revised amount, unless:
 - (A) it has already paid the amount in the notice; or
 - (B) the amount paid by the Payor is in excess of the revised amount, in which case Aurizon Network must refund the excess amount to the Payor or set it off against the next invoice (if any) payable by the Payor to Aurizon Network.

(c) In calculating the Transfer Fee or Relinquishment Fee, Aurizon Network may assume that each of the Access Charge Rates (as at the Transfer Date or Relinquishment Date, as applicable) will escalate, on each 1 July, at the rate of 2.5% per annum for the remainder of the term of the relevant Access Agreement.

(d) The Reduction Factor is the amount calculated as follows:

- (i) if:
 - (A) a new Access Holder or a Transferee has executed an Access Agreement (or a variation to an existing Access Agreement) in respect of Access Rights that Aurizon Network could not have provided without using the whole or part of the Nominated Access Rights; and
 - (B) Aurizon Network's provision of the Access Rights under that Access Agreement commenced, for a new Access Holder:
 - (1) who is not a Transferee, after Aurizon Network was given the Notice of Intention to Relinquish, but prior to the payment to it of the Relinquishment Fee; or
 - (2) who is a Transferee, on and from the Transfer Date,

then:

- (C) for the purposes of **clauses 7.4.6(d)7.4.2(t) and 7.4.8(e)(ii)7.4.3(e)(ii)**, if:

- (1) the relevant Train Services of the existing Access Holder and of the new Access Holder or Transferee are coal carrying Train Services; and
- (2) the Transferee's or new Access Holder's Train Services that will use the Nominated Access Rights will operate predominantly in and have a Nominated Unloading Facility in the same Coal System as the Train Services of the existing Access Holder that used those Nominated Access Rights,

an amount calculated as follows:

TOPB / TOPA

where:

TOPA is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement (**Remainder of the Original Term**) or for a Transfer, the take or pay amount that would have been payable for the Transfer Period if the Nominated Access Rights were not relinquished but the existing Access Holder did not operate the relevant Train Services for a reason other than Aurizon Network Cause; and

TOPB is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would be payable in accordance with the new Access Holder's or Transferee's Access Agreement (in relation to the whole or part of the Nominated Access Rights) if the new Access Holder's or Transferee's Train Services using the Nominated Access Rights were not operated by or for the new Access Holder or Transferee during the same period as the Remainder of the Original Term or for a Transfer, the take or pay amount that would have been payable for the Transfer Period for a reason other than Aurizon Network Cause; or

(D) if **clause 7.4.94(d)(i)(C)** does not apply, an amount calculated as follows:

A / B

where:

- A** is the annual train kilometres over the Common Corridor attributable to the new Access Holder's or Transferee's Train Services in respect of which Access Rights could not have been provided without using the whole or part of the Nominated Access Rights; and
- B** is the annual train kilometres over the Rail Infrastructure attributable to the Train Services operated under the Nominated Access Rights,

provided that to the extent that the new Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service is less than the existing Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service, the Reduction Factor will be decreased in proportion to that relative contribution; and

- (ii) if **clause 7.4.49(d)(i)** does not apply, zero (0).
- (e) If the Reduction Factor is calculated in accordance with **clause 7.4.49(d)** and the Reference Tariff in relation to the Nominated Access Rights includes a System Discount or System Premium, then the Transfer Fee or Relinquishment Fee, as applicable, must be further adjusted by Aurizon Network to account for any consequential decrease or increase (as applicable) in the System Discount or System Premium (as applicable) that would otherwise result in Aurizon Network under-recovering or over-recovering (as applicable) amounts from the Access Holder due to the application of the System Discount or System Premium (as applicable).
- (f) Aurizon Network must maintain, on its Website, worked examples of the calculation of a Relinquishment Fee.
- (g) The Access Holder may dispute, in accordance with the dispute provisions under the Access Agreement, the calculation of the Transfer Fee or Relinquishment Fee notified by Aurizon Network to the Transferor or the Access Holder (as applicable) under **clause 7.4.6(b)(ii)** or **7.4.8(d)(ii)**~~7.4.3(d)(ii)~~ (including any assumptions made by Aurizon Network).

7.5 Mutually Exclusive Access Applications

7.5.1 Notification and assistance

- (a) Aurizon Network will identify Access Applications that are or have become Mutually Exclusive Access Applications and will notify an Access Seeker as soon as practicable after Aurizon Network identifies that the Access Seeker's Access Application is or has become a Mutually Exclusive Access Application.
- (b) Aurizon Network will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it is not a Mutually Exclusive Access Application.

7.5.2 Queuing mechanism

- (a) This **clause 7.5.2**:
 - (i) applies in respect of Mutually Exclusive Access Applications or where this Undertaking otherwise specifies that an Access Seeker has joined the Queue; and
 - (ii) does not apply to:
 - (A) an Access Application for Access Rights that can only be granted subject to an Expansion creating additional Available Capacity; or
 - (B) in relation to the allocation of Available Capacity that:
 - (1) is subject to a Provisional Capacity Allocation under **Part 8** (including a Provisional Capacity Allocation arising from a reallocation under **Part 8**, for example under **clause 8.2.3(b)**);
 - (2) is or was subject to a Provisional Capacity Allocation that Aurizon Network, in accordance with **Part 8**, is seeking to reallocate following a withdrawal of that Provisional Capacity Allocation; or
 - (3) is or was subject to a Provisional Capacity Allocation in respect of which the relevant Access Seeker has entered into an Access Agreement, Access Conditions or User Funding Agreement relating to the corresponding Access Rights; or
 - (C) an Access Application for Access Rights which are sought

according to a Transfer under **clause 7.4.2** or in accordance with the terms of an Access Agreement; or

~~(E)~~(D) a Customer Initiated Transfer.

(b) In allocating Available Capacity, Aurizon Network will prioritise Access Seekers in a chronological queue based on the date when Aurizon Network is deemed to have received each Access Seeker's Access Application as outlined in **clause 4.4(c) (Queue)**, except that:

(i) a Renewing Access Seeker will be placed ahead of all other Access Seekers in the Queue in respect of the Access Rights the subject of the Renewal, but only to the extent that the Renewing Access Seeker complies with **clause 7.3(h)(ii)(C)**;

(ii) in respect of Conditional Access Rights where:

(A) Aurizon Network has notified relevant Access Holders in accordance with **clause 8.9.2** of its Reduced Conditional Access Rights; and

(B) an Access Application is deemed to have been lodged in respect of the reduction as a result of the Conditional Access Holder providing notice to Aurizon Network under **clause 8.9.3(a)(ii)**; and

(C) either:

(1) there is Available Capacity which is capable of satisfying that Access Application in respect of the reduction; or

(2) an Affected Access Holder elects to seek to fund an Expansion in accordance with **clause 8.9.3(e)**,

then:

(D) the Conditional Access Holder and Affected Access Holder (as applicable) will be given priority in the Queue behind any Renewals in respect of the Access Application for that reduction; and

- (E) where there are two (2) or more Conditional Access Holders or Affected Access Holders (as applicable) affected, each Conditional Access Holder and Affected Access Holder (as applicable) will be treated as having the same position in the Queue for the purpose of negotiating and allocating the Available Capacity.
- (c) Access Applications to be included in the Queue that are Competing Applications will be collectively positioned in the Queue in accordance with **clause 7.5.2(b)** as though they were a single application received by Aurizon Network, for the purposes of the Queue, at the time the earliest of the Competing Applications was deemed to be received by Aurizon Network.
- (d) An Access Seeker will be removed from the Queue if:
 - (i) the Access Seeker's Access Application has been withdrawn or the Negotiation Period for an Access Seeker has ceased in accordance with **Part 4**;
 - (ii) Aurizon Network has determined not to allocate Available Capacity to an Access Seeker as a result of the operation of **clause 7.2.1**;
 - (iii) the Access Seeker is a Conditional Access Holder and it has not provided notice to Aurizon Network under **clause 8.9.3(a)(ii)**; or
 - (iv) the Access Seeker is an Affected Access Holder and it has made an election under **clause 8.9.3(e)(i)**.
- (e) Aurizon Network must promptly notify:
 - (i) following receipt of a notification of intent from an Access Seeker under **clause 4.7**, that Access Seeker of the initial position of their Access Application in the Queue; and
 - (ii) thereafter, of any change to that position in the Queue and the reason(s) for that change.

(For clarity, the timing of Aurizon Network's notification under **clause 7.5.2(e)(i)** does not affect the position of an Access Seeker's Access Application in the Queue).
- (f) An Access Seeker may assign its position in the Queue to another party who:
 - (i) is a Railway Operator and the Access Seeker has entered into an agreement with that Railway Operator

to provide the Train Services and requires that Railway Operator to hold the Access Rights;

- (ii) is a Related Party of the Access Seeker and the assignment is not a Material Variation; or
 - (iii) has acquired the whole or a substantial part of the assets of the Access Seeker.
- (g) If a dispute concerning positions in the Queue or any other aspect of Aurizon Network's management of the Queue is referred for resolution under **Part 11**, Aurizon Network must not change an Access Seeker's position in that Queue unless and until that Dispute is resolved in favour of such a change in position.

7.5.3 Mutually Exclusive Access Application

- (a) If Aurizon Network has received Mutually Exclusive Access Applications for Available Capacity, then Aurizon Network will enter into negotiations for Access Agreements (including any agreements to allow Access Rights to be exercised or created – for example, a Rail Connection Agreement) for the Available Capacity for those Access Applications that meet the requirements of **Part 4**.
- (b) Subject to the terms of this Undertaking and for the purposes of **clause 7.5.2(b)**, in allocating Available Capacity, Aurizon Network may offer that Available Capacity simultaneously to each Access Seeker in the Queue who has an Access Application for Access Rights that correspond with the Available Capacity, which offer must specify:
 - (i) the position in the Queue of the relevant Access Seeker's Access Application in comparison to all other Access Seekers in the Queue who have been simultaneously offered the Available Capacity;
 - (ii) the timeframe in which the relevant Access Seeker may notify Aurizon Network that it wishes to accept the offer of allocation of all or part of the Available Capacity being offered; and
 - (iii) if applicable, that the offer is subject to other Access Seekers having Access Applications for Access Rights that correspond with the Available Capacity ahead of the relevant Access Seeker in the Queue being allocated the Available Capacity; and
 - (iv) that the offer is subject to the Access Seeker executing an Access Agreement within 20 Business Days of it accepting the offer in accordance with **clause 7.5.3(b)(ii)**.

- (c) Where Aurizon Network has allocated Available Capacity under this **clause 7.5.3** and none of the remaining Access Seekers can be granted the Access Rights sought as there is insufficient Available Capacity to do so, then negotiations with those remaining Access Seekers are suspended and **clause 4.8** will apply.

7.6 Capacity resumption

- (a) If an Access Holder for any reason other than the occurrence of a Force Majeure Event or an Aurizon Network Cause does not:
 - (i) for Cyclic Traffic, cause the operation of at least eighty five percent (85%) of the Train Services allowed under the Access Holder's Train Service Entitlement over a period of four (4) consecutive Quarters; or
 - (ii) for Timetabled Traffic, cause the operation of a Train Service on a Scheduled Train Path seven (7) or more (not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular Scheduled Train Path exists,

(Resumption Trigger Event) Aurizon Network may, within forty (40) Business Days after the Resumption Trigger Event, give that Access Holder notice (**Information Request Notice**) of:

- (iii) reasonable details of the Resumption Trigger Event;
- (iv) the Access Rights for the Train Service Type which Aurizon Network considers to be underutilised Access Rights for the Train Service Type in respect of the Resumption Trigger Event;
- (v) that Aurizon Network is considering resuming the whole or part of the underutilised Access Rights for the Train Service Type to the extent of that underutilisation;
- (vi) requesting the Access Holder to demonstrate a sustained requirement for the underutilised Access Rights; and
- (vii) reasonable details of Aurizon Network's reasonable expectation of a sustained alternative demand for the Capacity used by the Access Rights in question.

For clarity:

- (viii) nothing in this **clause 7.6(a)** requires Aurizon Network to disclose any information that is not relevant to the Information Request Notice in respect of the Resumption Trigger Event or information that is commercially sensitive to the Aurizon Group; and

- (ix) Aurizon Network will not be in breach of its obligations under **Part 3** when making a disclosure under this **clause 7.6(a)** provided that the information disclosed is relevant to the resumption in question.
- (b) Aurizon Network must not give an Information Request Notice in respect of a Resumption Trigger Event for a Train Service Type specified in **clause 7.6(a)** more than forty (40) Business Days after the end of the applicable four (4) consecutive Quarters referred to in **clause 7.6(a)**.
- (c) If Aurizon Network gives an Access Holder an Information Request Notice within the timeframe set out in **clause 7.6(a)**, the Access Holder must:
 - (i) within fifteen (15) Business Days after Aurizon Network gives the Information Request Notice to the Access Holder, provide to Aurizon Network the information requested in the Information Request Notice; and
 - (ii) if required by Aurizon Network, meet with Aurizon Network to discuss the suspected Resumption Trigger Event for the applicable Train Service Type.
- (d) If an Information Request Notice is given to an Access Holder and:
 - (i) the Access Holder has not demonstrated, to Aurizon Network's reasonable satisfaction, a sustained requirement for the Access Rights that were not utilised; and
 - (ii) Aurizon Network has demonstrated that it has a reasonable expectation of a sustained alternative demand for the Capacity used by the Access Rights in question,then Aurizon Network may give a further notice (**Resumption Notice**) confirming the Resumption Date and that it will reduce that Access Holder's Access Rights from the Resumption Date by:
 - (iii) for Cyclic Traffic, reducing the Access Holder's Access Rights to the extent that the Access Holder's Train Service Entitlement was underutilised; or
 - (iv) for Timetabled Traffic, deleting the Scheduled Train Path referred to in **clause 7.6(a)(ii)** from the Access Holder's Train Service Entitlement.
- (e) A Resumption Notice must:
 - (i) not be given before the end and not more than twenty (20) Business Days after the end of the fifteen (15) Business Day period in **clause 7.6(c)(i)**; and

(ii) specify:

- (A) full details of the Access Rights for the Train Service Type to be resumed (**Resumed Access Rights**); and
- (B) the date on which the resumption will take effect (which must be at least ten (10) Business Days after the Resumption Notice is given to the Access Holder) (**Resumption Date**).

- (f) If a valid Resumption Notice is given under this **clause 7.6**, the underutilised Access Rights for the Train Service Type will cease to form part of the Access Rights for the Train Service Type on and from the Resumption Date (other than for the purpose of calculating any TOP Charges that are payable as a result of the non-utilisation of any of the Resumed Access Rights prior to the Resumption Date).
- (g) Aurizon Network may withdraw a Resumption Notice prior to the later of the Resumption Date and fourteen (14) days after the determination of any dispute in relation to the Resumption Notice.
- (h) If Aurizon Network resumes an Access Holder's Access Rights in accordance with this **clause 7.6**, then the Access Charge payable by the Access Holder will be varied in accordance with the terms of the relevant Access Agreement and the Access Agreement will be varied accordingly.
- (i) If there is a dispute in connection with a decision by Aurizon Network to:
 - (i) issue an Information Request Notice and the Access Holder considers that Aurizon Network had insufficient grounds to do so under **clause 7.6(a)**; and
 - (ii) resume an Access Holder's Access Rights in accordance with this **clause 7.6**,

then Aurizon Network must not implement the resumption until the dispute resolution process has been concluded, and then only to the extent that such resumption is consistent with the outcomes of the dispute resolution process.

|

Part 12 Definitions (extract)

<u>Ancillary Access Rights</u>	Has the meaning given in clause 7.4.2(a)(iii)(C) .
<u>CIT Access Rights</u>	Has the meaning given in clause 7.4.7(b)(ii)(i) .
<u>CIT Date</u>	Has the meaning given in clause 7.4.7(b)(i) .
<u>CIT Notice</u>	Has the meaning given in clause 7.4.7(b) .
<u>Customer Initiated Transfer</u>	Has the meaning given in clause 7.4.7(a) .
<u>Long Term Transfer</u>	The meaning given to that term in clause 7.4.1(d) .
Mutually Exclusive Access Applications	<p>Access Applications where if Aurizon Network grants Access Rights in respect of one or more of those Access Applications then Aurizon Network will have insufficient Available Capacity to grant Access Rights in respect of the remaining Access Applications. In respect of:</p> <p>(a) two or more Access Applications where if Aurizon Network grants Access Rights in respect of one or more of those Access Applications then Aurizon Network will have insufficient Available Capacity to grant Access Rights in respect of the remaining Access Applications; and</p> <p>(a)(b) one or more Access Application(s) and a proposed Transfer which requires Ancillary Access Rights, where if Aurizon Network grants Access Rights in respect of the Access Application(s) then Aurizon Network will have insufficient Available Capacity to grant the Ancillary Access Rights in respect of the Transfer.</p>
<u>Port Precinct</u>	The meaning given to that term in clause 7.4.1(d) .
<u>SAR Relinquishment Fee</u>	For the Surplus Access Rights for a Train Service Type means the amount calculated in accordance with clause 13.6 of the Standard Access Agreement for the Surplus Access Rights for the Train Service Type .
Short Term Transfer	The meaning given to that term in clause 7.4.1(d). The meaning given to that term in clause 0.
Short Term Transfer Period	The meaning given to that term in clause 0.
Transfer	The meaning given to that term in clause 7.4.1(d). The transfer of all or part of an Access Holder's Access Rights under clause 7.4.2.

Transfer Notice The meaning given to that term in **clause 7.4.2(a)**.

Annexure 4 – Part 7 marked up against QRC February
Submission

[QRC Note: clause references throughout this section will require updating. The QRC has not sought to update all clause references in this submission.]

Part 7: Available Capacity allocation and management

7.1 Application

- (a) This **Part 7** addresses the allocation and management of Capacity, including in circumstances where there is insufficient Available Capacity to satisfy all of the Access Applications submitted to Aurizon Network. In particular, under its provisions:
- (i) Aurizon Network may refuse to grant Access Rights if the relevant Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that it can utilise those Access Rights (**clause 7.2.1**).
 - (ii) Aurizon Network must maintain a Capacity Notification Register and a Committed Capacity Register (**clause 7.2.2** and **clause 7.2.3**).
 - (iii) Aurizon Network will be obliged to give priority to the granting of Access Rights to a Renewing Access Seeker in respect of a Renewal in certain circumstances (**clause 7.3**).
 - (iv) Standard Access Agreements permit an Access Holder or an Access Holder's Customer to Transfer Access Rights in accordance with this Undertaking. Aurizon Network has obligations in relation to the allocation of Capacity to facilitate a Transfer (**clause 7.4.2**).
 - (v) Short Term Transfers will be required to meet specified requirements (**clause Error! Reference source not found.**).
 - (vi) Standard Access Agreements permit an Access Holder to relinquish Access Rights in accordance with this Undertaking. Aurizon Network has obligations in relation to the management of that relinquishment (**clause 7.4.3**).
 - (vii) Aurizon Network will notify Access Seekers if their Access Applications are Mutually Exclusive Access Applications and assist them to modify their Access Applications to seek to avoid them being Mutually Exclusive Access Applications (**clause 7.5.1**).

- (viii) Where Aurizon Network has received Mutually Exclusive Access Applications, Aurizon Network will form a queue to determine which Access Seeker will be allocated Available Capacity (**clause 7.5.2**).

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

- (b) A diagrammatic representation of the Capacity allocation process for Mutually Exclusive Access Applications is set out in **Schedule H**.
- (c) For the purposes of the Act, the treatment of Access Seekers differently as a result of, or in accordance with, **clause 7.3, 7.4.2 or 7.5.2** is permitted and to that extent does not offend the Act.
- (d) Except where otherwise expressly provided in this **Part 7** and without limitation to **clause 7.1(c)**, in the performance of its obligations and the exercise of its rights under this **Part 7**, Aurizon Network must not unfairly differentiate between Access Seekers (or, as applicable, Customers) on the basis of the identity of a funder of a Pre-feasibility Study, a Feasibility Study or an Expansion. For example, Aurizon Network will not provide an Access Seeker (or, as applicable, a Customer) with priority in the allocation of Capacity in respect of an Expansion on the basis that Aurizon Network is providing funding for the Expansion, over another Access Seeker (or, as applicable, a Customer) with a different source of funding.
- (e) Nothing in **clauses 7.3, 7.4.2 or 7.5.2** obliges Aurizon Network to grant Access Rights if there is insufficient Available Capacity to provide those Access Rights.
- (f) Nothing in **clauses 7.4.2 (Transfers), 7.4.3 (Relinquishments) and 7.6 (Capacity resumption)** affects the terms of an Access Agreement or Train Operations Deed executed before the Approval Date, unless the parties to the relevant document expressly agree to vary that document and adopt **clauses 7.4.2, 7.4.3 or 7.6**.

7.2 Capacity allocation and registers

7.2.1 *General requirement for allocation*

Despite any other provision in this Undertaking, Aurizon Network may refuse to allocate Available Capacity in respect of an Access Application if the Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that the Access Seeker has a reasonable likelihood of being able to utilise the Access Rights requested from the time when the Access Rights are proposed by the Access Seeker to commence, based on the following factors:

- (a) whether the Access Seeker:
- (i) (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights;
 - (ii) if not a Railway Operator, has secured, or is reasonably likely to secure, a rail haulage agreement for the operation of the Train Services the subject of the Access Application;
 - (iii) if a Railway Operator, has entered into, or is reasonably likely to enter into, a rail haulage agreement with a Customer to enable it to run Train Services to utilise the Access Rights sought (provided that any consideration of reasonable likelihood must disregard the effect of granting the Access Rights to the Railway Operator or the Railway Operator's ability to attract a Customer in the future);
 - (iv) (or Railway Operator) is reasonably likely to have access to facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to utilise the Access Rights sought;
 - (v) (or its Customer) is reasonably likely to have sufficient product (whether through the anticipated output of a mine or otherwise) to utilise the Access Rights sought (taking into account any other Access Rights held by the Access Seeker or its Customer in respect of product from the same origin);
 - (vi) has been actively participating in the negotiation process in accordance with **Part 4**; and
- (b) where the only party that has applied for Access is a Railway Operator, whether the Railway Operator no longer meets the criteria outlined in **clause 4.9(a)(ii)(A) and (B)**.

7.2.2 Capacity Notification Register

- (a) Aurizon Network must maintain a Capacity Notification Register which contains an Access Seeker's (and, if applicable, its Customer's) details if:
- (i) Aurizon Network has ceased negotiations with an Access Seeker in accordance with **clauses 4.5(e) 4.5(j) or 4.8(d)** (in respect of all or part of the Access Rights sought by the Access Seeker);
 - (ii) the Access Seeker (and, if applicable, its Customer) requests Aurizon Network to include it in the Capacity Notification Register; and

- (iii) Aurizon Network, acting reasonably, is satisfied the Access Seeker (or its Customer) has, or is in a queue to obtain, Supply Chain Rights in respect of an unloading facility.
- (b) The Capacity Notification Register must contain:
 - (i) the identity of each Access Seeker (or its Customer) which has requested it be included;
 - (ii) the nature of the Access Seeker's interest;
 - (iii) the date on which the applicable Access Application was received, or was deemed to have been received, in accordance with **clause 4.4(b)** by Aurizon Network.
- (c) Every six (6) Months after forming the Capacity Notification Register, Aurizon Network must confirm with each Access Seeker (or Customer) on the register that:
 - (i) it wishes to remain on the Capacity Notification Register; and
 - (ii) it has, or is in a queue to obtain, Supply Chain Rights in respect of an unloading facility.
- (d) If there is Available Capacity or a proposed Expansion which, if constructed, would create Available Capacity, then Aurizon Network must notify each person in the Capacity Notification Register who could utilise that existing or potential Available Capacity (as applicable) of the nature and extent of that existing or potential Available Capacity.
- (e) If a person notified under **clause 7.2.2(d)** submits an Access Application within one (1) Month after being given that notice, then that Access Application is deemed, for the purposes of **clause 4.4(b)** and in respect of the Access Rights the Access Seeker nominated for inclusion in the Capacity Notification Register, to have been received by Aurizon Network on the date Aurizon Network notified the relevant Access Seeker under **clause 7.2.2(d)**.
- (f) A person will remain on the Capacity Notification Register until:
 - (i) that person fails to comply with **clause 7.2.2(c)**; or
 - (ii) Aurizon Network notifies that person in accordance with **clause 7.2.2(d)**.

7.2.3 Committed Capacity Register

- (a) Aurizon Network must maintain a Committed Capacity Register that identifies:
 - (i) each Access Holder with Access Rights under an Access Agreement;

- (ii) DTMR in respect of its Committed Capacity;
 - (iii) any other party that has an interest in existing Access Rights and wishes to be included in the Committed Capacity Register and has notified Aurizon Network of that interest, in which case, the register must include:
 - (A) the Committed Capacity or Access Rights in which they have an interest; and
 - (B) the nature of that interest.
- (b) Where an Access Seeker requests Access which will:
- (i) commence within two (2) Years after the expiration of an existing Access Right (other than an Access Right in respect of coal carrying Train Services); and
 - (ii) utilise Capacity that will only become available following the expiration of that Access Right,

Aurizon Network will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the Committed Capacity Register as having an interest in the existing Access Rights of the existence of the Access Application. Failure to give such notification is not a default under this Undertaking and does not invalidate or prejudice any Access Agreement that may have been entered into by Aurizon Network provided that Aurizon Network has acted reasonably and in good faith.

7.3 Renewals

- (a) This **clause 7.3** sets out provisions that apply where all or any part of an Access Holder's existing Access Rights will expire and:
- (i) that Access Holder (where the Access Holder has no Customer); or
 - (ii) the person nominated by the Access Holder's Customer in writing to Aurizon Network (and, for clarity, that Customer may nominate itself),

(Renewing Access Seeker) wishes to hold or to continue to hold (as applicable) equivalent Access Rights (based on the Access Holder's Access Rights immediately prior to that expiry), subject to **clause 7.3(b)**, for a further term commencing immediately after those existing Access Rights will expire (that is, a **Renewal**).

- (b) For the purpose of **clause 7.3(a)**, Aurizon Network will disregard any change to the origin or destination of the relevant Train Services in considering whether the relevant Access Rights are equivalent Access Rights so long as the Train Services for the Renewal:

- (i) continue to have substantially the same Train Paths as the existing Train Services. For clarity, the Train Services for the Renewal may include a longer haul than the existing Train Services;
- (ii) do not adversely affect the ability of existing Access Holders to use their Access Rights;
- (iii) have an origin which is located in the same Track Segment as the origin of the Train Services under the existing Access Rights; and
- (iv) are not in excess of those existing Access Rights under the relevant Access Holder's existing Access Agreement. For clarity, the Train Services for the Renewal may include a longer haul than the existing Train Services and will not be considered to be in excess of the existing Access Rights if **paragraphs (i), (ii) and (iii)** above are satisfied.

(c) For clarity:

- (i) a Renewing Access Seeker may elect to renew only part of its existing Access Rights;
- (ii) that part of the Renewing Access Seeker's existing Access Rights not Renewed will become Available Capacity on the expiry of those existing Access Rights;
- (iii) an Access Holder does not have Access Rights beyond the term of its Access Agreement; and
- (iv) a Renewal includes Access Rights that were granted to the Renewing Access Seeker as a Transferee if the Renewing Access Seeker's existing Access Agreement includes those transferred Access Rights at the date of expiry of that Access Agreement.

(d) Despite any provision in **Part 4**, Aurizon Network must not:

- (i) negotiate the provision of Access that will use Capacity that will become Available Capacity on the expiry of an existing Access Right; and
- (ii) enter into an Access Agreement in relation to such Capacity,

with a person other than the relevant Renewing Access Seeker unless and until:

- (iii) the relevant Access Holder, where the Access Holder has no Customer, or otherwise the relevant Access Holder's Customer, has notified Aurizon Network that the Access Holder does not intend to seek a Renewal; or

- (iv) the Renewing Access Seeker has not (other than because of a delay by or breach of this Undertaking by Aurizon Network) executed an Access Agreement for that Capacity with Aurizon Network under this **clause 7.3** at least twelve (12) Months prior to the expiry of the Access Rights (or such later date as agreed between Aurizon Network and the Renewing Access Seeker).
- (e) Aurizon Network may refuse to negotiate, or to enter into, an Access Agreement with a Renewing Access Seeker for a Renewal more than five (5) years prior to the expiry of the Access Rights. For clarity, a refusal by Aurizon Network to negotiate an Access Agreement as a result of the operation of this **clause 7.3(e)** does not affect the Renewing Access Seeker's right to seek a Renewal under this **clause 7.3** within the period that is five (5) years prior to the expiry of the Access Rights.
- (f) If a Renewing Access Seeker is seeking a Renewal at least twelve (12) Months (or such other later date as agreed between Aurizon Network and the Renewing Access Seeker) but no more than sixty (60) Months (or such earlier date as agreed between Aurizon Network and the Renewing Access Seeker) prior to the expiry of the relevant Access Rights, then:
 - (i) the term of an Access Agreement relating to the Renewal must be:
 - (A) for coal carrying Train Services, the lesser of ten (10) years and the remaining life of the relevant mine (as evidenced to Aurizon Network's satisfaction (acting reasonably) by the Renewing Access Seeker); or
 - (B) for other Train Services, the lesser of ten (10) years and the same length of time as the term of the relevant current Access Agreement; and
 - (ii) if:
 - (A) the Renewing Access Seeker's Access Application is not seeking a Renewal for; or
 - (B) the Renewing Access Seeker does not agree to an Access Agreement for,

a term referred in **clause 7.3(f)(i)**, then the Renewing Access Seeker's Access Application will not be treated as an Access Application for a Renewal under this **clause 7.3**.

- (g) While this **clause 7.3** sets out how Aurizon Network will differentiate in the treatment of a Renewing Access Seeker as compared to other Access Seekers, this **clause 7.3** does not affect the rights and obligations of the Renewing Access Seeker or Aurizon Network under **Part 4** or **Part 5** or the remaining provisions of this **Part 7** except as set out in this **clause 7.3**.
- (h) For clarity:
 - (i) a Renewing Access Seeker must complete and submit an Access Application for Access Rights it is seeking to renew; and
 - (ii) subject to this **Part 7**, the negotiations for those Access Rights will be conducted in accordance with **Part 4** and **Part 5**, including:
 - (A) the Negotiation Cessation Notice provisions under **clause 4.13**;
 - (B) the Renewing Access Seeker and Aurizon Network beginning negotiations as soon as reasonably possible once the relevant Negotiation Period has commenced under **clause 4.11.1(a)**; and
 - (C) both the Renewing Access Seeker and Aurizon Network negotiating the terms of the relevant Access Agreement for the Renewal acting reasonably and in good faith under **clauses 5.1(c)** and **5.1(d)**.
- (i) Aurizon Network acknowledges that any provision under **Part 4** which permits Aurizon Network:
 - (i) to treat an Access Application as being withdrawn (except where the Access Seeker expressly withdraws the Access Application); or
 - (ii) to cease negotiation under **clause 4.11.1(c)(v)** or otherwise issue a Negotiation Cessation Notice because there is insufficient Available Capacity,does not apply in respect of a Renewal.

7.4 Dealing with Access Rights

7.4.1 Transfers

(a) An Access Holder may only assign, novate or otherwise transfer the Access Holder's interest in an Access Agreement to a third party in accordance with the terms of that Access Agreement.

~~(a)~~(b) Subject to **clause 7.4.17.4.1(a)**, an Access Holder (~~or a Customer~~)-(Transferor) may undertake a Transfer to another Access Holder or an Access Seeker (~~or a Customer or Customer Access Seeker~~) (Transferee) in accordance with this clause 7.4.

~~(b)~~(c) Schedule [insert] shows, diagrammatically, the process to effect a Long Term Transfer and Short Term Transfer.

(d) For the purpose of this Part 7:

(i) a Transfer is a transfer of any of an Access Holder's Access Rights (or the Access Rights held for the purpose of providing Train Services for a Customer) for a term which is no longer than the remaining term of the Access Agreement but excluding:

(A) a Customer Initiated Transfer; or

(B) a change in the nomination of a Train Operator by an Access Holder;

(ii) a Short Term Transfer is a Transfer of Access Rights:

(A) for a Transfer Period of two (2) years or less; and

(B) in respect of which the Transferee (or its Customer) has an existing Access Agreement under which the Transferred Access Rights can be added,

but excluding a Customer Initiated Transfer;

(iii) a Long Term Transfer is a Transfer of Access Rights which is not a Short Term Transfer; and

(iv) Port Precinct means each of the following:

(A) Port of Abbot Point;

(B) Port of Hay Point (including Hay Point Coal Services Coal Terminal and Dalrymple Bay Coal Terminal); and

(C) Port of Gladstone (including the RG Tanna Coal Terminal,

[Wiggins Island Coal Export Terminal and domestic coal terminals in the vicinity of Gladstone\).](#)

7.4.2 **Transfer Notice**

- (a) A Transferor and Transferee must provide written notice of a proposed Transfer to Aurizon Network (**Transfer Notice**) which specifies:
 - (i) the date on which the Transfer is to take effect (**Transfer Date**) and to terminate (if any);
 - (ii) the Access Rights which the Transferor proposes to Transfer (**Nominated Access Rights**) by describing:
 - (A) the number and type of Train Services to be transferred (which must be an even number of Train Services (each service being a one way Train Service)); and
 - (B) the existing origin and destination of the Nominated Access Rights;
 - (iii) the Access Rights the Transferee proposes to acquire from the Transferor (**Transferred Access Rights**) by describing:
 - (A) the number and type of Train Services;
 - (B) the proposed origin and destination; and
 - (C) any Capacity which is required in addition to the Available Capacity that will be created by the relinquishment of the Nominated Access Rights as part of the proposed Transfer (**Ancillary Access Rights**);
 - (iv) the Access Agreement which the Nominated Access Rights are proposed to be transferred from, which must be the Transferor's ~~most recently executed~~ Access Agreement [which has been entered into first in time](#) relating to the origin and destination of the Nominated Access Rights (to the extent sufficient to satisfy the Transfer);
 - (v) either:

- (A) the Access Agreement under which the Transferred Access Rights are proposed to be added which must:
 - (1) have existing Train Service Entitlements from the origin for the Transferred Access Rights; and
 - (2) where there is more than one agreement that satisfies **clause 7.4.2(a)(v)(A)(1)**, must be the most recently executed Access Agreement; or
- (B) if there is no existing Access Agreement, ~~exists which has~~ Train Service Entitlements from the origin for the Transferred Access Rights, a short form Access Application must be completed by the Transferee which includes the information listed in **Schedule B, Part 6** in respect of the Transferred Access Rights;
- (vi) evidence that the Transferor's and Transferee's Customers (as applicable) have consented to the Transfer ~~(including if a Customer is comprised of more than one entity, each entity comprising the Customer); and; and~~ and; and
- (vii) evidence that the Transferee (or its Customer) will be reasonably likely to be able to utilise the Transferred Access Rights based on whether:
 - (A) the Transferee (or its Customer) has secured, or is reasonably likely to secure, Supply Chain Rights for the Transferred Access Rights from the Transfer Date;
 - (B) unless the Transferee is a Railway Operator, the Transferee (or its Customer) has secured or is reasonably likely to secure, a rail haulage agreement for the Transferred Access Rights from the Transfer Date;

- (C) the Transferee or its Railway Operator is reasonably likely to have access to facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to utilise the Transferred Access Rights; and
 - (D) the Transferee (or its Customer) is reasonably likely to have sufficient product (whether through the anticipated output of a mine or otherwise) to utilise the Transferred Access Rights.
- (b) If a Transfer Notice includes a short form Access Application in accordance with clause 7.4.2(a)(v)(B), subject to this Part 7, the negotiation process for those Transferred Access Rights will be conducted on an expedited basis in accordance with Part 4.
- (c) A Transfer Notice for a Short Term Transfer must be provided:
- (i) if Ancillary Access Rights are not required, at least five (5) Business Days prior to close of Train Orders for the period commencing on the Transfer Date; and
 - (ii) if Ancillary Access Rights are required, at least seven (7) Business Days prior to close of Train Orders for the period commencing on the Transfer Date.
- (d) A Transfer Notice for a Long Term Transfer must be provided:
- (i) if no Ancillary Access Rights are required, 20 Business Days prior to the Transfer Date; or
 - (ii) if Ancillary Access Rights are required, 25 Business Days prior to the Transfer Date.

7.4.3 **Criteria for a Transfer to take effect**

~~(e)~~(a) Subject to clause ~~7.4.3(b)~~ and ~~clause 7.4.3(e)~~ 7.4.3(b) and clause 7.4.3(c), a Transfer must meet the following conditions:

- (i) the origin for the Transferred Access Rights is on the same Mainline Path as the [origin for the](#) Nominated Access Rights;
- (ii) the destination for the Transferred Access Rights is the same as the destination for the Nominated Access Rights or is in the same ~~port precinct~~ [Port Precinct](#) as the destination for the Nominated Access Rights;

(iii) the Train Services for the Transferred Access Rights ~~is~~are the same as the nature or type of Train Services for the Nominated Access Rights; and

~~(i)(iv)~~ the information or evidence required by **clause 7.4.2(a)** has been provided.

~~(b)~~ If a Long Term Transfer:

(i) satisfies the conditions of clause 7.4.3(a); and

(ii) requires Ancillary Access Rights,

Aurizon Network must determine whether the Ancillary Access Rights cause the Transfer and another Access Application(s) to become Mutually Exclusive Access Applications. If the Transfer and another Access Application(s) are Mutually Exclusive Access Applications:

(iii) Aurizon Network must promptly provide written notice to the Transferee;

(iv) if:

(A) the Transfer Notice included a short form Access Application in accordance with clause 7.4.2(a)(v)(B), the part of that Access Application that relates to the Ancillary Access Rights will be subject to clause 7.5; or

(B) otherwise, the Transferee ~~will be deemed to have submitted~~ must submit a short form Access Application in respect of the Ancillary Access Rights which will be deemed to have been submitted on the date of the Transfer Notice and that Access Application will be subject to clause 7.5; ~~and~~

and, to the extent that Aurizon Network requires further information in respect of the Ancillary Access Rights in order to determine whether there is sufficient Available Capacity, it may request such additional information from the Transferee; and

~~(i)(v)~~ the transfer will not take effect unless and until the Ancillary Access Rights are granted to the Transferee in accordance with **clause 7.5**. Aurizon Network must provide written notice to the Transferor and Transferee once the Ancillary Access Rights are granted.

~~(g)~~(c) If a Short Term Transfer:

- (i) satisfies the conditions of [clause 7.4.3\(a\)](#); and
- (ii) requires Ancillary Access Rights,

Aurizon Network must undertake a Rapid Capacity Assessment to determine whether there is sufficient Available Capacity for the Ancillary Access Rights. Aurizon Network must promptly provide written notice to the Transferor and Transferee of the outcomes of the Rapid Capacity Assessment including full details of the assessment: and the transfer will not take effect unless and until the Ancillary Access Rights are granted to the Transferee. Aurizon Network must provide written notice to the Transferor and Transferee that the Ancillary Access Rights are granted to the extent the Rapid Capacity Assessment determines there is sufficient Available Capacity.

~~(b)~~(d) If Aurizon Network determines (acting reasonably) a Transfer does not comply with this **clause 7.4.3** (including if there is insufficient Available Capacity under **clause 7.4.3(c)**), it must promptly provide written notice (including reasons) to the Transferor and the Transferee.

7.4.4 *Effect of Short Term Transfers*

If a Short Term Transfer meets the requirements of **clause 7.4.3** (and there is sufficient Available Capacity under **clause 7.4.3(c)**, if applicable), Aurizon Network must promptly provide the Transferor and Transferee (and their respective Operators, if any) with written notice approving the Short Term Transfer and providing that;

~~(h)~~(a) no Transfer Fee or Relinquishment Fee is payable;

~~(i)~~(b) the Transferred Access Rights will be taken to be Access Rights for ~~an~~ additional [Train Service Entitlements for the relevant](#) Train Service Type under the Transferee's nominated Access Agreement for the Transfer Period;

~~(j)~~(c) the Nominated Access Rights will be taken to have been relinquished for the Train Service Type specified in the Transfer Notice for the Transfer Period;

~~(k)~~(d) the Transferor and the Transferee will be taken to have varied the relevant [Access Agreement \(and Train Operations Deeds \(or train operations agreement\) \(if any\)\) by the issue of replacement schedules to those relevant agreements to the relevant Transferor and Transferee \(and Train Operator if applicable\)](#) to (as applicable) exclude the Nominated Access Rights and include the Transferred Access Rights for the Transfer Period; and

~~(l)~~(e) the Transferee's Access Agreement will be taken to be varied [by the issue of replacement schedules](#) to include, in respect of the Transferred Access Rights, an Access Charge Rate that is set by

reference to the same Reference Tariff as the Nominated Access Rights.

7.4.5 Effect of Long Term Transfers

- (a) If a Long Term Transfer meets the requirements of clause 7.4.3; (and the Ancillary Access Rights are granted in accordance with clause 7.4.3(b)), Aurizon Network must promptly provide the Transferor and Transferee (and their respective Operators, if any) written notice approving the Long Term Transfer and then on and from the Transfer Date (or such later date as agreed by the Transferor, Transferee and Aurizon Network):
- (i) the Nominated Access Rights ~~are removed from~~ will be taken to have been relinquished for the ~~Access Agreement identified~~ Train Service Type specified in the Transfer Notice for the Transfer Period; and
 - (ii) the Transferred Access Rights are granted will be taken to the Transferee be Access Rights for the Transfer Period Train Service Entitlements for the relevant Train Service Type under the Transferee's nominated Access Agreement ~~identified for the Transfer Period,~~
(ii) provided that each of the matters in the Transfer Notice or otherwise entered into by the Transferee clause 7.4.5(b) are complied with.
- (b) Each of the parties to a Long Term Transfer referred to in **clause 7.4.5(a)** will promptly after the approval of the Long Term Transfer ~~ensure~~ do the following:
- (i) Aurizon Network and the ~~Access Holder~~ Transferor enter into an agreement to vary the terms of the ~~Access Holder's~~ Transferor's Access Agreement to address the relinquishment of the Nominated Access Rights (including any variations to the Access Charge Rates);
 - (ii) if the Transferred Access Rights are being granted under an existing Access Agreement between Aurizon Network and the Transferee, Aurizon Network and the Transferee enter into an agreement to vary the terms of that Access Agreement to accommodate the Transferred Access Rights (including any variations to the Access Charge Rates and the term of the agreement);
 - (iii) if the Transferred Access Rights are being granted under a new Access Agreement between Aurizon Network and the Transferee, that Access Agreement:

- (A) has been negotiated and agreed in accordance with **clause 7.4.2(b)**; and
 - (B) (except for a condition in relation to the grant of the Transferred Access Rights taking effect under this **clause 7.4.5(b)**) is unconditional and binding upon the Transferee;
- (iv) with the consent of the Transferor and the Transferee, Aurizon Network and the relevant Train Operator(s) (if any) vary the relevant Train Operations Deeds (or train ~~operator~~operations agreements) (if any) by the issue of replacement schedules to those relevant agreements to the relevant Train Operator(s) (if applicable) to (as applicable) exclude the Nominated Access Rights and include the Transferred Access Rights for the Transfer Period;
 - (v) the Transferee provides Aurizon Network with security in respect of the Transferred Access Rights to the extent reasonably requested by Aurizon Network in accordance with this Undertaking; and
 - (vi) payment of a Transfer Fee (if applicable).

7.4.6 Transfer Fee and Adjustment Charges

- (a) Subject to **clause 7.4.6(d)**, a Transferor must pay a Transfer Fee to Aurizon Network if:
 - (i) a Transfer is a Long Term Transfer; or
 - (ii) both the Nominated Access Rights and the Transferred Access Rights are not for coal carrying services.
- (b) Aurizon Network must:
 - (i) calculate the Transfer Fee; and
 - (ii) notify the Transferor of the amount of the Transfer Fee and how the Transfer Fee was calculated, including details of any assumptions made when calculating the Transfer Fee and reasons for those assumptions, at the following times:
 - (iii) if a Transfer Notice has been provided;
 - (A) where no Ancillary Access Rights are required, within two (2) Business Days of the Transfer Notice; or

- (B) where Ancillary Access Rights are required, within ~~[insert]; and [QRC note: for further consideration and discussion.]~~ three (3) Business Days of Aurizon Network determining that there is sufficient Available Capacity for the Ancillary Access Rights; and
- (iv) otherwise, promptly following a request by an Access Holder considering a transfer.
- (c) The Transfer Fee is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges for the relevant Train Service Types that would have been payable for the Transfer Period assuming:
- (i) the Nominated Access Rights were not transferred; and
 - (ii) the Train Services were not operated for the Transferor for a reason other than Aurizon Network Cause,
 - ~~(iii)~~ **(PV Amount)** less the amount which is the product of the PV Amount and the Reduction Factor.
- (d) Despite any other provision in this **clause 7.4**, no Transfer Fee is payable:
- (i) where the Transfer Fee is calculated to be an amount that is less than zero; or
 - (ii) in the case of a Short Term Transfer or a Customer Initiated Transfer.
- (e) If the Transferor has not paid (or commenced a dispute in respect of the calculation of) the Transfer Fee within twenty (20) Business Days after the latest of:
- (i) the Transfer Date;
 - (ii) the date Aurizon Network gives the Transferor a notice under **clause 7.4.6(b)(iii)**;
 - (iii) the date that Aurizon Network gives the Transferor a valid tax invoice in respect of the Transfer Fee; and
 - (iv) in respect of payment only, the date any dispute regarding the calculation of the Transfer Fee is determined,

then Aurizon Network may give the Transferor a notice (**Transfer Cancellation Notice**) with respect to Nominated Access Rights specified in the Notice of Intention to Transfer in which case:

- (v) the Notice of Intention to Transfer is deemed to have never been given by the Transferor; and
 - (vi) the Nominated Access Rights that were the subject of the Notice of Intention to Transfer will not be Transferred to the Transferee.
- (f) For the avoidance of doubt, the giving of a Transfer Cancellation Notice does not prevent the Transferor from subsequently giving Aurizon Network a new Transfer Notice in respect of the same Nominated Access Rights.
- (g) Where, following a Transfer, the Transferor's Access Agreement terminates, the Transferee agrees to pay all Adjustment Charges (Transferred Adjustment Charges) that, but for the Transfer of the Access Rights, would have become payable by the Transferor in relation to Train Services operated for the Transferor prior to the commencement of the Transferee's new Access Agreement unless the Transferee and Transferor agree to some other arrangement (which is enforceable by Aurizon Network) in respect of the Transferred Adjustment Charges and provide notice of that agreement to Aurizon Network.

7.4.7 Customer Initiated Transfers

- ~~(m)~~(a) Where an Access Holder holds ~~all or part~~any of its Access Rights for the purpose of providing Train Services for a Customer, that Customer may seek to transfer those Access Rights ~~(to the extent held for the Customer's benefit)~~ to itself or to another Railway Operator so that the Customer or, if relevant, another Railway Operator, becomes the Access Holder in respect of those Access Rights provided that the Customer is not seeking any change to the origin and destination of, or the commodity for, the Access Rights (**Customer Initiated Transfer**).
- ~~(n)~~(b) Where a Customer seeks to undertake a Customer Initiated Transfer, the Customer must provide written notice to Aurizon Network and the Access Holder (**CIT Notice**) which ~~specifies:~~
- (i) specifies the date on which the Customer Initiated Transfer is to take effect (**CIT Date**) and to terminate (if any);
 - (ii) specifies the Access Rights which the Customer is seeking to transfer from the Access Holder to itself or, if relevant, another Railway Operator (**CIT Access Rights**) by describing:
 - (A) the number and type of Train Services to be transferred (which must be an even number of Train Services (each service being a

one way Train Service)) from the Access Holder; and

(B) the origin and destination of the Access Rights; and

(iii) specifies any changes to the type of Train Services which the Customer requires once the Customer Initiated Transfer takes effect; and

(iv) where the Customer Initiated Transfer is to another Railway Operator, includes the consent of that Railway Operator.

~~(e)~~(c) A Customer Initiated Transfer must meet the following conditions:

(i) the ~~Transferee~~Customer, or if relevant the Railway Operator, agrees to pay all Adjustment Charges (**Transferred Adjustment Charges**) that, but for the ~~Transfer~~transfer of the CIT Access Rights, would have become payable by the Access Holder in relation to Train Services operated for the Access Holder utilising the CIT Access Rights prior to the commencement of the Customer's (or Railway Operator's) new Access Agreement; and

(ii) the Customer (or Customers where all Customers for the origin initiate the Customer Initiated Transfer) is the sole end Customer (or Customers) of the Train Services utilising the CIT Access Rights.

~~(p)~~(d) If a Customer Initiated Transfer complies with clause ~~7.4.7(b)~~7.4.7(b) and clause ~~7.4.7(e)~~7.4.7(c), Aurizon Network must promptly provide the Customer ~~and~~(and where the Customer Initiated Transfer is to another Railway Operator, that Railway Operator) and the Access Holder written notice approving the Customer Initiated Transfer and then on and from the ~~Transfer~~CIT Date (or such later date as agreed by the Customer and Aurizon Network):

(i) the CIT Access Rights ~~are removed~~will be taken to have been relinquished for the Train Service Type specified in the CIT Notice from the Access Holder's Access Agreement; and

(ii) those CIT Access Rights ~~are granted to the Customer~~will be taken to be Access Rights for Train Service Entitlements for the relevant Train Service Type under a new Access Agreement with either the Customer or, where the Customer Initiated Transfer is to another Railway Operator, that Railway Operator on the same terms as the Access Holder's Access Agreement.

~~(a)~~(e) Each of the parties to a Customer Initiated Transfer referred to in **clause 7.4.7(d)** will promptly after the approval of the Customer Initiated Transfer do the following:

~~(iii)~~(i) Aurizon Network and the Access Holder will enter into an agreement to vary the terms of the Access Holder's Access Agreement to address the relinquishment of the CIT Access Rights (including any variations to the Access Charge Rates);

~~(iv)~~(ii) Aurizon Network and the Customer will enter into a new Access Agreement on the same terms as the Access Holder's Access Agreement except to the extent the Customer notified Aurizon Network of any changes to the types of Train Services in the CIT Notice; and

~~(v)~~(iii) the Customer will provide Aurizon Network with security in respect of the CIT Access Rights to the extent reasonably requested by Aurizon Network in accordance with this Undertaking.

~~(e)~~(f) For clarification, clauses 7.4.2, 7.4.3, 7.4.4, 7.4.5 and 7.4.6 do not apply to Customer Initiated Transfers.

7.4.8 Relinquishments

- (a) If an Access Holder wishes to relinquish any of its Access Rights it must give Aurizon Network reasonable notice of its intention (**Notice of Intention to Relinquish**).
- (b) A Notice of Intention to Relinquish must specify:
 - (i) the Access Rights, by reference to each Train Service Type, which the Access Holder intends to relinquish (**Nominated Access Rights**); and
 - (ii) the date (**Relinquishment Date**) on which the Nominated Access Rights are to be relinquished (provided that such Relinquishment Date must not be more than two (2) Years after the date on which the Access Holder gives the Notice of Intention to Relinquish to Aurizon Network).
- (c) Nominated Access Rights the subject of a Notice of Intention to Relinquish will not be relinquished until the later of:
 - (i) the date upon which the Access Holder pays the Relinquishment Fee to Aurizon Network; and
 - (ii) the Relinquishment Date.
- (d) Aurizon Network must:

- (i) calculate the Relinquishment Fee; and
- (ii) notify the Access Holder of the amount of the Relinquishment Fee and how the Relinquishment Fee was calculated, including details of any assumptions made when calculating the Relinquishment Fee and reasons for those assumptions,

at the following times:

- (iii) if the Access Holder is considering relinquishing some or all of the Access Rights but has not given Aurizon Network a Notice of Intention to Relinquish in respect of those Access Rights, promptly following a request by the Access Holder; and
- (iv) if the Access Holder has given Aurizon Network a Notice of Intention to Relinquish, not less than five (5) Business Days before the Relinquishment Date.

(e) Subject to **clause 7.4.3(k), 7.4.8(f)**, the Relinquishment Fee is the amount calculated as follows:

- (i) for coal carrying Train Services included in a Pre-Approval Date Coal Access Agreement, in accordance with that Pre-Approval Date Coal Access Agreement; or
- (ii) in all other cases, the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate TOP Charges for the relevant Train Service Types that would have been payable for the remainder of the term of the relevant Access Agreement assuming:
 - (A) the Nominated Access Rights were not relinquished; and
 - (B) the relevant Train Services were not operated for the Access Holder for a reason other than Aurizon Network Cause,

(PV Amount) less the amount which is the product of the PV Amount and the greater of:

- (C) 0.5; and
- (D) the Reduction Factor.

(f) ~~QRC Note: refer to separate mark-up of~~ Despite any other provision in this clause 7.4.8, if the payload/relinquishment provisions in Relinquishment Fee is calculated to be an amount that is less than zero, then the Standard Access Agreement and Standard Train Operations Deed. The following

~~provisions~~ Relinquishment Fee will ~~need to be updated to~~ be consistent with that mark-up and as set out in the QRC's covering submission on this topic.] zero.

~~(f)~~(g) Aurizon Network may, in accordance, and subject to compliance, with clause ~~40~~11 of the Standard Access Agreement, reduce the number of Nominated Monthly Train Services of an Access Holder for a Train Service Type if, at a point in time, the Average Annual Payload for that Train Service Type operated by the Train Operator exceeds the Maximum Payload for that Train Service Type and the Access Holder fails to respond to a notice from Aurizon Network as required by clause 11 of the Standard Access Agreement.

~~(g)~~(h) Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by **clause 7.3.4(f), 7.4.8(f)**, Aurizon Network will notify the Train Operator(s) in accordance with ~~clause 11.1(a)(ii)~~ of the Standard Train Operations Deed(s) of any changes to the Nominated Monthly Operational Rights.

~~(h)~~(i) If an Access Holder wishes to increase the Maximum Payload for any of its Train Service Types which would result in that Access Holder holding Surplus Access Rights under its Access Agreement:

(i) the Access Holder may ~~request~~with the ~~relinquishment~~consent of ~~those Surplus Access Rights~~each relevant Customer of the Access Holder (if any) or the consent of each relevant Train Operator where the Access Holder is not also the Train Operator, give Aurizon Network a notice in accordance with the terms of clause ~~44~~10 of the Standard Access Agreement specifying whether the Access Holder elects to relinquish or maintain the Surplus Access Rights for the relevant Train Service Type;

(ii) where the Access Holder elects to relinquish the Surplus Access Rights for the relevant Train Service Type, then, subject to compliance by each of the Access Holder and Aurizon Network with the terms of clause ~~44~~10 of the Standard Access Agreement, including the payment of the SAR Relinquishment Fee by the Access Holder (but for the avoidance of doubt, no other Relinquishment Fee), some or all of those Surplus Access Rights may be relinquished; ~~and~~

(iii) where the Access Holder elects to maintain the Surplus Access Rights for the relevant Train Service Type, then, subject to compliance by each of the Access Holder and Aurizon Network with the terms of

clause 10 of the Standard Access Agreement, the Surplus Access Rights for the Train Service Type will continue to form part of the Access Rights held by the Access Holder; and

~~(iii)~~(iv) Aurizon Network will notify the Train Operator of any changes to:

- (A) ~~—~~the Nominated Monthly Operational Rights;
- (B) the Maximum Payload for the relevant Train Service Type; ~~and~~
- (C) the Nominal Payload for the relevant Train Service Type; ~~and~~
- ~~(C)~~(D) the Indicative Tonnage for the relevant Train Service Type,

as a result of the increase in the Maximum Payload for a Train Service Type in accordance with ~~clause 11.2(b) of~~ the Standard Train Operations Deed.

~~(i) — Aurizon Network may, in accordance, and subject to compliance, with clause 12 of the Standard Access Agreement, give an Access Holder a notice of its intention to increase the Nominal Payload for a Train Service Type which may result in a reduction in the Nominated Monthly Train Services held by that Access Holder in respect of that Train Service Type.~~

(j) Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by ~~clause 7.3.4(i), Aurizon Network will notify the Train Operator(s) in accordance with clause 12.3(c) of the Standard Train Operations Deed(s) of any changes to the:~~7.4.8(f) a SAR Relinquishment Fee will be payable by the relevant Access Holder to Aurizon Network. For the avoidance of doubt, no other Relinquishment Fee will be payable by the relevant Access Holder to Aurizon Network.

- ~~(i) — Nominal Payload for the Train Service Type;~~
- ~~(ii) — Maximum Payload for the Train Service Type; and~~
- ~~(iii) — Nominated Monthly Train Services for the Train Service Type,~~

~~— in each case as a result of the intention to increase the Nominal Payload for the Train Service Type.~~

~~(k) — Where the Nominated Monthly Train Services of an Access Holder are reduced by Aurizon Network as contemplated by~~

~~clause 7.3.4(f) or clause 7.3.4(i) no Relinquishment Fee will be payable by the relevant Access Holder to Aurizon Network.~~

~~(l) Despite any other provision in this clause 7.4.3, if the Relinquishment Fee is calculated to be an amount that is less than zero, then the Relinquishment Fee will be zero.~~

(k) Promptly after the Commencement Date, Aurizon Network will notify all Access Holders with Access Agreements that provisions relating to payloads and relinquishments have been included in the Standard Access Agreement (being clauses 10, 11 and 13 of the Standard Access Agreement) and that, subject to receipt by Aurizon Network of a notice from an Access Holder under clause 7.4.8(l) it agrees to amend existing Access Agreements to include equivalent provisions.

(l) Where, within 60 days after receiving a notice under clause 1.1.1(a)(i), an Access Holder notifies Aurizon Network that it wishes to amend the Access Holder's Access Agreement to include a provision that is in all material respects equivalent to clause 10, 11 and 13 of the Standard Access Agreement, Aurizon Network will prepare, and provide to the Access Holder, an appropriate variation agreement to the Standard Access Agreement and, if executed by the Access Holder, execute that variation agreement.

7.4.9 General provisions

- (a) Aurizon Network must act in a diligent and timely manner in dealing with a proposed Transfer under **clause 7.4.2** or relinquishment under ~~clause 7.4.3-7.4.8~~.
- (b) If the calculation of the Transfer Fee or Relinquishment Fee changes after the date of the notice under **clause 7.4.6(b)(ii)** or ~~7.4.3(d)(ii); 7.4.8(d)(ii)~~, but before the Transferor or Access Holder (as applicable) (**Payor**) has paid the amount in the notice, then:
 - (i) Aurizon Network must advise the Payor of the revised amount and full reasons for the change in the calculation; and
 - (ii) the Payor must pay the revised amount, unless:
 - (A) it has already paid the amount in the notice; or
 - (B) the amount paid by the Payor is in excess of the revised amount, in which case Aurizon Network must refund the excess amount to the Payor or set it off against the next invoice (if any) payable by the Payor to Aurizon Network.

(c) In calculating the Transfer Fee or Relinquishment Fee, Aurizon Network may assume that each of the Access Charge Rates (as at the Transfer Date or Relinquishment Date, as applicable) will escalate, on each 1 July, at the rate of 2.5% per annum for the remainder of the term of the relevant Access Agreement.

(d) The Reduction Factor is the amount calculated as follows:

(i) if:

- (A) a new Access Holder or a Transferee has executed an Access Agreement (or a variation to an existing Access Agreement) in respect of Access Rights that Aurizon Network could not have provided without using the whole or part of the Nominated Access Rights; and
- (B) Aurizon Network's provision of the Access Rights under that Access Agreement commenced, for a new Access Holder:

- (1) who is not a Transferee, after Aurizon Network was given the Notice of Intention to Relinquish, but prior to the payment to it of the Relinquishment Fee; or
- (2) who is a Transferee, on and from the Transfer Date,

then:

(C) for the purposes of **clauses 7.4.2(t) and 7.4.3(e)(ii), 7.4.6(d) and 7.4.8(e)(ii)**, if:

- (1) the relevant Train Services of the existing Access Holder and of the new Access Holder or Transferee are coal carrying Train Services; and
- (2) the Transferee's or new Access Holder's Train Services that will use the Nominated Access Rights will operate predominantly in and have a Nominated Unloading Facility in the same Coal System as the Train Services of the existing Access Holder that used those Nominated Access Rights,

an amount calculated as follows:

$$\text{TOPB} / \text{TOPA}$$

where:

TOPA is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would have been payable for the remainder of the term of the Access Agreement (**Remainder of the Original Term**) or for a Transfer, the take or pay amount that would have been payable for the Transfer Period if the Nominated Access Rights were not relinquished but the existing Access Holder did not operate the relevant Train Services for a reason other than Aurizon Network Cause; and

TOPB is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the take or pay amount that would be payable in accordance with the new Access Holder's or Transferee's Access Agreement (in relation to the whole or part of the Nominated Access Rights) if the new Access Holder's or Transferee's Train Services using the Nominated Access Rights were not operated by or for the new Access Holder or Transferee during the same period as the Remainder of the Original Term or for a Transfer, the take or pay amount that would have been payable for the Transfer Period for a reason other than Aurizon Network Cause; or

(D) if **clause 7.4.49(d)(i)(C)** does not apply, an amount calculated as follows:

$$A / B$$

where:

A is the annual train kilometres over the Common Corridor attributable to the new Access Holder's or Transferee's Train Services in respect of which Access Rights could not have been provided without using the whole or part of the Nominated Access Rights; and

B is the annual train kilometres over the Rail Infrastructure attributable to the Train Services operated under the Nominated Access Rights,

provided that to the extent that the new Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service is less than the existing Access Holder's average contribution to Common Costs per train kilometre for its relevant Train Service, the Reduction Factor will be decreased in proportion to that relative contribution; and

- (ii) if **clause 7.4.49(d)(i)** does not apply, zero (0).
- (e) If the Reduction Factor is calculated in accordance with **clause 7.4.49(d)** and the Reference Tariff in relation to the Nominated Access Rights includes a System Discount or System Premium, then the Transfer Fee or Relinquishment Fee, as applicable, must be further adjusted by Aurizon Network to account for any consequential decrease or increase (as applicable) in the System Discount or System Premium (as applicable) that would otherwise result in Aurizon Network under-recovering or over-recovering (as applicable) amounts from the Access Holder due to the application of the System Discount or System Premium (as applicable).
- (f) Aurizon Network must maintain, on its Website, worked examples of the calculation of a Relinquishment Fee.
- (g) The Access Holder may dispute, in accordance with the dispute provisions under the Access Agreement, the calculation of the Transfer Fee or Relinquishment Fee notified by Aurizon Network to the Transferor or the Access Holder (as applicable) under **clause 7.4.6(b)(ii)** or **7.4.3(d)(ii)****7.4.8(d)(ii)** (including any assumptions made by Aurizon Network).

7.5 Mutually Exclusive Access Applications

7.5.1 Notification and assistance

- (a) Aurizon Network will identify Access Applications that are or have become Mutually Exclusive Access Applications and will notify an Access Seeker as soon as practicable after Aurizon Network identifies that the Access Seeker's Access Application is or has become a Mutually Exclusive Access Application.
- (b) Aurizon Network will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it is not a Mutually Exclusive Access Application.

7.5.2 Queuing mechanism

- (a) This **clause 7.5.2**:
 - (i) applies in respect of Mutually Exclusive Access Applications or where this Undertaking otherwise

specifies that an Access Seeker has joined the Queue;
and

- (ii) does not apply to:
 - (A) an Access Application for Access Rights that can only be granted subject to an Expansion creating additional Available Capacity; or
 - (B) in relation to the allocation of Available Capacity that:
 - (1) is subject to a Provisional Capacity Allocation under **Part 8** (including a Provisional Capacity Allocation arising from a reallocation under **Part 8**, for example under **clause 8.2.3(b)**);
 - (2) is or was subject to a Provisional Capacity Allocation that Aurizon Network, in accordance with **Part 8**, is seeking to reallocate following a withdrawal of that Provisional Capacity Allocation; or
 - (3) is or was subject to a Provisional Capacity Allocation in respect of which the relevant Access Seeker has entered into an Access Agreement, Access Conditions or User Funding Agreement relating to the corresponding Access Rights; or
 - (C) an Access Application for Access Rights which are sought according to a Transfer under **clause 7.4.2** or in accordance with the terms of an Access Agreement; or
 - (D) a Customer Initiated Transfer.
- (b) In allocating Available Capacity, Aurizon Network will prioritise Access Seekers in a chronological queue based on the date when Aurizon Network is deemed to have received each Access Seeker's Access Application as outlined in **clause 4.4(c) (Queue)**, except that:
 - (i) a Renewing Access Seeker will be placed ahead of all other Access Seekers in the Queue in respect of the Access Rights the subject of the Renewal, but only to the extent that the Renewing Access Seeker complies with **clause 7.3(h)(ii)(C)**;
 - (ii) in respect of Conditional Access Rights where:

- (A) Aurizon Network has notified relevant Access Holders in accordance with **clause 8.9.2** of its Reduced Conditional Access Rights; and
- (B) an Access Application is deemed to have been lodged in respect of the reduction as a result of the Conditional Access Holder providing notice to Aurizon Network under **clause 8.9.3(a)(ii)**; and
- (C) either:
 - (1) there is Available Capacity which is capable of satisfying that Access Application in respect of the reduction; or
 - (2) an Affected Access Holder elects to seek to fund an Expansion in accordance with **clause 8.9.3(e)**,

then:

- (D) the Conditional Access Holder and Affected Access Holder (as applicable) will be given priority in the Queue behind any Renewals in respect of the Access Application for that reduction; and
 - (E) where there are two (2) or more Conditional Access Holders or Affected Access Holders (as applicable) affected, each Conditional Access Holder and Affected Access Holder (as applicable) will be treated as having the same position in the Queue for the purpose of negotiating and allocating the Available Capacity.
- (c) Access Applications to be included in the Queue that are Competing Applications will be collectively positioned in the Queue in accordance with **clause 7.5.2(b)** as though they were a single application received by Aurizon Network, for the purposes of the Queue, at the time the earliest of the Competing Applications was deemed to be received by Aurizon Network.

- (d) An Access Seeker will be removed from the Queue if:
- (i) the Access Seeker's Access Application has been withdrawn or the Negotiation Period for an Access Seeker has ceased in accordance with **Part 4**;
 - (ii) Aurizon Network has determined not to allocate Available Capacity to an Access Seeker as a result of the operation of **clause 7.2.1**;
 - (iii) the Access Seeker is a Conditional Access Holder and it has not provided notice to Aurizon Network under **clause 8.9.3(a)(ii)**; or
 - (iv) the Access Seeker is an Affected Access Holder and it has made an election under **clause 8.9.3(e)(i)**.
- (e) Aurizon Network must promptly notify:
- (i) following receipt of a notification of intent from an Access Seeker under **clause 4.7**, that Access Seeker of the initial position of their Access Application in the Queue; and
 - (ii) thereafter, of any change to that position in the Queue and the reason(s) for that change.
- (For clarity, the timing of Aurizon Network's notification under **clause 7.5.2(e)(i)** does not affect the position of an Access Seeker's Access Application in the Queue).
- (f) An Access Seeker may assign its position in the Queue to another party who:
- (i) is a Railway Operator and the Access Seeker has entered into an agreement with that Railway Operator to provide the Train Services and requires that Railway Operator to hold the Access Rights;
 - (ii) is a Related Party of the Access Seeker and the assignment is not a Material Variation; or
 - (iii) has acquired the whole or a substantial part of the assets of the Access Seeker.
- (g) If a dispute concerning positions in the Queue or any other aspect of Aurizon Network's management of the Queue is referred for resolution under **Part 11**, Aurizon Network must not change an Access Seeker's position in that Queue unless and until that Dispute is resolved in favour of such a change in position.

7.5.3 Mutually Exclusive Access Application

- (a) If Aurizon Network has received Mutually Exclusive Access Applications for Available Capacity, then Aurizon Network will

enter into negotiations for Access Agreements (including any agreements to allow Access Rights to be exercised or created – for example, a Rail Connection Agreement) for the Available Capacity for those Access Applications that meet the requirements of **Part 4**.

- (b) Subject to the terms of this Undertaking and for the purposes of **clause 7.5.2(b)**, in allocating Available Capacity, Aurizon Network may offer that Available Capacity simultaneously to each Access Seeker in the Queue who has an Access Application for Access Rights that correspond with the Available Capacity, which offer must specify:
- (i) the position in the Queue of the relevant Access Seeker's Access Application in comparison to all other Access Seekers in the Queue who have been simultaneously offered the Available Capacity;
 - (ii) the timeframe in which the relevant Access Seeker may notify Aurizon Network that it wishes to accept the offer of allocation of all or part of the Available Capacity being offered; and
 - (iii) if applicable, that the offer is subject to other Access Seekers having Access Applications for Access Rights that correspond with the Available Capacity ahead of the relevant Access Seeker in the Queue being allocated the Available Capacity; and
 - (iv) that the offer is subject to the Access Seeker executing an Access Agreement within 20 Business Days of it accepting the offer in accordance with **clause 7.5.3(b)(ii)**.
- (c) Where Aurizon Network has allocated Available Capacity under this **clause 7.5.3** and none of the remaining Access Seekers can be granted the Access Rights sought as there is insufficient Available Capacity to do so, then negotiations with those remaining Access Seekers are suspended and **clause 4.8** will apply.

7.6 Capacity resumption

- (a) If an Access Holder for any reason other than the occurrence of a Force Majeure Event or an Aurizon Network Cause does not:
- (i) for Cyclic Traffic, cause the operation of at least eighty five percent (85%) of the Train Services allowed under the Access Holder's Train Service Entitlement over a period of four (4) consecutive Quarters; or
 - (ii) for Timetabled Traffic, cause the operation of a Train Service on a Scheduled Train Path seven (7) or more

(not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular Scheduled Train Path exists,

(Resumption Trigger Event) Aurizon Network may, within forty (40) Business Days after the Resumption Trigger Event, give that Access Holder notice (**Information Request Notice**) of:

- (iii) reasonable details of the Resumption Trigger Event;
- (iv) the Access Rights for the Train Service Type which Aurizon Network considers to be underutilised Access Rights for the Train Service Type in respect of the Resumption Trigger Event;
- (v) that Aurizon Network is considering resuming the whole or part of the underutilised Access Rights for the Train Service Type to the extent of that underutilisation;
- (vi) requesting the Access Holder to demonstrate a sustained requirement for the underutilised Access Rights; and
- (vii) reasonable details of Aurizon Network's reasonable expectation of a sustained alternative demand for the Capacity used by the Access Rights in question.

For clarity:

- (viii) nothing in this **clause 7.6(a)** requires Aurizon Network to disclose any information that is not relevant to the Information Request Notice in respect of the Resumption Trigger Event or information that is commercially sensitive to the Aurizon Group; and
 - (ix) Aurizon Network will not be in breach of its obligations under **Part 3** when making a disclosure under this **clause 7.6(a)** provided that the information disclosed is relevant to the resumption in question.
- (b) Aurizon Network must not give an Information Request Notice in respect of a Resumption Trigger Event for a Train Service Type specified in **clause 7.6(a)** more than forty (40) Business Days after the end of the applicable four (4) consecutive Quarters referred to in **clause 7.6(a)**.
- (c) If Aurizon Network gives an Access Holder an Information Request Notice within the timeframe set out in **clause 7.6(a)**, the Access Holder must:
- (i) within fifteen (15) Business Days after Aurizon Network gives the Information Request Notice to the Access Holder, provide to Aurizon Network the

information requested in the Information Request Notice; and

- (ii) if required by Aurizon Network, meet with Aurizon Network to discuss the suspected Resumption Trigger Event for the applicable Train Service Type.

(d) If an Information Request Notice is given to an Access Holder and:

- (i) the Access Holder has not demonstrated, to Aurizon Network's reasonable satisfaction, a sustained requirement for the Access Rights that were not utilised; and
- (ii) Aurizon Network has demonstrated that it has a reasonable expectation of a sustained alternative demand for the Capacity used by the Access Rights in question,

then Aurizon Network may give a further notice (**Resumption Notice**) confirming the Resumption Date and that it will reduce that Access Holder's Access Rights from the Resumption Date by:

- (iii) for Cyclic Traffic, reducing the Access Holder's Access Rights to the extent that the Access Holder's Train Service Entitlement was underutilised; or
- (iv) for Timetabled Traffic, deleting the Scheduled Train Path referred to in **clause 7.6(a)(ii)** from the Access Holder's Train Service Entitlement.

(e) A Resumption Notice must:

- (i) not be given before the end and not more than twenty (20) Business Days after the end of the fifteen (15) Business Day period in **clause 7.6(c)(i)**; and
- (ii) specify:

- (A) full details of the Access Rights for the Train Service Type to be resumed (**Resumed Access Rights**); and
- (B) the date on which the resumption will take effect (which must be at least ten (10) Business Days after the Resumption Notice is given to the Access Holder) (**Resumption Date**).

(f) If a valid Resumption Notice is given under this **clause 7.6**, the underutilised Access Rights for the Train Service Type will cease to form part of the Access Rights for the Train Service Type on

and from the Resumption Date (other than for the purpose of calculating any TOP Charges that are payable as a result of the non-utilisation of any of the Resumed Access Rights prior to the Resumption Date).

- (g) Aurizon Network may withdraw a Resumption Notice prior to the later of the Resumption Date and fourteen (14) days after the determination of any dispute in relation to the Resumption Notice.
- (h) If Aurizon Network resumes an Access Holder's Access Rights in accordance with this **clause 7.6**, then the Access Charge payable by the Access Holder will be varied in accordance with the terms of the relevant Access Agreement and the Access Agreement will be varied accordingly.
- (i) If there is a dispute in connection with a decision by Aurizon Network to:
 - (i) issue an Information Request Notice and the Access Holder considers that Aurizon Network had insufficient grounds to do so under **clause 7.6(a)**; and
 - (ii) resume an Access Holder's Access Rights in accordance with this **clause 7.6**,

then Aurizon Network must not implement the resumption until the dispute resolution process has been concluded, and then only to the extent that such resumption is consistent with the outcomes of the dispute resolution process.

Part 12 Definitions (extract)

Ancillary Access Rights	Has the meaning given in clause 7.4.2(a)(iii)(C)7.4.2(a)(iii)(C) .
CIT Access Rights	Has the meaning given in clause 7.4.7(b)(ii)(i) .
CIT Date	Has the meaning given in clause 7.4.7(b)(i) .
CIT Notice	Has the meaning given in clause 7.4.7(b) .
Customer Initiated Transfer	Has the meaning given in clause 7.4.7(a) .
Long Term Transfer	Any Transfer which is not a Short Term Transfer. <u>The meaning given to that term in clause 7.4.1(d)</u> .
Mutually Exclusive Access Applications	In respect of: <ul style="list-style-type: none"> (a) two or more Access Applications where if Aurizon Network grants Access Rights in respect of one or more of those Access Applications then Aurizon Network will have insufficient Available Capacity to grant Access Rights in respect of the remaining Access Applications; and (b) an<u>one or more</u> Access Application(s) and a proposed Transfer which requires Ancillary Access Rights, where if Aurizon Network grants Access Rights in respect of the Access Application(s) then Aurizon Network will have insufficient Available Capacity to grant the Ancillary Access Rights in respect of the Transfer.
Short Term Transfer <u>Port Precinct</u>	A Transfer: <ul style="list-style-type: none"> (c) for a<u>The meaning given to that</u> term of less than or equal to 2 years; and (d) in respect of which the Transferee (or its Customer) has an existing Access Agreement under which the Transferred Access Rights can be added in accordance with clause 7.4.2(a)(v)(A); and (e) the origin for the Transferred Access Rights is on the same Mainline Path as the Nominated Access Rights, but excluding a Customer Initiated Transfer. 7.4.1(d).
Transfer <u>SAR Relinquishment Fee</u>	The transfer of all or part of an Access Holder's <u>For the Surplus</u> Access Rights (or the Access Rights held for the benefit of the Customer) for a term which is no longer than the remaining term of the <u>Train Service Type means the amount calculated in accordance with clause 13.6 of the Standard</u> Access Agreement but excluding:

~~(f) — a Customer-Initiated Transfer; or~~

~~(g) a change in for the nomination of a Train Operator by an Surplus Access Holder. — Rights for the Train Service Type.~~

Short Term Transfer

The meaning given to that term in clause 7.4.1(d).

Transfer

The meaning given to that term in clause 7.4.1(d).

Transfer Notice

The meaning given to that term in ~~clause 7.4.3(a)~~ **7.4.2(a).**

Annexure 5 – Part 7A marked up against UT5

Part 7A: Capacity

7A.1 Intent

This **Part 7A** sets out various provisions relating to the provision of Existing Capacity, Planned Capacity, Committed Capacity and Available Capacity in the Rail Infrastructure – in particular:

- (a) **clause 7A.2** describes Aurizon Network's obligations in relation to Network Management Principles and System Rules;
- (b) **clause 7A.3** provides that Aurizon Network will participate (to a reasonable degree) in Supply Chain coordination including processes (to the extent reasonable) in relation to the review of System Operating Parameters;
- (c) **clauses 7A.4** and **7A.5** confirm that Aurizon Network will:
 - (i) undertake Capacity Assessments;
 - (ii) conduct annual reviews of System Operating Parameters and Capacity; and
- (d) **clause 7A.6** describes Aurizon Network's obligations in relation to its proposed Network Development Plan.

7A.2 Network Management Principles

7A.2.1 *Compliance with Network Management Principles*

- (a) Aurizon Network must:
 - (i) perform scheduling, Network Control and associated services; and
 - (ii) provide Capacity related information to Access Holders and Train Operators (in respect of the Access Rights to which its Train Operations Deed relates),in accordance with the Network Management Principles.
- (b) Any dispute in relation to compliance with the Network Management Principles will be dealt with in accordance with **Part 11**, except to the extent the dispute arises in respect of rights under an Access Agreement or Train Operations Deed in which case the dispute will be dealt with in accordance with the dispute resolution process set out in the relevant agreement.

7A.2.2 *Nature of the System Rules*

- (a) The System Rules specify in greater detail the way in which Aurizon Network must plan, schedule and control the operation of Train Services on a single or combination of Coal Systems in accordance with the Network Management Principles.

- (b) The System Rules must be published on the Website.

7A.2.3 Making the initial System Rules for a Coal System

- (a) Where System Rules do not already exist for a Coal System (whether individually or together with other Coal Systems), then within two (2) Months of the Approval Date or the approval of a new Coal System under this Undertaking, Aurizon Network must:
 - (i) develop the initial System Rules for that Coal System including, where Aurizon Network elects to do so:
 - (A) together with one (1) or more other Coal Systems; or
 - (B) by way of amending existing System Rules to apply in relation to that Coal System; and
 - (ii) for a period of no longer than three (3) Months, consult with Access Holders, Railway Operators and Access Seekers whose Train Services will be affected by the System Rules or amended System Rules, as applicable, and any affected Infrastructure Service Providers, in relation to the introduction of the System Rules or amended System Rules, as applicable.
- (b) Within one (1) Month after the completion of the consultation process under **clause 7A.2.3(a)**, Aurizon Network must:
 - (i) prepare the proposed System Rules or amended System Rules, as applicable, (**Draft System Rules**) having regard to the equitable operation of the Draft System Rules across Access Holders and Access Seekers (should they become Access Holders) and their Customers and the terms of Access Agreements;
 - (ii) in preparing the Draft System Rules, seek to ensure that they do not conflict with the Network Management Principles, the System Operating Parameters or any provision of this Undertaking; and
 - (iii) submit the Draft System Rules to the QCA for approval.

7A.2.4 Reviewing and amending the System Rules

- (a) This **clause 7A.2.4**:
 - (i) does not apply to an amendment of System Rules referred to under **clause 7A.2.3(a)(i)(B)**; but
 - (ii) applies to a review of the System Rules developed under **clause 7A.2.3**.
- (b) Without limiting Aurizon Network's right to review any System Rules from time to time, Aurizon Network must review the System Rules

immediately upon Aurizon Network becoming aware of the occurrence of any of the following events:

- (i) Capacity in the relevant Coal System (or, if more than one (1), Coal Systems in aggregate) to which the relevant System Rules apply changes by greater than 10% of the existing total number of relevant Train Paths on a Monthly basis;
- (ii) Yearly Cyclic Traffic or Timetabled Traffic (as applicable) changes by greater than 10% of the previous Year's number of relevant Train Paths;
- (iii) a new loading facility, port terminal or unloading facility becomes (or is reasonably likely to become) connected to a relevant Coal System; or
- (iv) a material change to the System Operating Parameters or the Network Management Principles which subsequently affects the operations of the System Rules,

and despite whether or not any of the events outlined in **clause 7A.2.4(b)** have occurred, at least once per Year.

- (c) If Aurizon Network has reviewed the System Rules, then Aurizon Network must:
 - (i) notify the QCA (who may, if it determines necessary, publish the information provided on the QCA's website) and each of the following:
 - (A) Access Holders and Access Seekers and their Customers (but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details) whose Train Services will be affected by any amendments necessary as a result of such review;
 - (B) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
 - (C) affected Infrastructure Service Providers;
 - (D) affected Railway Operators,(collectively, the **Affected Persons**) of the following matters:
 - (E) the outcome of the review and the necessity (or otherwise) to amend the System Rules;
 - (F) if the System Rules are to be amended, the proposed amendments (**Proposed Amendments**);

- (G) reasons for the Proposed Amendments or the decision to not amend the relevant System Rules; and
 - (H) details of the impact the Proposed Amendments will or may have on the delivery of each Affected Person's Train Service Entitlements;
 - (ii) consult with the Affected Persons;
 - (iii) have regard to the equitable operation of the System Rules across Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders) and the terms of Access Agreements;
 - (iv) ensure that the amendments do not conflict with the Network Management Principles, System Operating Parameters or any provision of this Undertaking; and
 - (v) ensure that the amendments are appropriate having regard to the matters listed in section 138(2) of the Act.
- (d) If a person (acting reasonably and in good faith):
- (i) disagrees with the outcome of Aurizon Network's review of the System Rules notified under **clause 7A.2.4(c)(i)**; or
 - (ii) considers that the Proposed Amendments:
 - (A) would not, as a whole, operate equitably amongst Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders); or
 - (B) are inconsistent with this Undertaking (including the Network Management Principles and System Operating Parameters); or
 - (C) are inappropriate having regard to the matters listed in section 138(2) of the Act,

then that person may, within twenty (20) Business Days after being given a notice under **clause 7A.2.4(c)(i)** or the publication on the QCA website, provide a written submission to Aurizon Network identifying its view with respect to **paragraphs (A) to (C)**.
- (e) Immediately following the expiration of the time period under **clause 7A.2.4(d)**, Aurizon Network must:
- (i) notify the Affected Persons and any person who provides Aurizon Network with a written submission under **clause 7A.2.4(d)** that the Proposed Amendments are being referred to the QCA for approval;

- (ii) submit the Proposed Amendments to the QCA for approval; and
- (iii) provide the QCA:
 - (A) all submissions provided to Aurizon Network within the time period under **clause 7A.2.4(d)**;
 - (B) an assessment of those submissions by Aurizon Network;
 - (C) any variations to the Proposed Amendments that Aurizon Network proposes to make after taking into account the submissions (**Variations**); and
 - (D) details of the impact the Proposed Amendments and Variations will or may have on the delivery of each Affected Person's Train Service Entitlements.

7A.2.5 Approval of System Rules

- (a) If Aurizon Network has submitted:
 - (i) Draft System Rules to the QCA under **clause 7A.2.3(b)(iii)**; and
 - (ii) Proposed Amendments (or Variations, if any) to the QCA under **clause 7A.2.4(e)(ii)**,
(Proposed System Rules, for the purpose of this **clause 7A.2.5**) the QCA must:
 - (iii) publish the Proposed System Rules on its website; or
 - (iv) assess the Proposed System Rules (together with any submissions provided to Aurizon Network under **clause 7A.2.4(d)**); and
 - (v) seek submissions in respect of the Proposed System Rules.
- (b) The QCA may approve the Proposed System Rules only if the QCA:
 - (i) is satisfied they are consistent with this Undertaking (including the Network Management Principles);
 - (ii) is satisfied that they are in accordance with the notice given under **clause 7A.2.5**, if any; and
 - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act.
- (c) If the QCA approves the Proposed System Rules, it must give notice to Aurizon Network of its approval, specifying the date on which the proposed amendments will take effect.
- (d) If the QCA refuses to approve the Proposed System Rules, then the QCA will give Aurizon Network a notice:
 - (i) stating the reasons for its refusal; and

- (ii) requiring Aurizon Network to amend the Proposed System Rules to address the matters in the QCA's reasons or submit additional information, to address the matters in the QCA's reasons within twenty (20) Business Days after the giving of that notice (or such other period as the QCA may in its absolute discretion determine).
- (e) The QCA may develop System Rules consistent with this Undertaking if:
 - (i) Aurizon Network does not submit Draft System Rules in accordance with **clause 7A.2.3(b)(iii)**;
 - (ii) Aurizon Network does not resubmit the Proposed System Rules in accordance with **clause 7A.2.5(d)(ii)**; or
 - (iii) the QCA refuses to approve the Proposed System Rules that were resubmitted in accordance with **clause 7A.2.5(d)(ii)**.
- (f) If the QCA develops Draft System Rules under **clause 7A.2.5(d)** despite **clause 7A.2.5(a)**, the QCA must:
 - (i) publish the Draft System Rules on its website;
 - (ii) invite persons to make submissions on the Draft System Rules to the QCA within a reasonable time specified by the QCA; and
 - (iii) consider any submissions it receives within the time specified.
- (g) **Clauses 7A.2.5(a) to 7A.2.5(d)** will:
 - (i) apply to any Proposed System Rules resubmitted to the QCA under **clause 7A.2.5(d)(ii)**;
 - (ii) apply to any additional information submitted to the QCA under **clause 7A.2.5(d)(ii)** (including where the Proposed System Rules are not amended) as though Aurizon Network were resubmitting the same Proposed System Rules but with the additional information; and
 - (iii) continue to apply until the QCA approves the Proposed System Rules for the relevant Coal System.
- (h) If the QCA approves the Proposed System Rules, then:
 - (i) the relevant System Rules take effect on the date of the approval or such later date as specified in the System Rules or the approval;
 - (ii) in the case of Proposed Amendments and Variations, the relevant System Rules are taken to have been amended in accordance with the Proposed Amendments and Variations;

- (iii) the QCA must give Aurizon Network a notice providing the reasons for its decision; and
 - (iv) Aurizon Network must publish the amended System Rules on its Website.
- (i) Nothing in **clause 7A.2.5** prevents Aurizon Network from seeking subsequent amendments to any System Rules even if the QCA has previously refused to approve Proposed Amendments in relation to those System Rules.

7A.2.6 General provisions

- (a) For the purposes of this **clause 7A.2**:
- (i) the amending of the System Rules includes replacing or removing the System Rules; and
 - (ii) Proposed Amendments includes a proposed replacement or removal of System Rules.
- (b) The System Rules may be withdrawn by Aurizon Network only with the approval of the QCA.
- (c) If the QCA considers that the System Rules require amendment, the QCA may require Aurizon Network to submit replacement System Rules within a reasonable period advised by the QCA, in which case **clause 7A.2.5** applies.

7A.3 Supply Chain coordination

- (a) Aurizon Network must (to the extent it is reasonable to do so) participate in:
- (i) each Supply Chain Group in relation to:
 - (A) the coordination and effective performance of a relevant Supply Chain; and
 - (B) if applicable, the development of a Supply Chain Master Plan; and
 - (ii) discussions with other service providers and participants in the Supply Chain with a view to the coordination of maintenance activities in the relevant Supply Chain.
- (b) Without limiting the nature of Aurizon Network's participation, if requested by a Supply Chain Group (acting reasonably), Aurizon Network must if it has capacity to do so and believes the request is reasonable:
- (i) participate in the development of and undertake regular reviews of that Supply Chain Group's master plan;
 - (ii) review options for the development of Capacity being investigated by the Supply Chain Group and advise if and how any option is likely to impact on the Network

- Management Principles, System Operating Parameters or System Rules for the relevant Coal System; and.
- (iii) if requested by the Supply Chain Group, investigate operational changes that could increase Capacity in the relevant Coal System, including by conducting a review of the relevant System Operating Parameters under **clause 7A.5**.
- (c) Subject to the terms of this Undertaking, Aurizon Network must, in respect of each Supply Chain,:
- (i) reasonably facilitate an appropriate balance between cooperation between all elements of Supply Chains (in respect of which Access forms a part) to seek to maximise the performance of those Supply Chains and the other matters set out in **clause 2.2** of this Undertaking; and
 - (ii) act in a way that is not inconsistent with **Part 2**.
- (d) If:
- (i) a Supply Chain Group identifies an operational change to its Coal System which change may improve Capacity in the relevant Coal System; and
 - (ii) Aurizon Network decides not to implement the change, Aurizon Network will provide the Supply Chain Group with its reasons for not implementing the change.
- (e) Aurizon Network will not be obliged to:
- (i) undertake any activity referred to in **clause 7A.3(a)** or **clause 7A.3(b)** unless the reasonable cost of undertaking that activity is recoverable by Aurizon Network on the terms of this Undertaking; and
 - (ii) make any binding commitment or to take any action as a result of its participation and discussions referred to in **clause 7A.3(a)**.

7A.4 Capacity assessments

7A.4.1 [not used]

7A.4.2 Capacity Assessment

Aurizon Network must undertake a static or dynamic (as appropriate) Capacity Analysis and determine the Capacity_u:

for each Coal System, [and if that Coal System has one or more existing Expansion Tariffs, separately for each relevant Expansion:](#)

- (i) on each anniversary of the date the QCA published Aurizon Network's Baseline Capacity Assessment Report under the 2016 Undertaking; and [QRC Note: a baseline capacity](#)

assessment report may be required for any existing Expansions which are subject to an Expansion Tariff, where this has not already been undertaken (eg WIRP).]

- (ii) ~~for a Coal System~~ if the System Operating Parameters are varied in a way that Aurizon Network, acting reasonably, considers can be expected to materially change the Existing Capacity in that Coal System or Expansion.

(b) A Capacity Assessment must:

- (i) include consideration of outcomes of any consultation by Aurizon Network with Access Holders and Access Seekers (and their Customer and Train Operator, as applicable) for Train Services operating in that Coal System or Expansion in relation to that assessment;
- (ii) include the STP for each Coal System or Expansion;
- (iii) include consideration of outcomes of any consultation with any Supply Chain Group for the relevant Coal System or Expansion;
- (iv) include consideration of the following factors:
 - (A) the terms of Access Agreements relating to Train Services operating in that Coal System or Expansion; and
 - (B) the interfaces between the Rail Infrastructure and other facilities forming part of, or affecting, the relevant Supply Chain or Expansion; and
- (v) utilise the same modelling methodology utilised by Aurizon Network in its previous Capacity Assessment (or Baseline Capacity Assessment, if applicable), or if that methodology is not utilised, include a statement of reasons for the departure(s) from that methodology; and
- (vi) include a report that sets out Aurizon Network's assumptions ~~-affecting Capacity~~ and relied upon for the Capacity Assessment.

Aurizon Network will promptly make the outcomes of a Capacity Assessment, including Aurizon Network's assumptions affecting Capacity and relied upon for the Capacity Assessment (including the STP for each Coal System or Expansion), **(Preliminary Capacity Assessment Report)** available to the QCA, Access Holders, Access Seekers and, if applicable, Customers.

(c) If, within thirty (30) Business Days after Aurizon Network makes a Preliminary Capacity Assessment Report available in accordance with **clause 7A.4.2(c)**, either:

- (i) the QCA; or
- (ii) the Access Holders (or Customers):
 - (A) for at least 60% of the Train Paths in relation to a Coal System or Expansion (as determined in accordance with **clause 7A.4.2(f)**); or
 - (B) representing in number 60% of the Access Holders (or Customers) with Access to the Coal System or Expansion (as determined in accordance with **clause 7A.4.2(g)**),

notify Aurizon Network that they wish to have the Capacity Assessment (including the STP) in relation to that Coal System or Expansion reviewed ~~audited~~ by an independent expert, then:

- (iii) Aurizon Network must engage an appropriately qualified and experienced expert acceptable to the QCA to review ~~audit~~ the Capacity Assessment (including the STP);
 - (iv) **clause 7A.4.4** applies; and
 - (v) Aurizon Network will, after receiving the expert's ~~final audit report~~ report, promptly provide the expert's ~~final audit~~ report to:
 - (A) the QCA on an unredacted basis; and
 - (B) Access Holders, Access Seekers and, if applicable, Customers:
- (1) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the expert's ~~final audit~~ report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the expert's ~~final audit~~ report), on an unredacted basis; and

- (2) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations, Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the expert's ~~final audit~~ report on an unredacted basis;
- (3) in respect of the information for which consent is obtained under **clause 7A.4.2(d)(v)(B)(2)**, Aurizon Network is required to disclose the information contained in the expert's ~~final audit~~ report on an unredacted basis; and
- (4) in respect of the information for which consent is not obtained under **clause 7A.4.2(d)(v)(B)(2)**, Aurizon Network is required to disclose the information contained in the expert's ~~final audit~~ report:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.

- (d) Within 20 Business Days of the provision of the expert's ~~final audit~~ report under **clause 1.1.1(c)(v)**, Aurizon Network will make available to the QCA, Access Holders, Access Seekers and, if applicable, Customers its response to that report, which shall, in respect of each recommendation in that report, provide:
 - (i) Aurizon Network's view as to whether it is a reasonable recommendation;
 - (ii) if Aurizon Network considers that it is not a reasonable recommendation, Aurizon Network's reasons for that view; and
 - (iii) if Aurizon Network considers that it is a reasonable recommendation, how Aurizon Network intends to modify its ~~modelling process~~ [Capacity Assessment](#) to take account of that recommendation.

(e) Aurizon Network will amend the Preliminary Capacity Assessment Report to the extent required to take account of any modifications ~~to the modelling process~~ that may be made by Aurizon Network in accordance with **clause 1.1.1(d)(iii)**.

(f) If an expert's report under **clause 1.1.1(c)(v)** determines that there is no Available Capacity and Aurizon Network subsequently seeks to contract any Capacity in respect of that Coal System or Expansion, Aurizon Network must provide prior written notice to each Access Holder in respect of the relevant Coal System or Expansion, as well as the QCA.

~~(f)~~(g) For the purpose of **clause 7A.4.2(d)(ii)(A)**, the relevant Train Paths must be determined in a manner consistent with the following principles:

- (i) the Train Paths for an Access Holder only include those Train Paths for the Access Holder relating solely to the relevant Coal System or Expansion;
- (ii) the Train Paths must be calculated as at the date on which Aurizon Network receives a notice under **clause 7A.4.2(d) (Notice Date)**;
- (iii) subject to **clause 1.1.1(g)(iv)**, the Train Paths must be determined (based on the Access Rights specified in that Access Agreement) for a 12 Month period starting on the Notice Date; and
- (iv) where:
 - (A) the Access Agreement is due to expire less than twelve (12) Months after the Notice Date; and
 - (B) there has been a Renewal in relation to the relevant Access Rights under that Access Agreement,

the Train Paths must be determined (based on the Access Rights specified in the relevant Access Agreements) for a twelve (12) Month period starting on the Notice Date.

~~(g)~~(h) For the purpose of **clause 7A.4.2(d)(ii)(B)**, the number of Access Holders (or Customers) with Access Rights in the Coal System or in respect of the Expansion must be determined in a manner consistent with the following principles:

- (i) an Access Holder who holds Access to the Coal System or Expansion on behalf of more than one Customer it will have the number of votes equal to the number of Customers in that Coal System or

Expansion for which it holds the Access Rights under the relevant Access Agreements;

- (ii) if an Access Holder or Customer is a Related Party of another Access Holder or Customer in that Coal System or in respect of that Expansion, it will be counted once only;
- (iii) the number of Access Holders or Customers must be calculated as at the date on which Aurizon Network receives a notice under **clause 7A.4.2(d) (Notice Date)**;
- (iv) subject to **clause 1.1.1(h)(v)**, the number of Access Holders or Customers must be determined for a twelve (12) Month period starting on the Notice Date; and
- (v) where:
 - (A) the Access Agreement is due to expire less than twelve (12) Months after the Notice Date; and
 - (B) there has been a Renewal in relation to the relevant Access Rights under that Access Agreement,

the number of Access Holders or Customers must be determined (based on the Access Rights specified in the relevant Access Agreements) for a twelve (12) Month period starting on the Notice Date.

~~(h)~~(i) Aurizon Network must, for each Coal System, publish on the Website in a prominent place readily accessible by the QCA and Access Seekers and Access Holders (and their Customer and Train Operator, as applicable):

- (i) the Capacity Assessment Report (including the STP);
- (ii) the statement of reasons referred to in **clause 7A.4.2(b)(v)**; and
- (iii) any ~~final audit~~ report provided by an expert engaged by Aurizon Network pursuant to **clause 7A.4.2(d)(iii)**.

~~(i)~~(j) Aurizon Network must provide, or make available in accordance with this **clause 7A.4.2**, the Capacity Assessment Report (which includes the STP for each Coal System or Expansion) as a complete and transparent document to:

- (i) the QCA on an unredacted basis; and
- (ii) stakeholders and when published on its Website:

- (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the Capacity Assessment Report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the Capacity Assessment Report), on an unredacted basis; and
- (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
- (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the Capacity Assessment Report on an unredacted basis;
 - (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and
 - (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.

(k) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:

- (i) do not prevent the disclosure of the information contained in the Capacity Assessment Report; and
 - (ii) permit disclosure of information required by this Undertaking,
- but:
- (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure of the information contained in the Capacity Assessment Report to the QCA,

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 1.1.1(k)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 1.1.1(k)(i)** and **clause 1.1.1(k)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

7A.4.3 System Capacity Assessment

- (a) Aurizon Network must undertake a static or dynamic (as appropriate) Capacity Analysis and determine System Capacity for each Coal System within six (6) months of the date that Aurizon Network publishes its Capacity Assessment Report and thereafter on each anniversary thereof.
- (b) A System Capacity Assessment will be undertaken for information purposes only for the benefit of Access Holders and Access Seekers (and their respective Customers and Train Operators) for a Coal System.
- (c) A System Capacity Assessment must include:
 - (i) consideration of outcomes of any consultation by Aurizon Network with Access Holders and Access Seekers (and their Customer and Train Operator, as applicable) for Train Services operating in that Coal System;
 - (ii) consideration of outcomes of any consultation with any Supply Chain Group for the relevant Coal System;
 - (iii) consideration of outcomes of any consultation with port operators; and
 - (iv) a report that sets out Aurizon Network's assumptions affecting System Capacity and relied upon for the System Capacity Assessment which must be consistent with those assumptions listed in the definition of System Capacity under Part 12 and may include such other assumptions as are agreed between Aurizon Network and any Supply Chain Group for the relevant Coal System.
- (d) Aurizon Network must promptly, for each Coal System, publish on the Website in a prominent place readily accessible by the QCA and Access Seekers and Access Holders (and their Customer and Train

Operator, as applicable) the outcomes of a System Capacity Assessment (**System Capacity Assessment Report**), including Aurizon Network's assumptions affecting System Capacity and relied upon for the System Capacity Assessment.

(e) Aurizon Network must provide, or make available in accordance with this **clause 7A.4.3**, the System Capacity Assessment Report as a complete and transparent document to:

(i) _____ the QCA on an unredacted basis; and

(ii) _____ stakeholders and when published on its Website:

(A) _____ in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the System Capacity Assessment Report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the System Capacity Assessment Report), on an unredacted basis; and

(B) _____ in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:

(1) _____ Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the System Capacity Assessment Report on an unredacted basis;

(2) _____ in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and

(3) _____ in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:

- _____ to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
- _____ to the extent not possible, on a redacted basis.

(f) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:

(i) do not prevent the disclosure of the information contained in the System Capacity Assessment Report; and

(ii) permit disclosure of information required by this Undertaking,

but:

(iii) in any event, must not agree to any confidentiality obligations that prevent disclosure of the information contained in the System Capacity Assessment Report to the QCA,

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 7A.4.3(f)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 7A.4.3(f)(i)** and **clause 7A.4.3(f)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

7A.4.37A.4.4 Capacity Deficit

(a) Where Aurizon Network has not published a Capacity Assessment Report and:

- (i) if there is no Alternative Baseline Capacity Assessment Report for the relevant Coal System or Expansion, the Baseline Capacity Assessment Report; or
- (ii) if there is an Alternative Baseline Capacity Assessment Report for the relevant Coal System or Expansion, the Alternative Baseline Capacity Assessment Report,

reveals that there is a deficit in the Capacity for that Coal System or Expansion (**Capacity Deficit**), then Aurizon Network must:

~~(i)~~(ii) have regard to that Capacity Deficit prior to executing an Access Agreement that would increase the size of that Capacity Deficit prior to constructing any **relevant new** Expansion for that Coal System;

~~(ii)~~(iii) within twenty (20) Business Days after the Approval Date (**Publication Date**), and only in circumstances where a preliminary report in respect of the Capacity Deficit under a Baseline Capacity Assessment Report has not been published under the 2016 Undertaking, submit a preliminary report to the QCA (and publish such preliminary report in a prominent place on its Website) setting out:

- (A) the relevant Coal System or Expansion and the location in that Coal System or Expansion where the Capacity Deficit arises;
- (B) the cause and quantum of the Capacity Deficit;
- (C) the Access Holders and, if any, Access Seekers affected by the Capacity Deficit;
- (D) Aurizon Network's consultation plan (which, when followed, must satisfy the requirements of **clauses 1.1.1(c)(i)(B), 1.1.1(c)(i)(C) and 1.1.1(c)(ii)**; and
- (E) Aurizon Network's preliminary views on solutions which could most efficiently address the Capacity Deficit; and

~~(iii)~~(iv) within six (6) Months after:

- (A) the Publication Date; or
- (B) where the relevant preliminary report in respect of the Capacity Deficit under a Baseline Capacity Assessment Report has been published under the 2016 Undertaking, the date of publication of that report under the 2016 Undertaking,

and only in circumstances where a detailed report in respect of the Capacity Deficit under a Baseline Capacity Assessment Report has not been published under **clause 7A.4.3(a)(vi)** of the 2016 Undertaking, submit a detailed report to the QCA showing the outcome of Aurizon Network's analysis of the Capacity Deficit and solutions which could address the Capacity Deficit and which includes:

- (C) the preferred changes to the operation and management of the Rail Infrastructure that can address the Capacity Deficit (including estimates of costs (if any) to implement those changes);
- (D) if relevant, evidence of Aurizon Network's consultation under **clauses 1.1.1(c)(i)(B) and 1.1.1(c)(i)(C)** that explains why changes to the operation and management of the Rail Infrastructure cannot address the Capacity Deficit;
- (E) a shortlist of Expansions considered by Aurizon Network and through the consultation under **clause 1.1.1(c)(i)(C)** (including estimates of costs to undertake each Expansion); and
- (F) any Expansion which Aurizon Network and the affected Access Holders or Access Seekers have agreed will address the Capacity Deficit.

- (b) Where the most recent Capacity Assessment Report reveals that there is a deficit in the Capacity for that Coal System or Expansion (also a **Capacity Deficit**), then Aurizon Network must:

- (i) have regard to that Capacity Deficit prior to executing an Access Agreement that would increase the size of that Capacity Deficit prior to constructing any ~~relevant~~ new Expansion for that Coal System;
- (ii) within twenty (20) Business Days after the date of the Capacity Assessment Report (also a **Publication Date**),

submit a preliminary report to the QCA (and publish such preliminary report in a prominent place on its Website) which sets out the matters listed in **clauses 1.1.1(k)(iii)(A) to (E)**; and

- (iii) within six (6) Months after the Publication Date, submit a detailed report to the QCA showing the outcome of Aurizon Network's analysis of the Capacity Deficit and solutions which could address the Capacity Deficit and which includes the matters listed in **clauses 1.1.1(k)(iv)(C) to (F)**.

(c) In preparing the report specified in **clause 1.1.1(k)(iv)** or **clause 1.1.1(b)(iii)** (as applicable), Aurizon Network must:

- (i) undertake at least the following:
 - (A) a review of operation and management practices, as set out in the assumptions used in the applicable Capacity assessment, in respect of the Rail Infrastructure to ascertain whether amendments to those practices would address the Capacity Deficit;
 - (B) consultation with Access Holders and Customers, if applicable, Train Operators, to identify if there are alternative supply chain capacity options which could address the Capacity Deficit; and
 - (C) consultation with Access Holders and Customers to identify and consider options for Expansions which could address the Capacity Deficit, and
- (ii) use reasonable endeavours to consult with Supply Chain Groups and terminal operators to identify if there are alternative supply chain capacity options which could address the Capacity Deficit.

- (d) The QCA may publish any report provided by Aurizon Network under **clauses 7A.4.4(a)** and **1.1.1(b)**.
- (e) If Aurizon Network and affected Access Holders consider that an Expansion is the best option to address the Capacity Deficit, then:
- (i) **Part 8** will apply to that Expansion;
 - (ii) Aurizon Network must ~~act reasonably and~~ negotiate in good faith with the affected Access Holders and the affected Access Seekers, individually and as required, the terms of a funding arrangement for the Expansion (but any Dispute regarding who will fund or the proportion will be determined in accordance with Part 11 only if all parties agree to the Dispute being resolved in accordance with Part 11).
- (f) Aurizon Network must provide, or make available in accordance with this **clause 7A.4.3**, any information or report in respect of the Capacity Deficit as a complete and transparent document to:
- (i) the QCA on an unredacted basis; and
 - (ii) stakeholders and when published on its Website:
 - (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information in respect of the Capacity Deficit (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information in respect of the Capacity Deficit), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
- (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information in respect of the Capacity Deficit on an unredacted basis;

- (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and
 - (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.
- (g) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
- (i) do not prevent the disclosure of the information in respect of the Capacity Deficit; and
 - (ii) permit disclosure of information required by this Undertaking,
- but
- (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA,
- provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 1.1.1(g)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 1.1.1(g)(i)** and **clause 1.1.1(g)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.
- (h) Nothing in this **clause 7A.4.3** affects or limits Aurizon Network's obligations or liabilities in respect of an Access Agreement or any other agreement entered into in accordance with this Undertaking.

7A.4.4 **7A.4.5** *Expert engagement*

Where this **clause 7A.4** requires Aurizon Network to engage an appropriately qualified and experienced expert, the following provisions apply:

- (a) the expert must:
 - (i) act independently;
 - (ii) give an undertaking to Aurizon Network to act independently of all relevant persons (including Aurizon Network and any individual Access Seeker, Access Holder, Customer or Train Operator);

- (iii) have no interest or duty which conflicts or may conflict with its function;
- (iv) not be an employee of Aurizon Network or a Related Party of Aurizon Network;
- (v) have regard to the provisions of this Undertaking and consider all submissions made to it by Aurizon Network or any Access Seeker, Access Holder, Customer or Train Operator on a timely basis;
- (vi) give an undertaking to Aurizon Network and the QCA to keep confidential and not use for another purpose all information and other matters coming to its knowledge by reason of its appointment and performance of its [audit review](#);

(vii) review the Capacity Assessment and the Preliminary Capacity Assessment Report;

~~(vii)~~(viii) provide a draft ~~audit~~ report to Aurizon Network and the QCA for consideration within a timeframe agreed between the Aurizon Network and the expert, and consider any reasonable submissions made by either Aurizon Network or QCA in a timely manner; and

~~(viii)~~(ix) provide a final ~~audit~~ report to Aurizon Network and the QCA within a timeframe agreed between Aurizon Network and the expert;

~~(b) the expert must audit the Preliminary Capacity Assessment Report, Aurizon Network's modelling process used to prepare it and the associated modelling, and:~~

~~(i) shall opine as to whether the input parameters in the applicable modelling are:~~

~~(A) consistent with the requirements of existing Access Agreements, all relevant Laws, UT5 (including Network Management Principles), any relevant System Rules and the System Operating Parameters; and~~

~~(B) correctly applied as part of Aurizon Network's modelling process;~~

~~(ii) shall opine as to whether the Preliminary Capacity Assessment Report:~~

~~(A) appropriately and correctly reflects the outcome of modelling that uses the input parameters~~

referred to in ~~clause 7A.4.4(b)(i)(A)~~ in accordance with Aurizon Network's modelling process; and

~~(B)~~ is otherwise complete and accurate; and

~~(iii)~~ if and to the extent that the expert does not opine in the affirmative in any of ~~clauses 7A.4.4(b)(i) and 7A.4.4(b)(ii)~~, it shall specify each applicable issue in its report and provide a brief recommendation as to how it should be addressed.

(b) the expert may:

(i) request Aurizon Network to run any scenarios that the expert reasonably considers it necessary ~~for the purpose of its audit~~ to assess; and

~~(e)(ii)~~ develop assumptions that it considers are appropriate provided that any such assumptions must have regard to existing Access Agreements, all relevant Laws, this Undertaking (including the Network Management Principles), any relevant System Rules and the System Operating Parameters; and

~~(e)(c)~~ Aurizon Network must:

(i) provide to the expert any information that is reasonably necessary for the expert to perform its ~~assessment~~ audit; and

(ii) run all scenarios requested ~~under clause 7A.4.4(c)~~ by the expert and provide the expert with transparency as to Aurizon Network's capacity model, modelling process, the associated modelling methodology and the outcomes of those requested scenarios.

7A.5 System Operating Parameters

(a) Aurizon Network must ensure that System Operating Parameters are in place for each Coal System at all times.

(b) In reviewing the System Operating Parameters for a Coal System, Aurizon Network will:

(i) notify the QCA (who may, if determined necessary by the QCA, publish the information provided on its Website) and each of the following:

(A) Access Holders and Access Seekers (and Customers but only to the extent that the Access Holder or Access Seeker has given Aurizon

Network those Customer contact details) whose Train Services will be affected by any amendments necessary as a result of such review;

- (B) the applicable Supply Chain Group (if any);
- (C) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
- (D) affected Infrastructure Service Providers; and
- (E) affected Railway Operators,

of the relevant System Operating Parameters and the time in which to make submissions;

- (ii) consider any submissions received in respect of the proposed System Operating Parameters or whether any variation of the System Operating Parameters is required (as applicable);
 - (iii) seek to be consistent with Aurizon Network's assumptions affecting Capacity and relied upon for the most recent Capacity Assessment (or Baseline Capacity Assessment, as applicable);
 - (iv) ensure that any amendments to the System Operating Parameters:
 - (A) do not conflict with any provision of this Undertaking; and
 - (B) are appropriate having regard to the matters listed in section 138(2) of the Act; and
 - (v) respond (with reasons) to any such submissions within fifteen (15) Business Days of receipt of the submission (or such longer period approved by the QCA) including whether and, if so, how Aurizon Network has varied the proposed or existing System Operating Parameters (as applicable) in response to those submissions.
- (c) Without limitation to **clause 7A.5(b)**, Aurizon Network will review the System Operating Parameters for a Coal System as soon as practicable after:
- (i) Aurizon Network becomes aware that any sustained change has occurred, or will occur, to that Coal System that materially affects the System Operating Parameters;
 - (ii) a new coal basin or port terminal is connected to the Rail Infrastructure;

- (iii) the completion of a major Expansion; or
 - (iv) being requested by the QCA or by 60% of Access Holders (or its Customers) on the relevant Coal System.
- (d) Nothing in this **clause 7A.5** obliges Aurizon Network to vary the System Operating Parameters.
- (e) Aurizon Network must keep its most current System Operating Parameters available on the Website.
- (f) Aurizon Network must provide the current System Operating Parameters as a complete and transparent document to:
 - (i) the QCA on an unredacted basis;
 - (ii) stakeholders and when published on its Website:
 - (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the System Operating Parameters (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the System Operating Parameters), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the System Operating Parameters on an unredacted basis;
 - (2) in respect of the information for which consent is obtained under **paragraph (ii)(B)(1)**, on an unredacted basis; and
 - (3) in respect of the information for which consent is not obtained under **paragraph (ii)(B)(1)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and

- to the extent not possible, on a redacted basis.
- (g) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations which:
- (i) do not prevent the disclosure of the information contained in the System Operating Parameters; and
 - (ii) permit disclosure of information required by this Undertaking, but
 - (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA,
- provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 7A.5(g)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 7A.5(g)(i)** and **clause 7A.5(g)(ii)**, whether or not the access seeker actually agrees to the inclusion of such obligations in the Access Agreement.
- (h) Aurizon Network must ensure that the System Operating Parameters are consistent with Good Engineering Practices.
- (i) On, or as soon as reasonably practicable after, the Approval Date, Aurizon Network will make available to the QCA and to each Access Holder (and its Customer and Train Operator, if any) the System Operating Parameters (as at the Approval Date) relevant to that Access Holder or Train Operator in a form that does not disclose any confidential information regarding individual Access Holders, Customers or Train Operators, to avoid disclosing any information that is commercially sensitive to an Access Holder, Customer or Train Operator.

7A.6 Network Development Plan

- (a) Aurizon Network must develop a Network Development Plan and keep its most current Network Development Plan available on the Website.
- (b) The Network Development Plan must contain the following information:
- (i) a Capacity Analysis (which must include the constrained Track sections) of each Coal System broken down by Existing Capacity and Committed Capacity (in each case on the assumption of no Operational Constraints), utilising the most recent Capacity Assessment or the Baseline Capacity Assessment, (as applicable), including:
 - (A) a progressive five-year plan of Capacity prepared using a dynamic simulation modelling assessment taking into account:

- (1) existing Train Service Entitlements;
- (2) any Train Paths relating to an Access Seeker (or a Renewing Access Seeker (if any)) that:
 - has submitted a properly completed Access Application under **Part 4**; and
 - has provided all of the information set out in **clause 4 of Schedule B**; and
 - is the subject of a Pre-feasibility Study which has commenced in respect of an Expansion; and
- (B) a static simulation modelling assessment (if Aurizon Network considers it appropriate, acting reasonably) of the Rail Infrastructure and all planned and anticipated Expansions (whether or not it is to occur in the next five (5) years),

in each case, where Aurizon Network considers it appropriate (acting reasonably):

- (A) growth scenarios within each Coal System associated with an optimisation project at a terminal in each port precinct connected to the Rail Infrastructure; and
 - (B) assumed Expansions which would be required to support expansions at each port connected to the Rail Infrastructure, on the assumption that each port expansion would be sufficient to support an additional berth at the relevant port;
- (ii) the impact of Operational Constraints on Existing Capacity, Committed Capacity and Available Capacity;
 - (iii) in respect of each Expansion being studied or investigated by Aurizon Network as a Concept Study, Pre-feasibility Study or Feasibility Study, the proposed scope, standard and preliminary determination of the cost of the proposed Expansion;
 - (iv) if Aurizon Network considers it appropriate (acting reasonably), an overview of opportunities for increasing Existing Capacity to support expansions in each port precinct connected to the Rail Infrastructure, on the

- assumption that each port expansion would be sufficient to support an additional shiploading berth;
- (v) a comparison of opportunities for increasing Existing Capacity within each Coal System; and
 - (vi) the studies and investigations that Aurizon Network is undertaking or expects to undertake to inform the next review and update of the Network Development Plan.
- (c) Aurizon Network will review and update the Network Development Plan annually or more frequently as it considers necessary, including:
- (i) if circumstances change in a way that Aurizon Network expects will materially affect the Network Development Plan;
 - (ii) if a new coal basin or port terminal is connected to the Rail Infrastructure;
 - (iii) at the completion of a major Expansion; or
 - (iv) where requested by the QCA or by 60% of Access Holders (or its Customers) on the relevant Coal System.
- (d) In developing or reviewing the Network Development Plan, Aurizon Network must:
- (i) ensure the Network Development Plan has regard to:
 - (A) the Network Management Principles;
 - (B) any:
 - (1) System Operating Parameters;
 - (2) Supply Chain Master Plan; and
 - (ii) notify the QCA (who may, if determined necessary by the QCA, publish the information provided on its Website) and each of the following:
 - (A) Access Holders and Access Seekers and its Customers (but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details);
 - (B) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
 - (C) affected Infrastructure Service Providers;
 - (D) affected Railway Operators; and

- (E) other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan;
 - (iii) consider submissions received from any interested parties;
 - (iv) have regard to:
 - (A) forecast changes in demand for Queensland coal exports;
 - (B) any relevant Access Applications;
 - (C) any relevant port terminal developments or development of other out-loading facilities;
 - (D) any relevant previous or current studies undertaken by Aurizon Network; and
 - (E) other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan;
 - (v) make a draft Network Development Plan available to the QCA and each person identified in **clause 7A.6(d)(ii)** and provide twenty (20) Business Days for comments or submissions to be made by those persons before finalising the Network Development Plan for publication on the Website.
- (e) If Access Holders, Access Seekers or its Customers (if relevant) notify Aurizon Network that they require a peer review to be conducted of the Network Development Plan, then Aurizon Network must cooperate with a consultant appointed to conduct that peer review by and at the cost of the Access Holders, Access Seekers and its Customers (if relevant), except that Aurizon Network is not obliged to cooperate with more than one consultant for a review contemplated under this clause.
 - (f) Any Dispute regarding the contents of the Network Development Plan must be determined in accordance with **Part 11**.
 - (g) Neither anything in this **clause 7A.6**, nor the development, review or notification of a Network Development Plan, gives rise to any commitment by, representation by or obligation on Aurizon Network in relation to funding, constructing, permitting or otherwise implementing any aspect of the Network Development Plan.

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Part 12: Definitions (extract)

<u>System Available Capacity</u>	<u>System Capacity, excluding all Committed Capacity.</u>
<u>System Capacity</u>	<p>(a) <u>The maximum number of Train Paths (calculated on a Monthly and annual basis) that can be provided; plus</u></p> <p>(b) <u>the number of Train Paths (calculated on a Monthly and annual basis) that are expected to result from an Expansion that Aurizon Network is contractually committed to construct,</u></p> <p><u>in respect of each Coal System, which includes the mainline and each branch line of that Coal System, using the following assumptions:</u></p> <p>(c) <u>reasonable requirements in respect of maintenance and repair of each element of the Supply Chain (including loading facilities, load out facilities and coal export terminal facilities);</u></p> <p>(d) <u>reasonably foreseeable delays or failures occurring in the relevant Supply Chain (including mine, port and rolling stock associated losses);</u></p> <p>(e) <u>the Supply Chain operating mode; and</u></p> <p>(f) <u>the capacity of each element of the Supply Chain (including loading facilities, load out facilities, rollingstock and coal export terminal facilities).</u></p>
<u>System Capacity Analysis</u>	<p><u>A simulation modelling assessment of the System Available Capacity to determine, as the context requires:</u></p> <p>(g) <u>System Available Capacity; and</u></p> <p>(h) <u>whether there is sufficient System Capacity to accommodate Committed Capacity.</u></p>
<u>System Capacity Assessment</u>	<u>An assessment undertaken under clause 7A.4.3(a).</u>
<u>System Capacity Assessment Report</u>	<u>The meaning given to that term in clause 7A.4.3(d).</u>

Annexure 6 – Part 7A marked up against QRC
February Submission

Part 7A: Capacity

7A.1 Intent

This **Part 7A** sets out various provisions relating to the provision of Existing Capacity, Planned Capacity, Committed Capacity and Available Capacity in the Rail Infrastructure – in particular:

- (a) **clause 7A.2** describes Aurizon Network's obligations in relation to Network Management Principles and System Rules;
- (b) **clause 7A.3** provides that Aurizon Network will participate (to a reasonable degree) in Supply Chain coordination including processes (to the extent reasonable) in relation to the review of System Operating Parameters;
- (c) **clauses 7A.4** and **7A.5** confirm that Aurizon Network will:
 - (i) undertake Capacity Assessments;
 - (ii) conduct annual reviews of System Operating Parameters and Capacity; and
- (d) **clause 7A.6** describes Aurizon Network's obligations in relation to its proposed Network Development Plan.

7A.2 Network Management Principles

7A.2.1 *Compliance with Network Management Principles*

- (a) Aurizon Network must:
 - (i) perform scheduling, Network Control and associated services; and
 - (ii) provide Capacity related information to Access Holders and Train Operators (in respect of the Access Rights to which its Train Operations Deed relates),in accordance with the Network Management Principles.
- (b) Any dispute in relation to compliance with the Network Management Principles will be dealt with in accordance with **Part 11**, except to the extent the dispute arises in respect of rights under an Access Agreement or Train Operations Deed in which case the dispute will be dealt with in accordance with the dispute resolution process set out in the relevant agreement.

7A.2.2 *Nature of the System Rules*

- (a) The System Rules specify in greater detail the way in which Aurizon Network must plan, schedule and control the operation of Train

Services on a single or combination of Coal Systems in accordance with the Network Management Principles.

- (b) The System Rules must be published on the Website.

7A.2.3 Making the initial System Rules for a Coal System

- (a) Where System Rules do not already exist for a Coal System (whether individually or together with other Coal Systems), then within two (2) Months of the Approval Date or the approval of a new Coal System under this Undertaking, Aurizon Network must:
 - (i) develop the initial System Rules for that Coal System including, where Aurizon Network elects to do so:
 - (A) together with one (1) or more other Coal Systems; or
 - (B) by way of amending existing System Rules to apply in relation to that Coal System; and
 - (ii) for a period of no longer than three (3) Months, consult with Access Holders, Railway Operators and Access Seekers whose Train Services will be affected by the System Rules or amended System Rules, as applicable, and any affected Infrastructure Service Providers, in relation to the introduction of the System Rules or amended System Rules, as applicable.
- (b) Within one (1) Month after the completion of the consultation process under **clause 7A.2.3(a)**, Aurizon Network must:
 - (i) prepare the proposed System Rules or amended System Rules, as applicable, (**Draft System Rules**) having regard to the equitable operation of the Draft System Rules across Access Holders and Access Seekers (should they become Access Holders) and their Customers and the terms of Access Agreements;
 - (ii) in preparing the Draft System Rules, seek to ensure that they do not conflict with the Network Management Principles, the System Operating Parameters or any provision of this Undertaking; and
 - (iii) submit the Draft System Rules to the QCA for approval.

7A.2.4 Reviewing and amending the System Rules

- (a) This **clause 7A.2.4**:
 - (i) does not apply to an amendment of System Rules referred to under **clause 7A.2.3(a)(i)(B)**; but
 - (ii) applies to a review of the System Rules developed under **clause 7A.2.3**.

- (b) Without limiting Aurizon Network's right to review any System Rules from time to time, Aurizon Network must review the System Rules immediately upon Aurizon Network becoming aware of the occurrence of any of the following events:
- (i) Capacity in the relevant Coal System (or, if more than one (1), Coal Systems in aggregate) to which the relevant System Rules apply changes by greater than 10% of the existing total number of relevant Train Paths on a Monthly basis;
 - (ii) Yearly Cyclic Traffic or Timetabled Traffic (as applicable) changes by greater than 10% of the previous Year's number of relevant Train Paths;
 - (iii) a new loading facility, port terminal or unloading facility becomes (or is reasonably likely to become) connected to a relevant Coal System; or
 - (iv) a material change to the System Operating Parameters or the Network Management Principles which subsequently affects the operations of the System Rules,
- and despite whether or not any of the events outlined in **clause 7A.2.4(b)** have occurred, at least once per Year.
- (c) If Aurizon Network has reviewed the System Rules, then Aurizon Network must:
- (i) notify the QCA (who may, if it determines necessary, publish the information provided on the QCA's website) and each of the following:
 - (A) Access Holders and Access Seekers and their Customers (but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details) whose Train Services will be affected by any amendments necessary as a result of such review;
 - (B) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
 - (C) affected Infrastructure Service Providers;
 - (D) affected Railway Operators,(collectively, the **Affected Persons**) of the following matters:
 - (E) the outcome of the review and the necessity (or otherwise) to amend the System Rules;

- (F) if the System Rules are to be amended, the proposed amendments (**Proposed Amendments**);
 - (G) reasons for the Proposed Amendments or the decision to not amend the relevant System Rules; and
 - (H) details of the impact the Proposed Amendments will or may have on the delivery of each Affected Person's Train Service Entitlements;
- (ii) consult with the Affected Persons;
 - (iii) have regard to the equitable operation of the System Rules across Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders) and the terms of Access Agreements;
 - (iv) ensure that the amendments do not conflict with the Network Management Principles, System Operating Parameters or any provision of this Undertaking; and
 - (v) ensure that the amendments are appropriate having regard to the matters listed in section 138(2) of the Act.
- (d) If a person (acting reasonably and in good faith):
- (i) disagrees with the outcome of Aurizon Network's review of the System Rules notified under **clause 7A.2.4(c)(i)**; or
 - (ii) considers that the Proposed Amendments:
 - (A) would not, as a whole, operate equitably amongst Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders); or
 - (B) are inconsistent with this Undertaking (including the Network Management Principles and System Operating Parameters); or
 - (C) are inappropriate having regard to the matters listed in section 138(2) of the Act,

then that person may, within twenty (20) Business Days after being given a notice under **clause 7A.2.4(c)(i)** or the publication on the QCA website, provide a written submission to Aurizon Network identifying its view with respect to **paragraphs (A) to (C)**.
- (e) Immediately following the expiration of the time period under **clause 7A.2.4(d)**, Aurizon Network must:

- (i) notify the Affected Persons and any person who provides Aurizon Network with a written submission under **clause 7A.2.4(d)** that the Proposed Amendments are being referred to the QCA for approval;
- (ii) submit the Proposed Amendments to the QCA for approval; and
- (iii) provide the QCA:
 - (A) all submissions provided to Aurizon Network within the time period under **clause 7A.2.4(d)**;
 - (B) an assessment of those submissions by Aurizon Network;
 - (C) any variations to the Proposed Amendments that Aurizon Network proposes to make after taking into account the submissions (**Variations**); and
 - (D) details of the impact the Proposed Amendments and Variations will or may have on the delivery of each Affected Person's Train Service Entitlements.

7A.2.5 Approval of System Rules

- (a) If Aurizon Network has submitted:
 - (i) Draft System Rules to the QCA under **clause 7A.2.3(b)(iii)**; and
 - (ii) Proposed Amendments (or Variations, if any) to the QCA under **clause 7A.2.4(e)(ii)**,

(Proposed System Rules, for the purpose of this **clause 7A.2.5**) the QCA must:

 - (iii) publish the Proposed System Rules on its website; or
 - (iv) assess the Proposed System Rules (together with any submissions provided to Aurizon Network under **clause 7A.2.4(d)**); and
 - (v) seek submissions in respect of the Proposed System Rules.
- (b) The QCA may approve the Proposed System Rules only if the QCA:
 - (i) is satisfied they are consistent with this Undertaking (including the Network Management Principles);
 - (ii) is satisfied that they are in accordance with the notice given under **clause 7A.2.5**, if any; and
 - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act.

- (c) If the QCA approves the Proposed System Rules, it must give notice to Aurizon Network of its approval, specifying the date on which the proposed amendments will take effect.
- (d) If the QCA refuses to approve the Proposed System Rules, then the QCA will give Aurizon Network a notice:
 - (i) stating the reasons for its refusal; and
 - (ii) requiring Aurizon Network to amend the Proposed System Rules to address the matters in the QCA's reasons or submit additional information, to address the matters in the QCA's reasons within twenty (20) Business Days after the giving of that notice (or such other period as the QCA may in its absolute discretion determine).
- (e) The QCA may develop System Rules consistent with this Undertaking if:
 - (i) Aurizon Network does not submit Draft System Rules in accordance with **clause 7A.2.3(b)(iii)**;
 - (ii) Aurizon Network does not resubmit the Proposed System Rules in accordance with **clause 7A.2.5(d)(ii)**; or
 - (iii) the QCA refuses to approve the Proposed System Rules that were resubmitted in accordance with **clause 7A.2.5(d)(ii)**.
- (f) If the QCA develops Draft System Rules under **clause 7A.2.5(d)** despite **clause 7A.2.5(a)**, the QCA must:
 - (i) publish the Draft System Rules on its website;
 - (ii) invite persons to make submissions on the Draft System Rules to the QCA within a reasonable time specified by the QCA; and
 - (iii) consider any submissions it receives within the time specified.
- (g) **Clauses 7A.2.5(a) to 7A.2.5(d)** will:
 - (i) apply to any Proposed System Rules resubmitted to the QCA under **clause 7A.2.5(d)(ii)**;
 - (ii) apply to any additional information submitted to the QCA under **clause 7A.2.5(d)(ii)** (including where the Proposed System Rules are not amended) as though Aurizon Network were resubmitting the same Proposed System Rules but with the additional information; and
 - (iii) continue to apply until the QCA approves the Proposed System Rules for the relevant Coal System.

- (h) If the QCA approves the Proposed System Rules, then:
 - (i) the relevant System Rules take effect on the date of the approval or such later date as specified in the System Rules or the approval;
 - (ii) in the case of Proposed Amendments and Variations, the relevant System Rules are taken to have been amended in accordance with the Proposed Amendments and Variations;
 - (iii) the QCA must give Aurizon Network a notice providing the reasons for its decision; and
 - (iv) Aurizon Network must publish the amended System Rules on its Website.
- (i) Nothing in **clause 7A.2.5** prevents Aurizon Network from seeking subsequent amendments to any System Rules even if the QCA has previously refused to approve Proposed Amendments in relation to those System Rules.

7A.2.6 General provisions

- (a) For the purposes of this **clause 7A.2**:
 - (i) the amending of the System Rules includes replacing or removing the System Rules; and
 - (ii) Proposed Amendments includes a proposed replacement or removal of System Rules.
- (b) The System Rules may be withdrawn by Aurizon Network only with the approval of the QCA.
- (c) If the QCA considers that the System Rules require amendment, the QCA may require Aurizon Network to submit replacement System Rules within a reasonable period advised by the QCA, in which case **clause 7A.2.5** applies.

7A.3 Supply Chain coordination

- (a) Aurizon Network must (to the extent it is reasonable to do so) participate in:
 - (i) each Supply Chain Group in relation to:
 - (A) the coordination and effective performance of a relevant Supply Chain; and
 - (B) if applicable, the development of a Supply Chain Master Plan; and
 - (ii) discussions with other service providers and participants in the Supply Chain with a view to the coordination of maintenance activities in the relevant Supply Chain.
- (b) Without limiting the nature of Aurizon Network's participation, if requested by a Supply Chain Group (acting reasonably), Aurizon

Network must if it has capacity to do so and believes the request is reasonable:

- (i) participate in the development of and undertake regular reviews of that Supply Chain Group's master plan;
 - (ii) review options for the development of Capacity being investigated by the Supply Chain Group and advise if and how any option is likely to impact on the Network Management Principles, System Operating Parameters or System Rules for the relevant Coal System; and.
 - (iii) if requested by the Supply Chain Group, investigate operational changes that could increase Capacity in the relevant Coal System, including by conducting a review of the relevant System Operating Parameters under **clause 7A.5**.
- (c) Subject to the terms of this Undertaking, Aurizon Network must, in respect of each Supply Chain,:
- (i) reasonably facilitate an appropriate balance between cooperation between all elements of Supply Chains (in respect of which Access forms a part) to seek to maximise the performance of those Supply Chains and the other matters set out in **clause 2.2** of this Undertaking; and
 - (ii) act in a way that is not inconsistent with **Part 2**.

~~(d) Subject to **clause 7A.3(e)(ii)**, Aurizon Network must adopt any operational changes determined by each if:~~

~~(i) a Supply Chain Group that could increase identifies an operational change to its Coal System which change may improve Capacity in the relevant Coal System, but only; and~~

~~(d)(ii) Aurizon Network decides not to implement the extent that the operational change does not;~~

~~(i) adversely affect any existing Aurizon Network Management Principles, System Rules or System Operating Parameters; or~~

~~(ii) result in the Rail Infrastructure being operated in a manner inconsistent will provide the Supply Chain Group with the Safeworking Procedures and the Safety Standards.~~

~~For clarity, any dispute in relation to Aurizon Network's action (or decision) to its reasons for not adopt operational changes under this **clause 7A.3(d)** will be dealt with in accordance with **Part 11** implementing the change.~~

- (e) Aurizon Network will not be obliged to:
- (i) undertake any activity referred to in **clause 7A.3(a)** or **clause 7A.3(b)** unless the reasonable cost of undertaking

that activity is recoverable by Aurizon Network on the terms of this Undertaking; and

- ~~(ii)~~ undertake any activity referred to in ~~clause 7A.3(d)~~:
 - ~~(A)~~ where any upfront costs are associated with that activity, unless and until the reasonable costs of undertaking that activity are recovered by Aurizon Network on the terms of this Undertaking; and
 - ~~(B)~~ where there are ongoing operational costs associated with that activity, unless, prior to undertaking that activity, the recovery by Aurizon Network of the reasonable costs of undertaking that activity on the terms of this Undertaking is approved in writing by the QCA; and
- ~~(iii)~~ (ii) make any binding commitment or to take any action as a result of its participation and discussions referred to in **clause 7A.3(a)**, ~~except to the extent required by clause 7A.3(d)~~.

7A.4 Capacity assessments

7A.4.1 [not used]

7A.4.2 ~~Capacity Assessment~~ **and System Capacity Assessment**

- ~~(a)~~ Aurizon Network must undertake:
 - ~~(i)~~ a static or dynamic (as appropriate) Capacity Analysis ~~to~~ and determine the Capacity; ~~and~~
 - ~~(ii)~~ ~~a static or dynamic (as appropriate) System Capacity Analysis to determine the System Capacity;~~
- for each Coal System, and if that Coal System has one or more existing Expansion Tariffs, separately for each relevant Expansion:
- ~~(iii)~~ (i) on each anniversary of the date the QCA published Aurizon Network's Baseline Capacity Assessment Report under the 2016 Undertaking; and **[QRC Note: a baseline capacity assessment report may be required for any existing Expansions which are subject to an Expansion Tariff, where this has not already been undertaken (eg WIRP).]**
 - ~~(iv)~~ (ii) if the System Operating Parameters are varied in a way that Aurizon Network, acting reasonably, considers can be expected to materially change the Existing Capacity in that Coal System or Expansion.
- (b) A Capacity Assessment must:
 - (i) include consideration of outcomes of any consultation by Aurizon Network with Access Holders and Access Seekers (and their Customer and Train Operator, as

- applicable) for Train Services operating in that Coal System or Expansion in relation to that assessment;
- (ii) include the STP for each Coal System or Expansion;
 - (iii) include consideration of outcomes of any consultation with any Supply Chain Group for the relevant Coal System or Expansion;
 - (iv) include consideration of the following factors:
 - (A) the terms of Access Agreements relating to Train Services operating in that Coal System or Expansion; and
 - (B) the interfaces between the Rail Infrastructure and other facilities forming part of, or affecting, the relevant Supply Chain or Expansion; and
 - (v) utilise the same modelling methodology utilised by Aurizon Network in its previous Capacity Assessment (or Baseline Capacity Assessment, if applicable), or if that methodology is not utilised, include a statement of reasons for the departure(s) from that methodology; and
 - (vi) include a report that sets out Aurizon Network's assumptions affecting Capacity and relied upon for the Capacity Assessment.

~~(e) — A System Capacity Assessment must:~~

- ~~(i) — include consideration of outcomes of any consultation by Aurizon Network with Access Holders and Access Seekers (and their Customer and Train Operator, as applicable) for Train Services operating in that Coal System or Expansion in relation to that assessment;~~
- ~~(ii) — include the STP for each Coal System or Expansion;~~
- ~~(iii) — include consideration of outcomes of any consultation with any Supply Chain Group for the relevant Coal System or Expansion;~~
- ~~(iv) — include consideration of outcomes of any consultation with port operators;~~
- ~~(v) — include a report that sets out Aurizon Network's assumptions affecting System Capacity and relied upon for the System Capacity Assessment which must be consistent with those assumptions listed in the definition of System Capacity under Part 12.~~

~~(e)~~ Aurizon Network will promptly make ~~available to the QCA, Access Holders, Access Seekers and, if applicable, Customers,~~ the outcomes of:

- ~~(i)~~ a Capacity Assessment ~~(Preliminary Capacity Assessment Report);~~ and
- ~~(ii)~~ a System Capacity Assessment ~~(Preliminary System Capacity Assessment Report);~~

including Aurizon Network's assumptions affecting Capacity ~~or System Capacity (as applicable)~~ and relied upon for the Capacity Assessment ~~or System Capacity Assessment (as applicable)~~ (including the STP for each Coal System or Expansion) ~~),~~ (Preliminary Capacity Assessment Report) available to the QCA, Access Holders, Access Seekers and, if applicable, Customers.

~~(e)(c)~~ If, within thirty (30) Business Days after Aurizon Network makes a Preliminary Capacity Assessment Report ~~or Preliminary System Capacity Assessment Report~~ available in accordance with **clause 7A.4.2(c)**, either:

- (i) the QCA; or
- (ii) the Access Holders (or Customers):
 - (A) for at least 60% of the Train Paths in relation to a Coal System or Expansion (as determined in accordance with **clause 7A.4.2(f)**); or
 - (B) representing in number 60% of the Access Holders (or Customers) with Access to the Coal System or Expansion (as determined in accordance with **clause 7A.4.2(g)**),

notify Aurizon Network that they wish to have the Capacity Assessment ~~or the System Capacity Assessment~~ (including the STP) in relation to that Coal System or Expansion reviewed by an independent expert, then:

- (iii) Aurizon Network must engage an appropriately qualified and experienced expert acceptable to the QCA to review the Capacity Assessment ~~or System Capacity Assessment~~ (including the STP);
- (iv) **clause 7A.4.4** applies; and
- (v) Aurizon Network will, after receiving the expert's report, promptly provide the expert's report to:

- (A) the QCA on an unredacted basis;
and
- (B) Access Holders, Access Seekers
and, if applicable, Customers:
- (1) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the expert's report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the expert's report), on an unredacted basis; and
- (2) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations, Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the expert's report on an unredacted basis;
- (3) in respect of the information for which consent is obtained under **clause 7A.4.2(d)(v)(B)(2)**, Aurizon Network is required to disclose the information contained in the expert's report on an unredacted basis; and
- (4) in respect of the information for which consent is not obtained under **clause 7A.4.2(d)(v)(B)(2)**, Aurizon Network is required to disclose the information contained in the expert's report:
- to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.

~~(f)~~(d) Within 20 Business Days of the provision of the expert's report under **clause 1.1.1(c)(v)**, Aurizon Network will make available to the QCA, Access Holders, Access Seekers and, if applicable, Customers its response to that report, which shall, in respect of each recommendation in that report, provide:

- (i) Aurizon Network's view as to whether it is a reasonable recommendation;
- (ii) if Aurizon Network considers that it is not a reasonable recommendation, Aurizon Network's reasons for that view; and
- (iii) if Aurizon Network considers that it is a reasonable recommendation, how Aurizon Network intends to modify its Capacity Assessment ~~or System Capacity Assessment~~ to take account of that recommendation.

~~(g)~~(e) Aurizon Network will amend the Preliminary Capacity Assessment Report ~~or Preliminary System Capacity Assessment Report~~ to the extent required to take account of any modifications that may be made by Aurizon Network in accordance with **clause 1.1.1(d)(iii)**.

~~(h)~~(f) If an expert's report under **clause 1.1.1(c)(v)** determines that there is no Available Capacity ~~or there is no System Available Capacity (as applicable)~~ and Aurizon Network subsequently seeks to contract any Capacity in respect of that Coal System or Expansion, Aurizon Network must provide prior written notice to each Access Holder in respect of the relevant Coal System or Expansion, as well as the QCA.

~~(i)~~(g) For the purpose of **clause 7A.4.2(d)(ii)(A)**, the relevant Train Paths must be determined in a manner consistent with the following principles:

- (i) the Train Paths for an Access Holder only include those Train Paths for the Access Holder relating solely to the relevant Coal System or Expansion;
- (ii) the Train Paths must be calculated as at the date on which Aurizon Network receives a notice under **clause 7A.4.2(d) (Notice Date)**;
- (iii) subject to **clause 1.1.1(g)(iv)**, the Train Paths must be determined (based on the Access Rights specified in that Access Agreement) for a 12 Month period starting on the Notice Date; and
- (iv) where:
 - (A) the Access Agreement is due to expire less than twelve (12)

Months after the Notice Date;
and

- (B) there has been a Renewal in relation to the relevant Access Rights under that Access Agreement,

the Train Paths must be determined (based on the Access Rights specified in the relevant Access Agreements) for a twelve (12) Month period starting on the Notice Date.

(h) For the purpose of **clause 7A.4.2(d)(ii)(B)**, the number of Access Holders (or Customers) with Access Rights in the Coal System or in respect of the Expansion must be determined in a manner consistent with the following principles:

- (i) an Access Holder who holds Access to the Coal System or Expansion on behalf of more than one Customer it will have the number of votes equal to the number of Customers in that Coal System or Expansion for which it holds the Access Rights under the relevant Access Agreements;
- (ii) if an Access Holder or Customer is a Related Party of another Access Holder or Customer in that Coal System or in respect of that Expansion, it will be counted once only;
- (iii) the number of Access Holders or Customers must be calculated as at the date on which Aurizon Network receives a notice under **clause 7A.4.2(d) (Notice Date)**;
- (iv) subject to **clause 1.1.1(h)(v)**, the number of Access Holders or Customers must be determined for a twelve (12) Month period starting on the Notice Date; and
- (v) where:
 - (A) the Access Agreement is due to expire less than twelve (12) Months after the Notice Date;
and
 - (B) there has been a Renewal in relation to the relevant Access Rights under that Access Agreement,

the number of Access Holders or Customers must be determined (based on the Access Rights specified in the relevant Access Agreements) for a twelve (12) Month period starting on the Notice Date.

~~(i)~~ (i) Aurizon Network must, for each Coal System, publish on the Website in a prominent place readily accessible by the QCA and Access Seekers and Access Holders (and their Customer and Train Operator, as applicable):

(i) the Capacity Assessment Report (including the STP);

~~(ii)~~ ~~the System Capacity Assessment Report;~~

~~(iii)~~ (ii) the statement of reasons referred to in **clause 7A.4.2(b)(v)**; and

~~(iv)~~ (iii) any report provided by an expert engaged by Aurizon Network pursuant to **clause 7A.4.2(d)(iii)**.

~~(j)~~ (j) Aurizon Network must provide, or make available in accordance with this **clause 7A.4.2**, the Capacity Assessment Report (which includes the STP for each Coal System or Expansion) ~~and the System Capacity Assessment Report~~ as a complete and transparent document to:

(i) the QCA on an unredacted basis; and

(ii) stakeholders and when published on its Website:

(A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the Capacity Assessment Report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the Capacity Assessment Report), on an unredacted basis; and

(B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:

(1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the Capacity Assessment Report on an unredacted basis;

- (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and
- (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.

~~(m)~~(k) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:

- (i) do not prevent the disclosure of the information contained in the Capacity Assessment Report ~~or the System Capacity Assessment Report; and; and~~
- (ii) permit disclosure of information required by this Undertaking, but:
- (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure of the information contained in the Capacity Assessment Report ~~or the System Capacity Assessment Report~~ to the QCA,

provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 1.1.1(k)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 1.1.1(k)(i)** and **clause 1.1.1(k)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

~~7A.4.3 Capacity Deficit or System Capacity Deficit~~

7A.4.3 ~~If a System Capacity Assessment reveals there is a System Capacity Deficit,~~

- (a) _____ Aurizon Network must ~~not execute an Access Agreement that would increase the size of that~~ undertake a static or dynamic (as appropriate) Capacity Analysis and determine System Capacity for each Coal System within six (6) months of the date that Aurizon Network publishes its Capacity Assessment Report and thereafter on each anniversary thereof.
- (b) _____ A System Capacity ~~Deficit prior to constructing~~ Assessment will be undertaken for information purposes only for the benefit of Access

Holders and Access Seekers (and their respective Customers and Train Operators) for a Coal System.

- (c) A System Capacity Assessment must include:
- (i) consideration of outcomes of any consultation by Aurizon Network with Access Holders and Access Seekers (and their Customer and Train Operator, as applicable) for Train Services operating in that Coal System;
 - (ii) consideration of outcomes of any consultation with any Supply Chain Group for the relevant ~~new Expansion for~~ Coal System;
 - (iii) consideration of outcomes of any consultation with port operators; and
 - (iv) a report that ~~Coal System~~ sets out Aurizon Network's assumptions affecting System Capacity and relied upon for the System Capacity Assessment which must be consistent with those assumptions listed in the definition of System Capacity under **Part 12** and may include such other assumptions as are agreed between Aurizon Network and any Supply Chain Group for the relevant Coal System.
- (d) Aurizon Network must promptly, for each Coal System, publish on the Website in a prominent place readily accessible by the QCA and Access Seekers and Access Holders (and their Customer and Train Operator, as applicable) the outcomes of a System Capacity Assessment (**System Capacity Assessment Report**), including Aurizon Network's assumptions affecting System Capacity and relied upon for the System Capacity Assessment.
- ~~(a)~~(e) Aurizon Network must provide, or ~~existing Expansion~~, make available in accordance with this **clause 7A.4.3**, the System Capacity Assessment Report as a complete and transparent document to:
- (i) the QCA on an unredacted basis; and
 - (ii) stakeholders and when published on its Website:
 - (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the System Capacity Assessment Report (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the System Capacity Assessment Report), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if

complete disclosure is not permitted by Aurizon Network's confidentiality obligations:

- (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the System Capacity Assessment Report on an unredacted basis;
 - (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and
 - (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.
- (f) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
- (i) do not prevent the disclosure of the information contained in the System Capacity Assessment Report; and
 - (ii) permit disclosure of information required by this Undertaking,
but:
 - (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure of the information contained in the System Capacity Assessment Report to the QCA,
- provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 7A.4.3(f)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 7A.4.3(f)(i)** and **clause 7A.4.3(f)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.

7A.4.4 Capacity Deficit

~~(b)~~(a) Where Aurizon Network has not published a Capacity Assessment Report and:

- (i) if there is no Alternative Baseline Capacity Assessment Report for the relevant Coal System or Expansion, the Baseline Capacity Assessment Report; or
- (ii) if there is an Alternative Baseline Capacity Assessment Report for the relevant Coal System or Expansion, the Alternative Baseline Capacity Assessment Report,

reveals that there is a deficit in the Capacity for that Coal System or Expansion (**Capacity Deficit**), then Aurizon Network must:

~~(i)~~(ii) have regard to that Capacity Deficit prior to executing an Access Agreement that would increase the size of that Capacity Deficit prior to constructing any new Expansion for that Coal System;

~~(ii)~~(iii) within twenty (20) Business Days after the Approval Date (**Publication Date**), and only in circumstances where a preliminary report in respect of the Capacity Deficit under a Baseline Capacity Assessment Report has not been published under the 2016 Undertaking, submit a preliminary report to the QCA (and publish such preliminary report in a prominent place on its Website) setting out:

- (A) the relevant Coal System or Expansion and the location in that Coal System or Expansion where the Capacity Deficit arises;
- (B) the cause and quantum of the Capacity Deficit;
- (C) the Access Holders and, if any, Access Seekers affected by the Capacity Deficit;
- (D) Aurizon Network's consultation plan (which, when followed, must satisfy the requirements of **clauses 1.1.1(c)(i)(B), 1.1.1(c)(i)(C) and 1.1.1(c)(ii)**; and
- (E) Aurizon Network's preliminary views on solutions which could most efficiently address the Capacity Deficit; and

~~(iii)~~(iv) within six (6) Months after:

- (A) the Publication Date; or
- (B) where the relevant preliminary report in respect of the Capacity Deficit under a Baseline Capacity Assessment Report has been published under the 2016 Undertaking, the date of publication of that report under the 2016 Undertaking,

and only in circumstances where a detailed report in respect of the Capacity Deficit under a Baseline Capacity Assessment Report has not been published under **clause 7A.4.3(a)(vi)** of the 2016 Undertaking, submit a detailed report to the QCA showing the outcome of Aurizon Network's analysis of the Capacity Deficit and solutions which could address the Capacity Deficit and which includes:

- (C) the preferred changes to the operation and management of the Rail Infrastructure that can address the Capacity Deficit (including estimates of costs (if any) to implement those changes);
- (D) if relevant, evidence of Aurizon Network's consultation under **clauses 1.1.1(c)(i)(B) and 1.1.1(c)(i)(C)** that explains why changes to the operation and management of the Rail Infrastructure cannot address the Capacity Deficit;
- (E) a shortlist of Expansions considered by Aurizon Network and through the consultation under **clause 1.1.1(c)(i)(C)** (including estimates of costs to undertake each Expansion); and
- (F) any Expansion which Aurizon Network and the affected Access Holders or Access Seekers have agreed will address the Capacity Deficit.

- (b) Where the most recent Capacity Assessment Report reveals that there is a deficit in the Capacity for that Coal System or Expansion (also a **Capacity Deficit**), then Aurizon Network must:

- (i) have regard to that Capacity Deficit prior to executing an Access Agreement that would increase the size of that Capacity Deficit prior to constructing any new Expansion for that Coal System;
- (ii) within twenty (20) Business Days after the date of the Capacity Assessment Report (also a **Publication Date**),

submit a preliminary report to the QCA (and publish such preliminary report in a prominent place on its Website) which sets out the matters listed in **clauses 1.1.1(k)(iii)(A) to (E)**; and

- (iii) within six (6) Months after the Publication Date, submit a detailed report to the QCA showing the outcome of Aurizon Network's analysis of the Capacity Deficit and solutions which could address the Capacity Deficit and which includes the matters listed in **clauses 1.1.1(k)(iv)(C) to (F)**.

(c) In preparing the report specified in **clause 1.1.1(k)(iv)** or **clause 1.1.1(b)(iii)** (as applicable), Aurizon Network must:

- (i) undertake at least the following:
 - (A) a review of operation and management practices, as set out in the assumptions used in the applicable Capacity assessment, in respect of the Rail Infrastructure to ascertain whether amendments to those practices would address the Capacity Deficit;
 - (B) consultation with Access Holders and Customers, if applicable, Train Operators, to identify if there are alternative supply chain capacity options which could address the Capacity Deficit; and
 - (C) consultation with Access Holders and Customers to identify and consider options for Expansions which could address the Capacity Deficit, and
- (ii) use reasonable endeavours to consult with Supply Chain Groups and terminal operators to identify if there are alternative supply chain capacity options which could address the Capacity Deficit.

- (d) The QCA may publish any report provided by Aurizon Network under **clauses 7A.4.4(a)** and **1.1.1(b)**.
- (e) If Aurizon Network and affected Access Holders consider that an Expansion is the best option to address the Capacity Deficit, then:
 - (i) **Part 8** will apply to that Expansion;
 - (ii) Aurizon Network must negotiate in good faith with the affected Access Holders and the affected Access Seekers, individually and as required, the terms of a funding arrangement for the Expansion (but any Dispute regarding who will fund or the proportion will be determined in accordance with **Part 11** only if all parties agree to the Dispute being resolved in accordance with **Part 11**..
- (f) Aurizon Network must provide, or make available in accordance with this **clause 7A.4.3**, any information or report in respect of the Capacity Deficit as a complete and transparent document to:
 - (i) the QCA on an unredacted basis; and
 - (ii) stakeholders and when published on its Website:
 - (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information in respect of the Capacity Deficit (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information in respect of the Capacity Deficit), on an unredacted basis; and
 - (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
 - (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information in respect of the Capacity Deficit on an unredacted basis;

- (2) in respect of the information referred to in **paragraph (i)** or for which consent is obtained under **paragraph (ii)(A)**, on an unredacted basis; and
 - (3) in respect of the information that does not satisfy **paragraph (i)** or for which consent is not obtained under **paragraph (ii)(A)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.
- (g) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations that:
- (i) do not prevent the disclosure of the information in respect of the Capacity Deficit; and
 - (ii) permit disclosure of information required by this Undertaking,
- but
- (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA,
- provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 1.1.1(g)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 1.1.1(g)(i)** and **clause 1.1.1(g)(ii)**, whether or not the Access Seeker actually agrees to the inclusion of such obligations in the Access Agreement.
- (h) Nothing in this **clause 7A.1.1** affects or limits Aurizon Network's obligations or liabilities in respect of an Access Agreement or any other agreement entered into in accordance with this Undertaking.

7A.4.4 **7A.4.5** *Expert engagement*

Where this **clause 7A.4** requires Aurizon Network to engage an appropriately qualified and experienced expert, the following provisions apply:

- (a) the expert must:
 - (i) act independently;
 - (ii) give an undertaking to Aurizon Network to act independently of all relevant persons (including Aurizon Network and any individual Access Seeker, Access Holder, Customer or Train Operator);

- (iii) have no interest or duty which conflicts or may conflict with its function;
- (iv) not be an employee of Aurizon Network or a Related Party of Aurizon Network;
- (v) have regard to the provisions of this Undertaking and consider all submissions made to it by Aurizon Network or any Access Seeker, Access Holder, Customer or Train Operator on a timely basis;
- (vi) give an undertaking to Aurizon Network and the QCA to keep confidential and not use for another purpose all information and other matters coming to its knowledge by reason of its appointment and performance of its review;
- (vii) review the Capacity Assessment and the Preliminary Capacity Assessment Report ~~or the System Capacity Assessment and the Preliminary System Capacity Assessment Report (as applicable);~~
- (viii) provide a draft report to Aurizon Network and the QCA for consideration within a timeframe agreed between the Aurizon Network and the expert, and consider any reasonable submissions made by either Aurizon Network or QCA in a timely manner; and
- (ix) provide a final report to Aurizon Network and the QCA within a timeframe agreed between Aurizon Network and the expert;

(b) the expert may:

- (i) request Aurizon Network to run any scenarios that the expert reasonably considers it necessary to assess; and

~~(ii)~~ develop assumptions that it considers are appropriate:

~~(A)~~ (ii) provided that, ~~in respect of a Capacity Assessment,~~ any such assumptions must have regard to existing Access Agreements, all relevant Laws, this Undertaking (including the Network Management Principles), any relevant System Rules and the System Operating Parameters; and

~~(B)~~ ~~in respect of a System Capacity Assessment, any such assumptions must have regard to those listed in the definition of System Capacity under Part 12;~~ and

(c) Aurizon Network must:

- (i) provide to the expert any information that is reasonably necessary for the expert to perform its assessment; and
- (ii) run all scenarios requested by the expert and provide the expert with transparency as to Aurizon Network's capacity model, the associated modelling methodology and the outcomes of those requested scenarios.

7A.5 System Operating Parameters

- (a) Aurizon Network must ensure that System Operating Parameters are in place for each Coal System at all times.
- (b) In reviewing the System Operating Parameters for a Coal System, Aurizon Network will:
 - (i) notify the QCA (who may, if determined necessary by the QCA, publish the information provided on its Website) and each of the following:
 - (A) Access Holders and Access Seekers (and Customers but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details) whose Train Services will be affected by any amendments necessary as a result of such review;
 - (B) the applicable Supply Chain Group (if any);
 - (C) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
 - (D) affected Infrastructure Service Providers; and
 - (E) affected Railway Operators,

of the relevant System Operating Parameters and the time in which to make submissions;
 - (ii) consider any submissions received in respect of the proposed System Operating Parameters or whether any variation of the System Operating Parameters is required (as applicable);
 - (iii) seek to be consistent with Aurizon Network's assumptions affecting Capacity and relied upon for the most recent Capacity Assessment (or Baseline Capacity Assessment, as applicable);

- (iv) ensure that any amendments to the System Operating Parameters:
 - (A) do not conflict with any provision of this Undertaking; and
 - (B) are appropriate having regard to the matters listed in section 138(2) of the Act; and
- (v) respond (with reasons) to any such submissions within fifteen (15) Business Days of receipt of the submission (or such longer period approved by the QCA) including whether and, if so, how Aurizon Network has varied the proposed or existing System Operating Parameters (as applicable) in response to those submissions.
- (c) Without limitation to **clause 7A.5(b)**, Aurizon Network will review the System Operating Parameters for a Coal System as soon as practicable after:
 - (i) Aurizon Network becomes aware that any sustained change has occurred, or will occur, to that Coal System that materially affects the System Operating Parameters;
 - (ii) a new coal basin or port terminal is connected to the Rail Infrastructure;
 - (iii) the completion of a major Expansion; or
 - (iv) being requested by the QCA or by 60% of Access Holders (or its Customers) on the relevant Coal System.
- (d) Nothing in this **clause 7A.5** obliges Aurizon Network to vary the System Operating Parameters.
- (e) Aurizon Network must keep its most current System Operating Parameters available on the Website.
- (f) Aurizon Network must provide the current System Operating Parameters as a complete and transparent document to:
 - (i) the QCA on an unredacted basis;
 - (ii) stakeholders and when published on its Website:
 - (A) in respect of agreements entered into after the Approval Date of the 2016 Undertaking and to the extent permitted by any confidentiality obligations it may have in relation to the information contained in the System Operating Parameters (and if those obligations permit disclosure if required by this Undertaking then Aurizon Network is required to disclose the information contained in the System Operating Parameters), on an unredacted basis; and

- (B) in respect of agreements entered into prior to the Approval Date of the 2016 Undertaking or if complete disclosure is not permitted by Aurizon Network's confidentiality obligations:
- (1) Aurizon Network must use all reasonable endeavours to obtain the consent of the relevant Third Party to disclose the information contained in the System Operating Parameters on an unredacted basis;
 - (2) in respect of the information for which consent is obtained under **paragraph (ii)(B)(1)**, on an unredacted basis; and
 - (3) in respect of the information for which consent is not obtained under **paragraph (ii)(B)(1)**:
 - to the extent possible on an unredacted basis but aggregated so as to avoid disclosing the information that is confidential and unable to be disclosed; and
 - to the extent not possible, on a redacted basis.
- (g) Aurizon Network must use reasonable endeavours to agree to confidentiality obligations which:
- (i) do not prevent the disclosure of the information contained in the System Operating Parameters; and
 - (ii) permit disclosure of information required by this Undertaking, but
 - (iii) in any event, must not agree to any confidentiality obligations that prevent disclosure to the QCA,
- provided that Aurizon Network will be deemed to have complied with its obligations under this **clause 7A.5(g)** if it has requested during the negotiation of an Access Agreement that the Access Seeker agrees to confidentiality obligations in accordance with **clause 7A.5(g)(i)** and **clause 7A.5(g)(ii)**, whether or not the access seeker actually agrees to the inclusion of such obligations in the Access Agreement.
- (h) Aurizon Network must ensure that the System Operating Parameters are consistent with Good Engineering Practices.
- (i) On, or as soon as reasonably practicable after, the Approval Date, Aurizon Network will make available to the QCA and to each Access Holder (and its Customer and Train Operator, if any) the System

Operating Parameters (as at the Approval Date) relevant to that Access Holder or Train Operator in a form that does not disclose any confidential information regarding individual Access Holders, Customers or Train Operators, to avoid disclosing any information that is commercially sensitive to an Access Holder, Customer or Train Operator.

7A.6 Network Development Plan

- (a) Aurizon Network must develop a Network Development Plan and keep its most current Network Development Plan available on the Website.
- (b) The Network Development Plan must contain the following information:
 - (i) a Capacity Analysis (which must include the constrained Track sections) of each Coal System broken down by Existing Capacity and Committed Capacity (in each case on the assumption of no Operational Constraints), utilising the most recent Capacity Assessment or the Baseline Capacity Assessment, (as applicable), including:
 - (A) a progressive five-year plan of Capacity prepared using a dynamic simulation modelling assessment taking into account:
 - (1) existing Train Service Entitlements;
 - (2) any Train Paths relating to an Access Seeker (or a Renewing Access Seeker (if any)) that:
 - has submitted a properly completed Access Application under **Part 4**; and
 - has provided all of the information set out in **clause 4 of Schedule B**; and
 - is the subject of a Pre-feasibility Study which has commenced in respect of an Expansion; and
 - (B) a static simulation modelling assessment (if Aurizon Network considers it appropriate, acting reasonably) of the Rail Infrastructure and all planned and anticipated Expansions (whether or not it is to occur in the next five (5) years),

in each case, where Aurizon Network considers it appropriate (acting reasonably):

- (A) growth scenarios within each Coal System associated with an optimisation project at a terminal in each port precinct connected to the Rail Infrastructure; and
 - (B) assumed Expansions which would be required to support expansions at each port connected to the Rail Infrastructure, on the assumption that each port expansion would be sufficient to support an additional berth at the relevant port;
- (ii) the impact of Operational Constraints on Existing Capacity, Committed Capacity and Available Capacity;
 - (iii) in respect of each Expansion being studied or investigated by Aurizon Network as a Concept Study, Pre-feasibility Study or Feasibility Study, the proposed scope, standard and preliminary determination of the cost of the proposed Expansion;
 - (iv) if Aurizon Network considers it appropriate (acting reasonably), an overview of opportunities for increasing Existing Capacity to support expansions in each port precinct connected to the Rail Infrastructure, on the assumption that each port expansion would be sufficient to support an additional shiploading berth;
 - (v) a comparison of opportunities for increasing Existing Capacity within each Coal System; and
 - (vi) the studies and investigations that Aurizon Network is undertaking or expects to undertake to inform the next review and update of the Network Development Plan.
- (c) Aurizon Network will review and update the Network Development Plan annually or more frequently as it considers necessary, including:
- (i) if circumstances change in a way that Aurizon Network expects will materially affect the Network Development Plan;
 - (ii) if a new coal basin or port terminal is connected to the Rail Infrastructure;
 - (iii) at the completion of a major Expansion; or
 - (iv) where requested by the QCA or by 60% of Access Holders (or its Customers) on the relevant Coal System.

- (d) In developing or reviewing the Network Development Plan, Aurizon Network must:
- (i) ensure the Network Development Plan has regard to:
 - (A) the Network Management Principles;
 - (B) any:
 - (1) System Operating Parameters;
 - (2) Supply Chain Master Plan; and
 - (ii) notify the QCA (who may, if determined necessary by the QCA, publish the information provided on its Website) and each of the following:
 - (A) Access Holders and Access Seekers and its Customers (but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details);
 - (B) affected infrastructure providers for infrastructure forming part of the relevant Supply Chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
 - (C) affected Infrastructure Service Providers;
 - (D) affected Railway Operators; and
 - (E) other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan;
 - (iii) consider submissions received from any interested parties;
 - (iv) have regard to:
 - (A) forecast changes in demand for Queensland coal exports;
 - (B) any relevant Access Applications;
 - (C) any relevant port terminal developments or development of other out-loading facilities;
 - (D) any relevant previous or current studies undertaken by Aurizon Network; and
 - (E) other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan;
 - (v) make a draft Network Development Plan available to the QCA and each person identified in **clause 7A.6(d)(ii)** and provide twenty (20) Business Days for comments or

submissions to be made by those persons before finalising the Network Development Plan for publication on the Website.

- (e) If Access Holders, Access Seekers or its Customers (if relevant) notify Aurizon Network that they require a peer review to be conducted of the Network Development Plan, then Aurizon Network must cooperate with a consultant appointed to conduct that peer review by and at the cost of the Access Holders, Access Seekers and its Customers (if relevant), except that Aurizon Network is not obliged to cooperate with more than one consultant for a review contemplated under this clause.
- (f) Any Dispute regarding the contents of the Network Development Plan must be determined in accordance with **Part 11**.
- (g) Neither anything in this **clause 7A.6**, nor the development, review or notification of a Network Development Plan, gives rise to any commitment by, representation by or obligation on Aurizon Network in relation to funding, constructing, permitting or otherwise implementing any aspect of the Network Development Plan.

Part 12: Definitions (extract)

System Available Capacity	System Capacity, excluding all Committed Capacity.
System Capacity	<p>(a) The maximum number of Train Paths (calculated on a Monthly and annual basis) that can be provided; plus</p> <p>(b) the number of Train Paths (calculated on a Monthly and annual basis) that are expected to result from an Expansion that Aurizon Network is contractually committed to construct,</p> <p>in respect of each Coal System and for, which includes the mainline and each branch line of each<u>that</u> Coal System, using the following assumptions:</p> <p>(c) reasonable requirements in respect of maintenance and repair of each element of the Supply Chain (including loading facilities, load out facilities and coal export terminal facilities);</p> <p>(d) reasonably foreseeable delays or failures occurring in the relevant Supply Chain (including mine, port and rolling stock associated losses);</p> <p>(e) the Supply Chain operating mode; and</p> <p>(f) insert others<u>the capacity of each element of the Supply Chain (including loading facilities, load out facilities, rollingstock and coal export terminal facilities).</u></p>
System Capacity Analysis	<p>A simulation modelling assessment of the System Available Capacity to determine, as the context requires:</p> <p>(g) System Available Capacity; <u>and</u></p> <p>(h)—whether there is sufficient System Capacity to accommodate Committed Capacity; and</p> <p>(i)<u>(h)</u> whether there is sufficient System Available Capacity to accommodate the requested Access Rights not yet considered to be Committed Capacity.</p>
System Capacity Assessment	An assessment undertaken under clause 7A.4.2(a)(ii).7A.4.3(a).
System Capacity Assessment Report	The Preliminary System Capacity Assessment Report, as amended in accordance with clause 7A.4.2(f) (if applicable). <u>The meaning given to that term in clause 7A.4.3(d).</u>

Annexure 7 – Part 9 marked up against UT5 / QRC
February Submission

Part 9: Connecting Private Infrastructure

9.1 Connecting Infrastructure

- (a) The Private Infrastructure Owner must give Aurizon Network a written proposal for the proposed connection to the Rail Infrastructure. The written proposal must provide reasonably sufficient details about the proposed connection to allow it to be properly assessed by Aurizon Network against the criteria in **clause 9.1(b)** and for development of a Rail Connection Agreement.
- (b) Within two (2) Months (or such longer period as may be agreed between Aurizon Network and the Private Infrastructure Owner) of receiving the written proposal, Aurizon Network must assess the proposal, acting reasonably and in good faith, and decide whether or not it meets the following criteria:
 - (i) the proposed Connecting Infrastructure is for the purpose of connecting to the Rail Infrastructure in order to allow Trains operating on that Private Infrastructure to enter or exit from the Rail Infrastructure for the purpose of Access;
 - (ii) the proposed Connecting Infrastructure will meet the technical specifications required by Aurizon Network (acting reasonably) for connection to the Rail Infrastructure;
 - (iii) the proposed Connecting Infrastructure is to be constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining Rail Infrastructure (including any planned or anticipated Expansion);
 - (iv) the proposed Connecting Infrastructure will not adversely impact on safety; and
 - (v) the proposed Connecting Infrastructure will not, after completion and commissioning of the proposed connection and any related Expansion, reduce Capacity or Supply Chain Capacity.
- (c) Connecting Infrastructure must be owned by Aurizon Network or, where Aurizon Network holds the Rail Infrastructure of which that Connecting Infrastructure will form a part under a lease, must be included under that lease as part of the leased infrastructure.

- (d) Within five (5) Business Days of making its decision under **clause 9.1(b)**, Aurizon Network must notify the Private Infrastructure Owner and the QCA of that decision.
- (e) If Aurizon Network decides the proposal meets the criteria under **clause 9.1(b)**, then within two (2) Months of notifying the Private Infrastructure Owner under **clause 9.1(d)**, Aurizon Network must agree with the Private Infrastructure Owner the timeframes within which Aurizon Network (acting reasonably) will:
 - (i) enter into a Rail Connection Agreement with the Private Infrastructure Owner;
 - (ii) design and construct any Connecting Infrastructure;
 - (iii) commission any Connecting Infrastructure; and
 - (iv) complete any other matters Aurizon Network and the Private Infrastructure Owner consider necessary,(each a **Connection Milestone**) which must be supported by reasons explaining the length of the timeframe selected by Aurizon Network.
- (f) Aurizon Network and the Private Infrastructure Owner may agree to delay setting the Connection Milestones under **clause 9.1(e)** until an Access Agreement which requires the proposed connection to the Rail Infrastructure to be completed has been entered into between the parties.
- (g) Within five (5) Business Days of reaching agreement under **clause 9.1(e)** or agreeing under **clause 9.1(f)** to delay setting the Connection Milestones, Aurizon Network must notify the QCA of either each Connection Milestone (and the reasons supporting each Connection Milestone) or the decision to delay.
- (h) Where Aurizon Network decides that the criteria set out in **clause 9.1(b)** are, or will be, satisfied and that **clause 9.1(c)** will be complied with, it must permit the connection of the Private Infrastructure to the Rail Infrastructure subject to:
 - (i) Aurizon Network and the Private Infrastructure Owner entering into a Standard Rail Connection Agreement (unless the Private Infrastructure Owner agrees with Aurizon Network to vary the terms of the Standard Rail Connection Agreement, in which case any amendments proposed to those terms must be negotiated by both Aurizon Network and the Private Infrastructure Owner acting reasonably and in good faith);
 - (ii) Aurizon Network gaining access, on terms acceptable to Aurizon Network (acting reasonably and in good faith), to the land necessary to construct, operate, use and maintain the Connecting Infrastructure; and

(iii) Aurizon Network and the Private Infrastructure Owner or any other relevant person entering into any other agreements in relation to:

(A) the design, construction, project management or commissioning of the Connecting Infrastructure; or

(B) other works relating to the proposed connection,

required under the Rail Connection Agreement or any Law.

(i) If Aurizon Network decides, acting reasonably and in good faith:

(i) in accordance with **clause 9.1(b)**, that the criteria set out in **clause 9.1(b)** have not been satisfied; and

(ii) to refuse to enter into a Rail Connection Agreement as a result,

then Aurizon Network must, within five (5) Business Days of making its decision:

(iii) notify the Private Infrastructure Owner and the QCA of its decision if it has not already done so under **clause 9.1(d)**;

(iv) provide reasons for its decision to the Private Infrastructure Owner and the QCA; and

(v) specify the amendments it requires to be made to the Private Infrastructure Owner's proposal in order to satisfy the criteria in **clause 9.1(b)** and to enable Aurizon Network to enter into a Rail Connection Agreement.

(j) If a Private Infrastructure Owner is notified by Aurizon Network under **clause 9.1(i)(iii)**, the Private Infrastructure Owner may re-submit its proposal to Aurizon Network under **clause 9.1(a)**, in which case Aurizon Network must recommence the assessment and decision-making process under **clause 9.1(a)**.

(k) If connection of the Private Infrastructure to the Rail Infrastructure is permitted under this **clause 9.1**, then unless otherwise agreed with the Private Infrastructure Owner, Aurizon Network:

(i) must be responsible for designing, constructing, project managing and commissioning the Connecting Infrastructure;

(ii) must do so in accordance with the relevant Rail Connection Agreement, Construction Agreement and any other relevant agreement without unreasonable delay;

- (iii) is entitled to payment for that design, construction, project management and commissioning consisting only of reimbursement of its efficient costs which directly relate to the Connecting Infrastructure, but to the extent only that such costs have not, or will not be, included in the Regulatory Asset Base or recovered by Aurizon Network through other means under this Undertaking; and
 - (iv) must not in the technical specifications required by Aurizon Network for connection to the Rail Infrastructure, require higher standards for the design or construction than those required under the relevant legislation and Safety Standards.
- (l) Aurizon Network must pay all reasonable costs (excluding Consequential Loss) incurred by the Private Infrastructure Owner arising directly out of Aurizon Network’s unreasonable delay in:
- (i) entering into:
 - (A) a Rail Connection Agreement;
 - (B) an agreement relating to the design and construction, project management and/or commissioning of any Connecting Infrastructure required under the Rail Connection Agreement or any Law; and
 - (C) an agreement relating to any other works required for the connection or proposed connection under the Rail Connection Agreement or any Law;
 - (ii) designing and constructing any Connecting Infrastructure;
 - (iii) commissioning any Connecting Infrastructure; and
 - (iv) completing any other matters that Aurizon Network and the Private Infrastructure Owner consider necessary.

For the purposes of this **clause 9.1(l)**, “Consequential Loss” means:

- (v) loss of revenue, loss of profits, or loss of production;
- (vi) loss of whatever nature concerning supply of product from a mine to any third party or to make product available to transport;

- (vii) loss of business opportunities;
 - (viii) loss of or damage to reputation or good will;
 - (ix) wasted overheads;
 - (x) loss of or damage to credit rating; and
 - (xi) loss or damage that does not naturally, according to the usual course of things, flow from the delay.
- (m) In **clause 9.1(l)**, “unreasonable delay” includes, but is not limited to, Aurizon Network’s failure to comply with a Connection Milestone, except to the extent that Aurizon Network’s failure to meet the Connection Milestone is a direct result of an event or factor outside Aurizon Network’s reasonable control.
- (n) Without limiting **clause 11.1.1**, if the Private Infrastructure Owner and Aurizon Network cannot agree as to:
- (i) the negotiation of an agreement on the Connection Milestones under **clause 9.1(e)**;
 - (ii) whether either party has unreasonably delayed the formation of the agreements mentioned in **clause 19.1(l)(i)**; or
 - (iii) the amount of reasonable costs incurred by the Private Infrastructure Owner, the Access Seeker or Access Holder,

any party may seek to resolve the Dispute in accordance with **Part 11**.

- (o) Nothing in this **0** requires or obliges either Aurizon Network or the Private Infrastructure Owner to agree that the technical specifications or the completed construction of either the Private Infrastructure or any Connecting Infrastructure is required to the standards or condition for the design or construction of any relevant Rail Infrastructure (including any planned or anticipated Expansion).

9.2 Development of Standard Rail Connection Agreement

- (a) Following consultation with stakeholders, Aurizon Network will submit to the QCA a Proposed Standard Rail Connection Agreement within twelve (12) months after the Approval Date, or such further period as the QCA may, in its absolute discretion, determine.
- (b) The QCA will consider a Proposed Standard Rail Connection Agreement given to it by Aurizon Network under **clause 9.2(a)** and either approve or refuse to approve it within sixty (60) Business Days after it is received by the QCA or such further period as the QCA may determine.

- (c) If the QCA refuses to approve a Proposed Standard Rail Connection Agreement submitted under **clause 9.2(a)**, the QCA will give Aurizon Network a notice in writing:
- (i) stating the reasons for its refusal; and
 - (ii) requiring Aurizon Network to amend the Standard Rail Connection Agreement in the way the QCA considers appropriate and to resubmit the amended Standard Rail Connection Agreement to the QCA within sixty (60) Business Days after the giving of that notice or such further period as the QCA may in its absolute discretion determine.
- (d) The QCA may develop a Proposed Standard Rail Connection Agreement that is consistent with the Undertaking, if:
- (i) Aurizon Network does not submit a Proposed Standard Rail Connection Agreement in accordance with **clause 9.2(a)**;
 - (ii) Aurizon Network does not re-submit the Proposed Standard Rail Connection Agreement in accordance with **clause 9.2(c)**; or
 - (iii) the QCA refuses to approve a Proposed Standard Rail Connection Agreement that was re-submitted in accordance with **clause 9.2(c)**.
- (e) The QCA may approve a Proposed Standard Rail Connection Agreement (including a Proposed Standard Rail Connection Agreement developed by the QCA) only if the QCA:
- (i) is satisfied that, in the case of a resubmitted Proposed Standard Rail Connection Agreement, it is in accordance with the notice given under **Clause 9.2(c)**;
 - (ii) is satisfied that the Proposed Standard Rail Connection Agreement is consistent with this Undertaking;
 - (iii) considers it appropriate to do so having regard to the matters listed in section 138(2) of the Act; and
 - (iv) has complied with **clause 9.2(f)**.
- (f) Where Aurizon Network submits a Proposed Standard Rail Connection Agreement under **clause 9.2(a)** or the QCA develops a Proposed Standard Rail Connection Agreement under **clause 9.2(d)**, the QCA will:
- (i) publish the Proposed Standard Rail Connection Agreement on its website;
 - (ii) invite persons to make submissions on the Proposed Standard Rail Connection Agreement to the QCA

within a reasonable period of time specified by the QCA; and

(iii) consider any submission it receives within the time specified.

(g) If the QCA approves a Proposed Standard Rail Connection Agreement:

(i) the Standard Rail Connection Agreement will apply from the date of the QCA decision, or such later date that the QCA determines;

(ii) the QCA will give Aurizon Network a notice in writing stating the reasons for its decision; and

(iii) Aurizon Network must publish the Standard Rail Connection Agreement on its website.

(h) An approved Standard Rail Connection Agreement which was submitted in accordance with **clause 9.2(a)** or resubmitted in accordance with this **clause 9.2(c)** may only be withdrawn by Aurizon Network if approved by the QCA.

(i) If the QCA considers it necessary to do so, the QCA may ask Aurizon Network to submit a replacement Standard Rail Connection Agreement within a reasonable period advised by the QCA, in which case **clauses 9.2(b) to (h)** will apply but with references to **clause 9.2(a)** being read as a reference to this **clause 9.2(i)**.

(j) Unless otherwise agreed between Aurizon Network and a proponent of infrastructure which is proposed to connect to Rail Infrastructure (but for which Aurizon Network will not be the Railway Manager), any Rail Connection Agreement entered pursuant to this Undertaking after a Standard Rail Connection Agreement has been approved must be consistent with the terms of the Standard Rail Connection Agreement.

Annexure 8 – SAA marked up against UT5

Aurizon Network 2017 DAU Draft - 21 November 2016

Aurizon Network Pty Ltd

[Insert name of Access Holder]

Access Agreement – Coal

[QRC mark-up of provisions regarding changes to payload 17 March 2017 \(collaboration draft marked up against UT5\)](#)

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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 person specified in **item 1** of **Schedule 1 (Access Holder)**

Background

- A Aurizon Network is responsible for the provision of Access to the Nominated Network in accordance with the Access Undertaking.
 - B The Access Holder wishes to secure non-exclusive rights of Access to the Nominated Network for the operation of Train Services by an Operator (or Operators).
 - C Aurizon Network has agreed to grant non-exclusive Access Rights to the Access Holder for the operation of Train Services over the Nominated Network by an Operator (or Operators) in accordance with one or more Train Operations Deed.
 - D The Parties may enter into separate agreements for the provision of services by Aurizon Network to the Access Holder other than the grant of the Access Rights.
-

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Acceptable Credit Rating means a minimum long term credit rating of not less than BBB- from Standard & Poor's Ratings Services (or equivalent rating by another internationally recognised ratings agency).

Access has the meaning given in the Access Undertaking.

Access Agreement means an access agreement made under the Access Undertaking, other than this Agreement.

Access Charges means:

- (a) where the term is used in respect of a Billing Period, the Access Charges for that Billing Period as calculated in accordance with **Schedule 4**; and
- (b) otherwise, the charges calculated in accordance with **Schedule 4** and any interest payable in relation to such charges under this Agreement.

Access Charge Rates are the rates set out in **Schedule 4**.

Access Holder Agreement means each of the following types of agreements between Aurizon Network and the Access Holder:

- (a) a licence in respect of a train loadout facility;
- (b) an agreement allowing the connection of Private Facilities to the Infrastructure; or
- (c) an agreement in relation to the funding and/or construction of Connecting Infrastructure.

Access Holder's Staff means the employees, contractors, volunteers and agents of the Access Holder and any other person under the control or supervision of the Access Holder involved in any activity associated with the Train Services but does not include an Operator or the employees, contractors, volunteers or agents of an Operator.

Access Interface Deed means a deed in the form contained in **Schedule 7**.

Access Rights means the rights of access to the Nominated Network granted under this Agreement (whether or not utilised by an Operator from time to time).

Access Seeker has the meaning given in the Access Undertaking.

Access Undertaking means the access undertaking submitted by Aurizon Network to the QCA and approved by the QCA under the *Queensland Competition Authority Act 1997* (Qld) from time to time.

Accreditation means the ability to lawfully carry out railway operations under the Rail Safety Act (whether by being accredited under the Rail Safety Act or by being exempt from the requirement to be accredited under the Rail Safety Act), and **Accredited** means to have Accreditation.

Ad Hoc Train Service for a Train Service Type means:

- (a) a Network Train Service which is additional to the Nominated Monthly Train Services for that Train Services Type but which is otherwise in accordance with the Train Description for that Train Service Type; or
- (b) a Network Train Service which is not a Train Service for a Train Service Type but which Aurizon Network permits an Operator to operate for the Access Holder under this Agreement as if it was a Train Service for the Train Service Type (subject to any derogations to the Train Description for the Train Service Type permitted by Aurizon Network, which includes a change in the Origin and Destination for that Train Service Type provided that the changed Origin and Destination forms part of the Nominated Network).

Adjoining Network means a rail network which is not part of the Infrastructure but which connects to the Infrastructure.

Affected Train Service Type has the meaning given in **clause 11.20**.

Agreement means this document, including the schedules and annexures to it.

Assessment Date has the meaning given in **clause 11.10**.

Assign means to assign, novate, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber, but does not include the nomination of an Operator by the Access Holder and the execution of a Train Operations Deed.

[AT2 Component](#) means [that part of the formula for calculating the TOP Charges that is calculated by multiplying and/or dividing one or more variables](#)

[by "AT2" \(as defined in Schedule 4\).](#)

Aurizon Network Cause has the meaning given in the Access Undertaking.

Aurizon Network's Staff means the employees, contractors and agents of Aurizon Network and any other person under the control or supervision of Aurizon Network involved in the provision of Access Rights.

Authority has the meaning given in the Access Undertaking.

Available Capacity has the meaning given in the Access Undertaking.

Average Annual Payload for a Train Service Type and for an Operator means, at a point in time, the average of the Payloads (expressed in tonnes) for each Train Service [for that Train Service Type operated by that Operator](#) ~~for that Train Service Type operated by that Operator~~ from the Origin to the Destination (as recorded by a Weighbridge or Overload Detector) during the 12 month period ending at that point in time.

Billing Period means the period of a Month, except that:

- (a) the first Billing Period starts on the Commitment Date and ends on the last day of the Month in which the Commitment Date occurs; and
- (b) the last Billing Period commences on the first day of the Month during which this Agreement terminates or expires and ends on the date of termination or expiry.

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

Capacity has the meaning given in the Access Undertaking.

Capacity Assessment Notice has the meaning given in the Access Undertaking.

Capacity Shortfall has the meaning given in the Access Undertaking.

Change in Access Undertaking means:

- (a) any amendment to or replacement of the Access Undertaking or any successor undertaking to the Access Undertaking; or
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of the Access Undertaking resulting from a decision of a court or other Authority.

Change in Control in relation to any entity (the first mentioned entity) means:

- (a) a change in the entity that Controls the first mentioned entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change);
- (b) an entity that Controls the first mentioned entity ceases to Control that entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change); or
- (c) if the first mentioned entity is not Controlled, another entity acquires Control of the first mentioned entity.

Change in Law has the meaning given in the Access Undertaking, except that the reference to “Commencing Date” is replaced with “Commencement Date” (as defined under this Agreement).

Change in Relevant Taxes has the meaning given in the Access Undertaking.

Charge means:

- (a) any mortgage, charge, a general or special notarial bond, pledge, hypothec or lien; or
- (b) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

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

Coal System has the meaning given in the Access Undertaking.

Collateral has the meaning given in the PPS Act.

Commencement Date means the date of this Agreement.

Commitment Date means the earliest Train Service Commitment Date under this Agreement.

Compliant Nomination Requirements means:

- (a) subject to **paragraph (b)** of this definition, the Train Description for the Train Service Type which the Access Holder wishes to allocate to the nominee Operator in the nominee Operator’s new or existing Train Operations Deed (as applicable) must be the same as the Train Description for that Train Service Type in this Agreement;
- (b) in respect of each Train Service Type which is the subject of the nomination, the aggregate of:
 - (i) the “Nominated Monthly Operational Rights (for a 30 day Month)” in the Train Description for that Train Service Type in the nominee Operator’s Train Operations Deed; and
 - (ii) the “Nominated Monthly Operational Rights (for a 30 day Month)” in the Train Description for that Train Service Type in all other Train Operations Deeds (if any),

must not exceed the “Nominated Monthly Train Services (for a 30 day Month)” set out in the Train Description for that Train Service Type in this Agreement. For the avoidance of doubt, where the nomination is accompanied by the statement in **clause 4.3(b)(ii)(B), paragraph (b)(i)** of this definition is to be determined on the basis of the nominee Operator’s Train Operations Deed taking into account the additional Access Rights for the relevant Train Service Type which the Access Holder wishes to allocate to the nominee Operator.

Conditional Access Rights has the meaning given in **clause 9.2**.

Conditional Access Provisions means:

- (a) the provisions of the Access Undertaking which include the details of the Conditional Access Rights (which, as at the Commencement Date, is clause 8.9 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the Conditional Access Rights.

Confidential Information means the terms of this Agreement and any information, data or other matter disclosed to a Recipient by or on behalf of the Discloser in relation to this Agreement where:

- (a) the disclosure of the information, data or other matter by the Recipient might reasonably be expected to affect the commercial affairs of the Discloser; or
- (b) the information, data or matter is marked confidential by the Discloser when disclosed,

but excluding any such information, data or other matter which:

- (c) is already in the public domain or becomes available to the public through means other than a breach of the confidentiality undertaking by the Parties under this Agreement;
- (d) was in the Recipient's lawful possession before the disclosure by the Discloser;
- (e) is received by the Recipient independently from a Third Party who is free to disclose such information, data or other matter to the Recipient; or
- (f) has ceased to retain its confidential nature, for example, where the disclosure of the information, data or other matter by the Recipient would no longer reasonably be expected to affect the commercial affairs of the Discloser.

Connecting Infrastructure has the meaning given in the Access Undertaking.

Consequential Loss means:

- (a) any loss of revenue, 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) any wasted overheads or demurrage;
- (f) loss of or damage to credit rating;
- (g) in respect of a breach of an agreement, loss or damage that does not naturally, according to the usual course of things, arise from the breach; and
- (h) loss or damage suffered or incurred by a Party arising out of a Claim against that Party by a Third Party, to the extent that the loss or damage would not be recoverable by the Third Party if the Party was not liable to the Third Party for "Consequential Loss" (as defined in this definition) in respect of the Claim by the Third Party,

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

- (i) 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 this Agreement is itself not recoverable because it is a Consequential Loss, the costs or expenses incurred in mitigating that loss must also be treated as (non-recoverable) Consequential Loss;
- (j) 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 property of any person (including a Party) that has been lost, damaged or destroyed;
 - (ii) personal injury to or death of any person; or
- (k) 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
- (l) any fines or penalties imposed by an Authority 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 this 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.

Control has the meaning given in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Corresponding Suspension Event in respect of a Termination Event means the Suspension Event specified in the same row as that Termination Event in **Schedule 6**.

Customer has the meaning given in the Access Undertaking.

Daily Train Plan means a "Daily Train Plan" under the relevant Train Operations Deed.

Default 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 trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 28.3**).

Defaulting Operator

- (a) in **clause 110**, has the meaning given in **clause 11.1(a)0**; and

(b) in **clause 18**, has the meaning given in **clause 18.1(a)**.

▪

Depot for a Train Service Type means a depot, as specified in the Train Description for that Train Service Type.

Destination for a Train Service Type means the destination specified as such in the Train Description for that Train Service Type.

Discloser means a Party that discloses Confidential Information to the other Party.

[Discount Rate](#) has the meaning given in the [Access Undertaking](#).

Dispute has the meaning given in **clause 28.1**.

Dispute Notice has the meaning given in **clause 28.1**.

~~**Effective Date** has the meaning given in **clause 12.3(c)(i)**.~~

Emergency Possession has the meaning given in the Access Undertaking.

Environment has the meaning given in the *Environmental Protection Act 1994* (Qld).

Environmental Law has the meaning given in the Access Undertaking.

Environmental Management Plan means the environmental management plan developed, implemented and maintained by an Operator under a Train Operations Deed.

Environmental Regulator means, in respect of an Environmental Law, the Authority administering that Environmental Law.

Evaluation Period has the meaning given in the Access Undertaking.

[Existing Capacity](#) has the meaning given in the [Access Undertaking](#).

Expansion has the meaning given in the Access Undertaking.

Expert has the meaning given in **clause 28.3**.

Expiry Date means the latest Train Service Expiry Date under this Agreement.

Financial Obligation means any obligation of the Access Holder to:

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

FM Access Rights means the Access Rights for each Train Service Type which cannot be made available by Aurizon Network for an Operator to operate Train Services for the Access Holder due to damage to, or the destruction of, a part of the Nominated Network referred to in **clause 29.5** (assuming that part of the Nominated Network will not be repaired or replaced).

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

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

and, provided that the requirements in **paragraphs (a) and (b)** of this definition are satisfied, includes:

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

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

GST has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Incident means any Network Incident involving the activities of an Operator.

Incident Commander means a member of Aurizon Network's Staff who has been delegated responsibility for the direction and coordination of Aurizon Network's, each relevant Operator's and the Access Holder's resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with Authorities.

Incorporated Provisions means each of the following provisions:

- (a) Interface Risk Provisions;

- (b) Transfer Provisions;
- (c) Relinquishment Provisions;
- (d) Reduction Factor Provisions;
- (e) Resumption Provisions;
- (f) Conditional Access Provisions; and
- (g) Reference Tariff Provisions.

Incremental Costs has the meaning given in the Access Undertaking.

Indicative Tonnage for a Train Service Type means the tonnage as specified as such in the Train Description for that Train Service Type.

Infrastructure has the meaning given to the term “Rail Infrastructure” in the Access Undertaking.

Infrastructure Enhancement has the meaning given in the Access Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

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

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or
- (f) any similar event occurs in respect of the Party under the laws of any jurisdiction other than Australia.

Interface Risk Assessment has the meaning given in the Access Undertaking.

Interface Risk Management Plan or **IRMP** has the meaning given in the Access Undertaking.

Interface Risk Provisions means:

- (a) the provisions of the Access Undertaking which include the details of:
 - (i) the Interface Risks, the Interface Risk Assessment and the IRMP

- (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and
- (ii) the Environmental Management Plan (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the Interface Risks, the Interface Risk Assessment, the IRMP and the Environmental Management Plan.

Interface Risk has the meaning given in the Access Undertaking.

Intermediate Train Plan or **ITP** has the meaning given in the Access Undertaking.

Investigation means the investigation conducted in accordance with the Investigation Procedures.

Investigation Procedures means the procedures in relation to investigations which are:

- (a) specified in Aurizon Network's document entitled *Incident Report and Investigations* which is published on the Website (as amended and replaced from time to time); and
- (b) as far as practicable, applied consistently for all Access Holders and Train Operators in the same Coal System.

Joint Venture means the unincorporated joint venture (if any) between the JV Participants specified in **item 6 of Schedule 1**.

JV Participants means the entities (if any) specified in **item 7 of Schedule 1**.

Landowner has the meaning given in **clause 38.17**.

Law has the meaning given in the Access Undertaking.

Loading Facility for a Train Service Type means the loading facility located at the ultimate origin for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Maintenance Work has the meaning given in the Access Undertaking.

Major Periodic Maintenance has the meaning given in the Access Undertaking.

Material Change means a:

- (a) Change in Relevant Taxes;
- (b) Change in Law;
- (c) Change in Access Undertaking; or
- (d) matter deemed to be a Material Change under **clause 38.17(d)**.

Maximum Other Dwell Times for a Train Service Type means the maximum Other Dwell Times for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Payload for a Train Service Type means the maximum Payload for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Sectional Running Time for a Section for a Train Service Type means the maximum Sectional Running Times for Train Services for that Train Service Type operating on that Section as specified as such in the Train Description for that Train Service Type.

Maximum Time at Depot for a Train Service Type means the maximum Time at Depot for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Loading Facility for a Train Service Type means the maximum Time at Loading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Unloading Facility for a Train Service Type means the maximum Time at Unloading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Month means calendar month.

Net Financial Effect on a Party of an event or circumstance means the net effect in financial terms of the occurrence of the event or circumstance on the Party in relation to performing its obligations and exercising its rights under this Agreement and/or a Train Operations Deed including any increases in costs (whether capital or operating, fixed or variable) and other detriments incurred, or to be incurred, by the Party but deducting the amount of any savings or other benefits or advantages received, or to be received, by the Party, and on the basis that the Party uses reasonable endeavours to mitigate the net effect of the event or circumstance.

Network Customer means any person (including the Access Holder) that has been granted rights of access to operate Network Train Services on all or part of the Infrastructure.

Network Incident has the meaning given in the Access Undertaking.

Network Interface Point means a location at which the Infrastructure meets an Adjoining Network.

Network Management Principles has the meaning given in the Access Undertaking.

Network Train Service means the running of a Train between specified origins and destinations by a Railway Operator (including any Stowage) on the Infrastructure.

New Incorporated Provisions has the meaning given in **clause 3.2(b)(i)**.

New Train Service Type has the meaning given in **clause 11.2(a)(i)9**.

Nominal Payload for a Train Service Type means the nominal Payload for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Nominated Access Rights has the meaning given in the Access Undertaking.

Nominated Monthly Train Services for a Train Service Type means the number of Train Services for that Train Service Type that the Access Holder is entitled to have operated during any Month:

- (a) in the case of a Month that is 30 days, as specified in the Train Description for that Train Service Type; and
- (b) in the case of a Month that is longer or shorter than 30 days, a pro rata portion of the number of Train Services referred to in **paragraph (a)** of this definition (rounded to the nearest even number of whole Train Services provided that where the pro rata portion of the number of Train Services is a whole odd number, the number of Train Services will be rounded up to the nearest even number) to reflect the longer or shorter period,

as varied in accordance with this Agreement.

Nominated Network means that part of the Infrastructure described in **item 1 of Schedule 3**.

Nominated Network FM Reduction Notice means a notice given under **clause 29.5(d)**.

Non-Defaulting Operator has the meaning given in **clause 11.2(a)0**.

Notice has the meaning given in **clause 37.1**.

Notice of Enquiry has the meaning given in **clause 10.1(a)**.

Obstruction means any circumstance relating to the whole or any part of the Infrastructure, including Rollingstock, debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation of Train Services or Train Movements, and includes any Network Incident but does not include an Operational Constraint imposed by Aurizon Network.

Operational Constraint has the meaning given in the Access Undertaking.

Operator means each Accredited Railway Operator that is nominated by the Access Holder in accordance with **clause 4.3(b)** who is contracted by the Access Holder to operate Train Services for the Access Holder in accordance with the relevant nomination – but only to the extent of the relevant nomination.

Operator's Staff means, in respect of an Operator, the employees, contractors, volunteers and agents of that Operator and any other person under the control or supervision of that Operator who is involved in any activity associated with the Train Services but does not include the employees, contractors, volunteers or agents of another Operator.

Origin for a Train Service Type means the origin specified as such in the Train Description for that Train Service Type.

Original Train Service Type has the meaning given in **clause 11.2(a)(ii)0**.

Other Dwell Times means, for any other permitted activity, the time period commencing when a Train Service arrives at the specified point for that activity and ending when it is ready to depart from that point and the relevant Train Controller has been advised accordingly.

Over-Allocation has the meaning given in **clause 4.7(b)**.

Overload Detector means a weighing mechanism other than a Weighbridge and specified in **item 5.2 of Schedule 3**.

Party means a party to this Agreement, and **Parties** means the parties to this Agreement. For the avoidance of doubt, an Operator is not a party to this Agreement.

Passenger Priority Obligations has the meaning given in the Access Undertaking.

Payload of a Train Service means the weight of product loaded onto any Train used in operating that Train Service.

Performance Levels has the meaning given in the relevant Train Operations Deed.

Planned Dwell Times means each of Time at Loading Facility, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule.

Planned Possession has the meaning given in the Access Undertaking.

Possession has the meaning given in the Access Undertaking.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Private Facilities means sidings, loading and unloading facilities and any other facilities of any kind:

- (a) which either:
 - (i) are required to be accessed or used by an Operator to operate any Train Services for the Access Holder in the manner contemplated by this Agreement; or
 - (ii) if no Operator has been nominated in respect of the relevant Train Services, would have been required to be accessed or used by an Operator, had one been nominated; and
- (b) which do not form part of the Nominated Network.

[Private Infrastructure has the meaning given in the Access Undertaking.](#)

[Proposed Maximum Payload has the meaning given in clause 10.1\(b\)\(i\).](#)

Queensland Competition Authority or **QCA** means the authority established under the *Queensland Competition Authority Act 1997* (Qld).

Rail Safety Act means the *Transport (Rail Safety) Act 2010* (Qld).

Rail Safety Regulator means the chief executive of the department administering the Rail Safety Act.

Railway Manager has the meaning given in the Transport Infrastructure Act.

Railway Operator has the meaning given in the Access Undertaking.

Recipient means a Party that receives Confidential Information from the Discloser.

Reduction Factor has the meaning given in the Access Undertaking.

Reduction Factor Provisions means:

- (a) the provisions of the Access Undertaking which include the Reduction Factor and the details of the calculation and application of the Reduction Factor (which, as at the Commencement Date, is clause 7.4.4 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the application or calculation of the Reduction Factor.

Reduction Notice has the meaning given in **clause 11.10**.

Reference Tariff has the meaning given in the Access Undertaking.

Reference Tariff Provisions means:

- (a) the schedule of the Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service (which, as at the Commencement Date, is Schedule F of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the application or calculation of Reference Tariffs or access charges (including any TOP Charge).

Reference Train Service has the meaning given in the Access Undertaking.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Collateral means Collateral which is the subject of a Security Interest granted under this Agreement.

Relevant Rollingstock Configuration for a Train Service Type means ~~an~~ Authorised Rollingstock Configuration utilised in the operation of Train Services for that Train Service Type which has a maximum Payload which exceeds the Maximum Payload for that Train Service Type.

Relevant Tax means any tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on Aurizon Network by, or payable by Aurizon Network to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes.

Relinquishment Fee has the meaning given in the Access Undertaking.

Relinquishment Provisions means:

- (a) the provisions of the Access Undertaking which relate to the relinquishment of Access Rights (which, as at the Commencement Date, are clauses 7.4.3 and 7.4.4 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the relinquishment of Access Rights.

Response Notice has the meaning given in **clause 10.2(b)**.

Resumption Notice has the meaning given in the Access Undertaking.

Resumption Provisions means:

- (a) the provisions of the Access Undertaking which relate to capacity resumption (which, as at the Commencement Date, is clause 7.6 of the Access Undertaking); and

- (b) any other provisions of the Access Undertaking which affect or relate to capacity resumption.

[Revised Indicative Tonnage for a Train Service Type means the amount calculated for the Train Service Type in accordance with clause 13.4.](#)

~~Revised Maximum Payload for a Train Service Type means:~~

~~in clause 0, the amount calculated for that Train Service Type in accordance with clause 00; and~~

~~in clause 11, the amount calculated for that Train Service Type in accordance with clause 1.1.~~

Revised Nominal Payload for a Train Service Type ~~is:~~

~~in clause 0, means the amount calculated for that Train Service Type in accordance with clause 13.1; clause 0;~~

~~in clause 10, means the amount calculated for that Train Service Type in accordance with clause 10.2(a); and~~

~~in clause 11, has the meaning given in clause (a).~~

Revised Nominated Monthly Train Services for a Train Service Type ~~means:~~

~~in clause 0, the amount calculated for that Train Service Type in accordance with clause 13.20;~~

~~in clause 10, the amount calculated for that Train Service Type in accordance with clause 10.2(a); and~~

~~in clause 11, the amount calculated for that Train Service Type in accordance with clause 1.1.~~

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

Rollingstock Configuration has the meaning given in the Access Undertaking.

[Rollingstock Interface Standards has the meaning given in the Access Undertaking.](#)

Safeworking Procedures means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure specified in Aurizon Network's document entitled *Safeworking Procedures* as:

- (a) notified by Aurizon Network to the Access Holder; or
- (b) published on the Website,

(as amended and replaced from time to time).

[SAR Relinquishment Fee for the Surplus Access Rights for a Train Service Type means the amount calculated in accordance with clause 13.5 for the Surplus Access Rights for the Train Service Type.](#)

Scheduled Time means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as set out in the Train Schedule or as amended by Aurizon Network from time to time on the day of operation in accordance with the Network Management Principles.

Section means a section of Track between two locations on the Nominated Network as shown in the diagram(s) in **Schedule 3**.

Sectional Running Times means the time period measured from the time a Train Service passes the signal controlling entry into a Section until the time the Train Service arrives at the signal controlling entry into the next adjoining Section or the Adjoining Network (as applicable), and does not include an allowance for Planned Dwell Times.

Security means:

- (a) a parent company guarantee in a form reasonably acceptable to Aurizon Network and from an Australian incorporated holding company (as defined in the Corporations Act) of the Access Holder that has an Acceptable Credit Rating;
- (b) an unconditional and irrevocable bank guarantee in favour of Aurizon Network which:
 - (i) is issued by a trading bank holding a current Australian banking licence that has an Acceptable Credit Rating;
 - (ii) requires the issuing bank to pay on demand by Aurizon Network, without recourse to the Access Holder or any other person, an amount or amounts up to the amount specified in the bank guarantee;
 - (iii) has no expiry date (or, if it is not possible for the Access Holder to obtain a bank guarantee with no expiry date, has an expiry date no earlier than 12 Months after the date of issue of the bank guarantee);
 - (iv) states that it is assignable by Aurizon Network to an assignee from Aurizon Network under this Agreement (subject to the relevant bank and the Access Holder being given notice of the identity of the assignee); and
 - (v) is otherwise in a form and upon terms reasonably acceptable to Aurizon Network; or
- (c) any other form of security reasonably acceptable to Aurizon Network, in a form and upon terms reasonably acceptable to Aurizon Network,

as security for the due and proper performance by the Access Holder of its obligations under this Agreement.

Security Amount at a time means the amount determined in accordance with **item 4 of Schedule 1** at that time.

Security Interest has the meaning given in **clause 38.20(a)**.

Segment of an Expansion means each segment of the Expansion specified as such in the Train Description for the Conditional Access Rights which are conditional upon the completion and commissioning of the Expansion.

Split Train Service Type has the meaning given in **clause 11.2(a)**.

Staff means Aurizon Network's Staff or the Access Holder's Staff (as applicable).

State means the State of Queensland.

Stowage has the meaning given in the Access Undertaking.

Supply Chain Rights has the meaning given in the Access Undertaking.

Surplus Access Rights for a Train Service Type ~~has the meaning given in~~ means the amount calculated in accordance with clause 13.3 ~~clause 10.2(b)(ii)(C)~~ for the Train Service Type.

Suspension Event means any event or circumstance specified as such in **Schedule 6**.

Suspension Notice has the meaning given under **clause 30.1**.

Term means the term of this Agreement in accordance with **clause 2.1**.

Termination Event means any event or circumstance specified as such in **Schedule 6**.

Third Party means a person other than the Access Holder or Aurizon Network.

Third Party Land has the meaning given in **clause 38.17(a)**.

Through-Running Train Service Type means a Train Service Type that has a Destination and/or Origin that is a Network Interface Point and is specified as such in the Train Description for that Train Service Type.

Time at Depot means the time period commencing when a Train Service arrives at the entry signal for a Depot and ending when it is ready to depart the Depot and the relevant Train Controller has been advised accordingly.

Time at Loading Facility means the time period commencing when a Train Service arrives at the entry signal for a Loading Facility and ending when it presents at the exit signal for the Loading Facility, is ready to depart the Loading Facility and the relevant Train Controller has been advised accordingly.

Time at Unloading Facility means the time period commencing when a Train Service arrives at the entry signal for an Unloading Facility and ending when it presents at the exit signal for the Unloading Facility, is ready to depart the Unloading Facility and the relevant Train Controller has been advised accordingly.

TOP Charge has the meaning given in **Schedule 4**.

Track has the meaning given in the Access Undertaking.

Train has the meaning given in the Access Undertaking.

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

- (a) recording Train running times on Train diagrams and in Aurizon Network's information systems;
- (a) reporting of Incidents occurring on the Infrastructure;

- (b) managing Incidents occurring on the Infrastructure from within a Train Control centre;
- (c) field Incident management;
- (d) yard control services; and
- (e) exchanging information with Railway Operators.

Train Control Direction means any instruction or direction (whether given orally or in writing or by means of signal or other similar device) issued by or on behalf of Aurizon Network acting reasonably relating to Train Movements.

Train Controller means the person nominated by Aurizon Network from time to time as the supervisor of Train Movements on the relevant part of the Nominated Network.

Train Description for a Train Service Type means the description of, specifications for, and constraints on, the Access Rights for that Train Service Type specified in **Schedule 2**.

Train Movement has the meaning given in the Access Undertaking.

Train Operations Deed means a deed between Aurizon Network and an Operator in substantially the form of the Standard Train Operations Deed (as that term is defined in the Access Undertaking) (or such other form as agreed between the Operator and Aurizon Network) under which Aurizon Network agrees that the Operator may utilise Access Rights allocated to the Operator by the Access Holder, in accordance with this Agreement.

Train Schedule means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by Aurizon Network before the day of operation in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure.

Train Service for a Train Service Type means the running, by an Operator for the Access Holder, of a Train in one direction from the Origin to the Destination, or from the Destination to the Origin, for that Train Service Type (including any Stowage) in accordance with the Train Description for that Train Service Type.

Train Service Commitment Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Compliance Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Expiry Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Type means each type of train service specified as such in **Schedule 2**.

Transfer means the transfer of all or part of the Access Rights to a Third Party.

Transfer Fee has the meaning given in the Access Undertaking.

Transfer Provisions means:

- (a) the clauses of the Access Undertaking which relate to the transfer of Access Rights (which, as at the Commencement Date, are clauses 7.4.2 and 7.4.4 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the transfer of Access Rights.

Transport Infrastructure Act means the *Transport Infrastructure Act 1994* (Qld).

Ultimate Holding Company has the meaning given in the Corporations Act.

Unloading Facility for a Train Service Type means the unloading facility located at the ultimate destination for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Urgent Possession has the meaning given in the Access Undertaking.

Variation Request Notice has the meaning given in **clause 10.2(c)**.

[Variation Effective Date](#) has the meaning given in **clause 10.4(a)**.

Wagon means any rollingstock (including a wagon bogie) designed to carry any load other than passengers.

Website has the meaning given in the Access Undertaking.

Weighbridge means a weighbridge or weightometer verified under the *National Measurement Act 1960* (Cth), as specified in **item 5.1** of **Schedule 3**.

Year means each year commencing on 1 July and ending on 30 June during the Term and, if applicable, includes:

- (a) the shorter period commencing on the first day of the Month in which the Commitment Date occurs and ending on the next 30 June; and
- (b) the shorter period commencing on the 1 July occurring prior to the date of expiration or termination of this Agreement and ending on the date of expiration or termination of this Agreement.

1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and
- (e) a reference to:
 - (i) a person includes a partnership, unincorporated association, corporation or other entity, government or statutory body;
 - (ii) a person includes its legal personal representative, successors and assigns;

- (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (iv) conduct includes a benefit, remedy, discretion, authority or power;
- (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
- (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
- (viii) time is to local time in Brisbane, Queensland;
- (ix) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;
- (x) this or any other document or agreement includes the document or agreement as novated, amended or replaced from time to time and despite any changes in the identity of the parties;
- (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (xii) under a clause includes in accordance with that clause;
- (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Agreement;
- (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (xv) any code, guideline, recommendation or policy, or any provision of any code, guideline, recommendation or policy, includes any modification of it, or the substitution of it or any of its provisions for others, unless otherwise specified or directed by Aurizon Network;
- (xvi) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body;
- (xvii) access or access rights does not include rights granted by Aurizon Network to an Operator under a Train Operations Deed; and
- (xviii) the Access Holder, if the Access Holder is comprised of more than one entity (for example, if the Access Holder is comprised of the

participants in an unincorporated joint venture), is a reference to each entity comprising the Access Holder.

1.3 References to Access Rights

For the avoidance of doubt, Access Rights that are entitled to be utilised for the Access Holder includes Access Rights that could have been utilised had the Access Holder, in accordance with this Agreement, nominated an Operator to use those Access Rights.

1.4 Material published on the Website

For the avoidance of doubt, material published on the Website includes material which is available to the Access Holder via secured, password-protected online access to the Website.

1.5 Headings

Headings do not affect the interpretation of this Agreement.

1.6 Words and expressions defined in Access Undertaking

- (a) Subject to **clause 1.6(b)**, if a word or expression is defined in this Agreement to have the meaning given in the Access Undertaking, then it has the meaning given in the Access Undertaking in force as at the date of this Agreement.
- (b) If a word or expression used in any Incorporated Provisions which form part of this Agreement under **clause 3** is defined in the Access Undertaking, then it has the meaning given in the Access Undertaking in force on the date the relevant Incorporated Provisions is incorporated into this Agreement under **clause 3.1** or **3.2** (as applicable).

1.7 Inconsistency

- (a) If there is any inconsistency between the substantive terms of this Agreement (comprising **clauses 1 to 40**) and the schedules of this Agreement, the substantive terms of this Agreement prevail to the extent of the inconsistency.
- (b) Subject to **clause 9.1(b)**, if there is any inconsistency between matters contained in the Access Undertaking (as amended by any Change in Access Undertaking) and this Agreement, the provisions of this Agreement prevail to the extent of the inconsistency unless expressly provided to the contrary.

2 Term

2.1 Term

This Agreement commences on the Commencement Date and, unless earlier terminated in accordance with its terms, continues until the Expiry Date.

2.2 Right to renewal

The Parties acknowledge and agree that any right which the Access Holder may have to renew this Agreement will be as provided in the Access Undertaking (as amended by any Change in Access Undertaking).

3 Access Undertaking

3.1 Incorporation

- (a) The parties agree that, for the purposes of the Access Undertaking, the Access Holder is considered an Access Seeker or an 'Access Holder' (as the term is defined under the Access Undertaking) (as applicable).
- (b) Subject to **clause 3.2**, the following provisions of the Access Undertaking (as in force as at the Commencement Date) form part of this Agreement as if they were set out in full under this Agreement:
 - (i) Interface Risk Provisions;
 - (ii) Transfer Provisions;
 - (iii) Relinquishment Provisions;
 - (iv) Reduction Factor Provisions;
 - (v) Resumption Provisions; and
 - (vi) Conditional Access Provisions.
- (c) The Reference Tariff Provisions of the Access Undertaking (as changed by a Change in Access Undertaking from time to time) form part of this Agreement as if they were set out in full in this Agreement.
- (d) For the avoidance of doubt, despite any other provision in the Access Undertaking:
 - (i) **clause 25** applies to any Claim in respect of a breach of any Incorporated Provisions which form part of this Agreement under this **clause 3**; and
 - (ii) **clause 28** applies in respect of any Dispute between the Parties in respect of any right or obligation (or in respect of the enforcement) of any Incorporated Provisions which form part of this Agreement under this **clause 3**.

3.2 Changes in Access Undertaking

- (a) If there is a Change in Access Undertaking at any time which changes any of the Incorporated Provisions set out in **clause 3.1(b)**, then this **clause 3.2** applies.
- (b) A Party (**Notifying Party**) may, within 20 Business Days from the date of the Change in the Access Undertaking (or such longer period as the Parties may agree), notify (**Amendment Notice**) the other Party (**Receiving Party**):
 - (i) that it elects to amend this Agreement to replace the Incorporated Provisions which form part of this Agreement under **clause 3.1(b)** or this **clause 3.2 (Former Incorporated Provisions)** with the corresponding Incorporated Provisions as changed by the Change in Access Undertaking (**New Incorporated Provisions**); and
 - (ii) of any other changes to the other terms of this Agreement (if any) which the Notifying Party requires as a consequence of, or to give full effect to the replacement of the Former Incorporated Provisions with the New Incorporated Provisions under this **clause 3.2**; and

- (iii) of the date from which the changes become effective (and if any changes become effective from different dates, the dates applicable to each change), which must be on or after the date on which the Change in Access Undertaking became effective (**Change Date(s)**).
- (c) An Amendment Notice must include an amended version of this Agreement, with the changes referred to in **clause 3.2(b)(i)** clearly identified.
- (d) Promptly following receipt of an Amendment Notice, the Receiving Party must notify the Notifying Party the extent to which the Receiving Party accepts or does not accept the drafting of the amendments to the terms of this Agreement proposed in the Amendment Notice in accordance with **clause 3.2(b)(ii)**.
- (e) If the Receiving Party does not accept the drafting of the amendments to the terms of this Agreement, then the Parties must promptly meet to negotiate and attempt to agree the changes to the terms of this Agreement (if any) which are necessary as a consequence of, or to give full effect to, the replacement of the Former Incorporated Provisions with the New Incorporated Provisions under this **clause 3.2**.
- (f) If the Parties do not agree the amendments in respect of the matters outstanding under **clause 3.2(e)** by the Change Date(s), the matter must be referred to the QCA for determination in accordance with the provisions of the Access Undertaking which provide for determination of disputes by the QCA.
- (g) On and from the Change Date(s) (or such other time as the QCA may determine):
 - (i) the New Incorporated Provisions will form part of this Agreement as if set out in full in this Agreement;
 - (ii) the Former Incorporated Provisions will cease to form part of this Agreement; and
 - (iii) amendments to the terms of this Agreement:
 - (A) accepted under **clause 3.2(d)**;
 - (B) agreed under **clause 3.2(e)**; or
 - (C) determined by the QCA under **clause 3.2(f)**, become effective.
- (h) Within 10 Business Days from the date that amendments to the terms of this Agreement are accepted, agreed and/or determined (as applicable) under this **clause 3.2**, Aurizon Network must prepare and send to the Access Holder a copy of this Agreement as modified.

4 Access Rights

4.1 Grant of Access Rights

In consideration of the Access Holder paying the Access Charges, on and from each Train Service Commitment Date for each Train Service Type until the Train Service Expiry Date for that Train Service Type, Aurizon Network grants,

and will provide, to the Access Holder the Access Rights for that Train Service Type in accordance with the Train Description for that Train Service.

4.2 Nature and scope of Access Rights

- (a) The Access Rights granted under **clause 4.1** are non-exclusive contractual rights and do not give the Access Holder any right, title or interest of any proprietary nature in the Nominated Network.
- (b) Aurizon Network must provide the Access Holder with certain benefits, rights and services in accordance with the Access Undertaking and, to the extent relevant to the Access Holder's Access Rights, it is intended that the terms on which these requirements are provided are detailed in this Agreement.

4.3 Exercise of Access Rights and Operator nomination

- (a) The Parties acknowledge and agree that:
 - (i) the grant of the Access Rights to the Access Holder does not entitle the Access Holder to itself operate Train Services on the Nominated Network (unless it is also an Accredited Railway Operator and is nominated as an Operator in accordance with this Agreement);
 - (ii) the Access Holder can only utilise the Access Rights by nominating an Operator from time to time, in accordance with this Agreement; and
 - (iii) the Access Holder may nominate more than one Operator.
- (b) Subject to **clause 4.6(a)**, the Access Holder may, from time to time, provided that it is not in material breach of any of its obligations under this Agreement, nominate an Operator to utilise all or part of the Access Rights upon giving at least 20 Business Days prior written notice to Aurizon Network. The notice must:
 - (i) specify:
 - (A) the name, ABN, address and contact details of the Operator;
 - (B) the Access Rights which the Access Holder wishes to allocate to the Operator for the Operator to use in providing Train Services for the Access Holder;
 - (C) the first day and the last day of the period for which the Access Rights are to be allocated to the Operator; and
 - (ii) be accompanied by either:
 - (A) two copies of a Train Operations Deed, executed by the Operator, which:
 - (1) reflects, in schedule 2 of that Train Operations Deed, the Access Rights which the Access Holder wishes to allocate to the Operator; and
 - (2) satisfies the Compliant Nomination Requirements; or
 - (B) a statement and evidence identifying the Operator's existing Train Operations Deed in respect of utilisation of the Access Rights under this Agreement and evidence that:

- (1) the Operator agrees to the relevant nomination; and
 - (2) the Compliant Nomination Requirements are satisfied.
- (c) Access Rights allocated by the Access Holder to be used by any one or more Operators may not exceed, in aggregate, the Access Holder's Access Rights under this Agreement.
- (d) Despite any other provision in this Agreement and without limiting any of Aurizon Network's obligations under **clauses 4.3(e)** and **4.5(b)**, Aurizon Network must accept, or act on:
 - (i) any nomination of an Operator by the Access Holder under **clause 4.3(b)**; or
 - (ii) any variation which increases the allocation of Access Rights (including an increase to the period for which the Access Rights are to be allocated) to an Operator under **clause 4.5**,
except where Aurizon Network (acting reasonably) determines either:
 - (iii) in respect of a nominated Train Service Type the Access Holder does not hold, or have the benefit of, Supply Chain Rights for those Train Services; or
 - (iv) the Operator:
 - (A) is in material breach of any of its obligations under an existing Train Operations Deed with Aurizon Network (or Access Agreement if the Operator is also a Network Customer); or
 - (B) is not Accredited.
- (e) Aurizon Network must:
 - (i) within 10 Business Days of receiving the nomination under **clause 4.3(b)**, notify the Access Holder and the relevant Operator whether it accepts or rejects (providing its reasons) the nomination;
 - (ii) if it rejects the nomination, facilitate the resolution of any matter the subject of its reasons for the rejection; and
 - (iii) if it accepts the nomination, promptly do all things reasonably required (including compliance with **clause 4.6(a)** where applicable and amending the relevant Train Operations Deed to the extent required) to ensure that any delay to Train Services is minimised to the extent practicable including:
 - (A) if the notice under **clause 4.3(b)** is accompanied by two copies of a Train Operations Deed under **clause 4.3(b)(ii)(A)**, execute both copies of the Train Operations Deed and return one copy to the Operator; or
 - (B) if the notice under **clause 4.3(b)** is accompanied by a statement and evidence under **clause 4.3(b)(ii)(B)**, vary the relevant Train Operations Deed to include the right to operate Train Services utilising the Access Rights in respect of which the Operator was nominated, and provide notice of that variation to the Operator.
- (f) If Aurizon Network accepts the nomination of an Operator:

- (i) the Access Holder must promptly provide a copy of this Agreement to the Operator; and
- (ii) Aurizon Network must provide a copy of the IRMP to the Access Holder promptly after it has been agreed between the Parties and the Operator in accordance with the Interface Risk Provisions or determined under the Train Operations Deed.

4.4 Access Interface Deed

- (a) If the Access Holder is also a Railway Operator and the Access Rights are to be used for the purposes of a rail haulage agreement between the Access Holder (in its capacity as 'Operator') and a Customer (as that term is defined in the Access Undertaking), prior to or on the date it exercises its rights under **clause 4.3(b)**, the Access Holder must procure the Customer executes and delivers the Access Interface Deed to Aurizon Network on or before the Commitment Date.
- (b) As soon as practicable after receiving the Access Interface Deed duly executed by the Customer, Aurizon Network must:
 - (i) execute the Access Interface Deed;
 - (ii) provide a copy of the fully executed Access Interface Deed to the Customer; and
 - (iii) notify the Access Holder that the Access Interface Deed has been executed by the Customer and Aurizon Network.

4.5 Changes to Operator nominations

- (a) The Access Holder may, from time to time, upon giving at least 2 Business Days prior written notice to Aurizon Network and each affected Operator:
 - (i) vary any nomination previously given by the Access Holder under this Agreement so as to vary either or both of the following:
 - (A) the Access Rights which the Access Holder has allocated to an Operator; or
 - (B) the period for which the Access Rights are to be allocated to an Operator (provided that the period does not extend beyond the Train Service Expiry Date for the relevant Train Service Type); or
 - (ii) withdraw any nomination previously given by the Access Holder under **clause 4.3(b)** or this **clause 4.5(a)**; and
 - (iii) if the variation or withdrawal of a nomination results from the operation of clause 10.2(d) or 10.3(c)(iv)(A)(2) under a Train Operations Deed, the Access Holder may nominate, in accordance with **clause 4.3**, an alternative Operator to utilise the "Category 1 Reduced Operational Rights" (as defined in the Train Operations Deed) and/or the "Category 2 Reduced Operational Rights" (as defined in the Train Operations Deed) (as applicable).
- (b) Aurizon Network must notify the Access Holder and the Operator if it accepts or rejects (providing its reasons) in accordance with **clauses 4.3(d)(ii) to 4.3(d)(iv)(B)** the variation within the lesser of 10 Business

Days or the period remaining prior to the relevant Intermediate Train Plan being finalised.

- (c) Where an Operator receives an increased allocation of Access Rights following a varied nomination in accordance with this **clause 4.5**, and the date on which that variation commences is during the period covered by the then current Intermediate Train Plan, then Aurizon Network will schedule any additional Train Services ordered by the Operator to the extent permitted in accordance with the Network Management Principles.
- (d) If Aurizon Network rejects the nomination, it must facilitate the resolution of any matter the subject of its reasons for the rejection.
- (e) If Aurizon Network accepts the nomination, it must promptly do all things reasonably required to ensure that any delay to Train Services is minimised to the extent practicable including vary the relevant Train Operations Deed to include the right to operate Train Services utilising the Access Rights (or the “Category 1 Reduced Operational Rights” (as defined in the Train Operations Deed) and/or the “Category 2 Operational Rights” (as defined in the Train Operations Deed), as applicable) in respect of which the Operator was nominated.

4.6 Nominations with different Train Descriptions

- (a) If at any time:
 - (i) the Access Holder intends to:
 - (A) nominate an Operator to utilise all or part of the Access Rights; or
 - (B) vary a nomination previously given by the Access Holder; and the Train Services of the relevant Operator will have a Train Description different from that contemplated in **Schedule 2**; or
 - (ii) the Access Holder otherwise wishes to vary the Train Services from the Train Description nominated in **Schedule 2**,then:
 - (iii) prior to nominating the Operator or varying the nomination, Aurizon Network and the Access Holder must negotiate and endeavour to agree any amendments to this Agreement (including any amendments to the Access Rights and, subject to **clause 4.6(b)**, the Access Charge Rates) that may be necessary to reflect the Train Description of the Train Services to be operated by the relevant Operator for that part of the Access Rights to be allocated to that Operator; and
 - (iv) no amendment to the Access Rights that results in the Access Holder being granted increased rights to access the Nominated Network has any effect unless and until the Access Holder and Aurizon Network have complied with Aurizon Network’s Access Undertaking (as amended by any Change in Access Undertaking) (including with respect to the allocation of those increased Access Rights).
- (b) Any variation to the Access Charge Rates under **clause 4.6(a)(iii)**:

- (i) must be in accordance with the pricing principles set out in Part 6 of the Access Undertaking, in particular clause 6.2; and
- (ii) must be reasonably justified (including calculations) by Aurizon Network to the Access Holder.

4.7 Reduction of rights resulting in an Over-Allocation

If at any time:

- (a) either:
 - (i) the Access Rights of the Access Holder are reduced, relinquished or transferred under this Agreement; or
 - (ii) the Nominated Monthly Train Services in respect of a Train Service Type are reduced or varied under this Agreement ; and
- (b) as a result of such reduction, relinquishment or transfer of Access Rights or reduction or variation of Nominated Monthly Train Services in respect of a Train Service Type, the Access Rights allocated by the Access Holder to any one or more Operators under **clause 4.3** or **4.4** for a Train Service Type exceed, in aggregate, the Access Holder's Access Rights under this Agreement for that Train Service Type following the reduction, relinquishment or transfer (such excess being the **Over-Allocation**),

then, unless the Access Holder varies the nominations in accordance with **clause 4.5(a)** within 2 Business Days of such reduction, relinquishment, transfer or variation to eliminate the Over-Allocation, the Access Holder will be deemed to have varied the nominations in accordance with **clause 4.5(a)** as follows:

- (c) if the Access Holder has nominated only one Operator for that Train Service Type, reducing the Access Rights for that Train Service Type which the Access Holder has allocated to the Operator under its Train Operations Deed by the Over-Allocation; or
- (d) if the Access Holder has nominated multiple Operators in respect of an affected Train Service Type, reducing the Access Rights for that Train Service Type which the Access Holder has allocated to each Operator under this Agreement and each Operator's respective Train Operations Deed by a share of the Over-Allocation that is as closely as possible proportionate to the Train Services allocated to the Operator for the affected Train Service Type as a share of the total Train Services allocated to all Operators for that Train Service Type,

and such reduction will take effect on the date the reduction, variation, relinquishment or transfer takes effect, with Aurizon Network providing written notice of the reduction to each affected Operator as soon as practicable.

4.8 Operation of Ad Hoc Train Service

- (a) If:
 - (i) the Access Holder (or its Operator) notifies Aurizon Network that it wishes to have an Operator (which the Access Holder must identify when notifying Aurizon Network) operate an Ad Hoc Train Service (which the Access Holder (or its Operator) must identify having reference to the definition of Ad Hoc Train Service) for a Train Service Type; and

- (ii) the relevant Operator has notified Aurizon Network that is able and willing to operate that Ad Hoc Train Service for a Train Service Type under its Train Operations Deed to the extent the Access Holder provided the notice under **clause 4.8(a)(i)**,

then, to the extent permitted by the Network Management Principles, Aurizon Network:

- (iii) must if required in accordance with clause 5.4(c) of Schedule G of the Access Undertaking; or

- (iv) otherwise must use reasonable endeavours to,

schedule the Ad Hoc Train Service for the Train Service Type in the Daily Train Plan.

- (b) On and from the time that the Ad Hoc Train Service is scheduled in the Daily Train Plan, the terms and conditions of this Agreement apply to the Ad Hoc Train Service as if the Ad Hoc Train Service is a Train Service for the Train Service Type the relevant Operator is entitled to operate utilising the Access Rights for that Train Service Type.
- (c) Despite **clause 4.8(b)**, if an Ad Hoc Train Service is of a type described in **paragraph (b)** of the definition of Ad Hoc Train Service and has a different Origin and Destination for that Train Service Type, then such Ad Hoc Train Service will not be taken into account for the purposes of the TOP Charge.

4.9 Supply Chain Rights

- (a) The Access Holder must demonstrate to the satisfaction of Aurizon Network (acting reasonably) that the Access Holder holds, or has the benefit of, or is reasonably likely to hold, or have the benefit of, Supply Chain Rights for the commencement of the operation of the first Train Service for each Train Service Type.
- (b) The Access Holder may not nominate an Operator under this Agreement in respect of a Train Service Type for which the Access Holder does not hold, or have the benefit of, Supply Chain Rights for those Train Services.
- (c) The Access Holder must, for each Train Service Type, use all reasonable endeavours to continue to hold, or have the benefit of, those Supply Chain Rights until at least the Train Service Expiry Date for the Train Service Type, provided that if the term of any Supply Chain Rights expires or terminates prior to the Train Service Expiry Date for that Train Service Type, the Access Holder must use reasonable endeavours to secure equivalent Supply Chain Rights for the period until the Train Service Expiry Date for that Train Service Type.
- (d) If, prior to the commencement of the operation of the Train Services for each Train Service Type, Aurizon Network:
 - (i) acting reasonably, considers the Access Holder's circumstances have changed; and
 - (ii) notifies the Access Holder that it requires details of the changed circumstances,

the Access Holder must, within 10 Business Days after its notice, provide

Aurizon Network reasonable details of:

- (iii) the Supply Chain Rights for the Train Services for a Train Service Type that the Access Holder holds, or has the benefit of at the time; and
- (iv) if applicable, the steps which the Access Holder has taken, or intends to take to secure any additional, renewed, extended or replacement Supply Chain Rights for the Train Services for the Train Service Type and the status of any such steps.

5 Billing and payments

5.1 Charges

- (a) The Access Holder must pay to Aurizon Network the Access Charges and any other charges (if any) as calculated in accordance with this Agreement.
- (b) Where a Train Service is taken to be cancelled under a Train Operations Deed, despite the Train Service being cancelled and not operated, the Train Service will be taken to be one of the Nominated Monthly Train Services for the Train Service Type for the Month in which the Train Service was originally scheduled in the Daily Train Plan provided that:
 - (i) the reason for the cancellation is not (or is deemed under the relevant Train Operations Deed to not be) an Aurizon Network Cause; and
 - (ii) the relevant Operator notified Aurizon Network that it decided not to, or was unable to, operate that Train Service less than 48 hours (or failed to give any notification) before the time for commencement of the operation of that Train Service as originally scheduled in the Daily Train Plan.

5.2 Invoicing

- (a) As soon as reasonably practicable after the end of each Billing Period, Aurizon Network must give to the Access Holder an invoice for:
 - (i) the Access Charges for that Billing Period; plus
 - (ii) any amounts payable but unpaid by the Access Holder to Aurizon Network under this Agreement, and which have not previously been invoiced, as at the end of the Billing Period.
- (b) If **clause 5.6** applies, Aurizon Network must give the Access Holder an invoice under **clause 5.2(a)** after the end of a Billing Period even if no amount is required to be invoiced under **clause 5.2(a)** for that Billing Period.
- (c) If this Agreement terminates or expires on a date other than 30 June then, as soon as reasonably practicable after the first 30 June to occur after the termination or expiry of this Agreement, Aurizon Network must give to the Access Holder an invoice for the TOP Charge (if any) for the Year during which this Agreement terminated or expired.
- (d) Each invoice given under this **clause 5.2** must be accompanied by reasonable details of Aurizon Network's calculation of the amounts

claimed in the invoice including a breakdown of the Access Charges and itemised description of any other amounts (for the amounts deducted under **clause 5.6**, particulars must include the amounts against which the deduction is applied).

5.3 Payment

- (a) Subject to **clause 5.4**, the Access Holder must:
 - (i) pay to Aurizon Network the amount claimed in an invoice given under **clause 5.2** within 10 Business Days after the invoice is given to the Access Holder; and
 - (ii) pay all amounts payable to Aurizon Network under this Agreement:
 - (A) in Australian currency; and
 - (B) by:
 - (1) direct deposit into one or more bank accounts notified by Aurizon Network to the Access Holder in the invoice for this purpose (whether or not those bank accounts are in the name of Aurizon Network); or
 - (2) such other payment method as Aurizon Network specifies in the invoice (acting reasonably).
- (b) Any payment by the Access Holder of an amount payable under this Agreement in accordance with this **clause 5.3** is taken to be a payment of such amount to Aurizon Network for the purpose of this Agreement (whether or not such amount is paid into a bank account in the name of Aurizon Network).

5.4 Disputes

- (a) Any Disputes in connection with an amount claimed in an invoice:
 - (i) must be resolved in accordance with **clause 28**; and
 - (ii) which is not resolved in accordance with **clause 28.2**, may be referred by either Party to an Expert for determination in accordance with **clause 28.3**.
- (b) Despite **clause 5.4(a)**, if an amount claimed in an invoice given by Aurizon Network under **clause 5.2** is Disputed, then unless the total amount of the invoice is nil due to the operation of **clause 5.6**, the Access Holder must pay to Aurizon Network:
 - (i) the portion of the amount claimed in the invoice that is not in Dispute; and
 - (ii) 50% of the portion of the amount claimed in the invoice that is in Dispute,within the time specified in **clause 5.3(a)(i)**.
- (c) Upon resolution of any Dispute about an amount claimed in an invoice given by Aurizon Network, if the total amount which Aurizon Network was entitled to claim in the invoice (as resolved) is:
 - (i) more than the amount paid by the Access Holder, then the amount of the difference, together with interest on that amount calculated in

accordance with **clause 5.5** (from the date when the amount in Dispute would have been due and payable under **clause 5.3(a)(i)** but for **clause 5.4(b)**, until the date on which the difference, together with any interest, has been paid in full), must be paid by the Access Holder to Aurizon Network within 20 Business Days after the resolution of the Dispute; or

- (ii) less than the amount paid by the Access Holder, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 5.5** (from the date when the amount in Dispute was paid by the Access Holder until the date on which the credit is applied or the amount is paid (as applicable) under this **clause 5.4(c)(ii)**), must be:
 - (A) applied by Aurizon Network as credit in favour of the Access Holder against the amount claimed in the next invoice to be issued by Aurizon Network to the Access Holder under **clause 5.2** after the resolution of the Dispute (and, if necessary, to subsequent invoices issued by Aurizon Network under **clause 5.2** until the amount of the difference (including any interest) has been fully credited in favour of the Access Holder against amounts payable under invoices issued by Aurizon Network to the Access Holder under **clause 5.2**); or
 - (B) if there will be no further invoices issued by Aurizon Network to the Access Holder under **clause 5.2** after the resolution of the Dispute or the last credit referred to in **clause 5.4(c)(ii)(A)**, paid by Aurizon Network to the Access Holder within 20 Business Days after resolution of the Dispute or the last credit referred to in **clause 5.4(c)(ii)(A)** (as applicable).

5.5 Interest on overdue payments and Disputed amounts

- (a) Without prejudice to the rights, powers and remedies of a Party under this Agreement or otherwise at Law, 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, then that Party must pay interest on the outstanding amount calculated in accordance with this **clause 5.5**.
- (b) Interest accrues on outstanding amounts from the due date for payment until that amount, together with the interest on that amount, has been paid in full.
- (c) Interest under **clauses 5.4(c)(i), 5.4(c)(ii) and 5.5(b)** is calculated at the Default Rate. Any interest accrued but unpaid at the end of each Month is capitalised and, once capitalised, will itself bear interest.

5.6 Right of set-off

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

5.7 Consequences of failure to comply with Performance Levels

- (a) If an Operator nominated by the Access Holder under this Agreement does not comply with the Performance Levels imposed on it under a Train

Operations Deed, then, subject to **clause 5.4**, the Access Holder must pay to Aurizon Network the amount (if any) determined in accordance with the relevant Train Operations Deed as a result of that failure, as part of the invoice issued by Aurizon Network for Access Charges and other charges for the Billing Period immediately following Aurizon Network becoming entitled to that amount provided that, if there is no next Billing Period, the Access Holder must pay such amount to Aurizon Network within 10 Business Days after receipt of an invoice from Aurizon Network.

- (b) If Aurizon Network does not comply with the Performance Levels imposed on it under a Train Operations Deed, then Aurizon Network will credit to the Access Holder the amount (if any) determined in accordance with the relevant Train Operations Deed as a result of that failure by way of a deduction from the invoice issued by Aurizon Network for Access Charges and other charges for the Billing Period immediately following the Access Holder becoming entitled to that amount in accordance with **clause 5.7(c)**.
- (c) If the total amount which Aurizon Network must credit to the Access Holder under **clause 5.7(b)** is more than the amount under the invoice issued by Aurizon Network for Access Charges and other charges (after application of any other set-off or other credit owed to the Access Holder) for the Billing Period immediately following the Access Holder becoming entitled to that amount, then:
 - (i) the amount of the difference must be applied by Aurizon Network as credit in favour of the Access Holder against the amount claimed in the next invoice to be issued by Aurizon Network under **clause 5.2** and to subsequent invoices issued by Aurizon Network under **clause 5.2** until the amount of the difference has been fully credited in favour of the Access Holder against amounts payable under invoices issued by Aurizon Network under **clause 5.2**); or
 - (ii) if there is no next Billing Period, then Aurizon Network must pay such amount to the Access Holder within 10 Business Days after receipt of an invoice from the Access Holder.

6 Security

6.1 Requirement to provide Security after Commencement Date

- (a) This **clause 6.1** only applies if **item 3** of **Schedule 1** states that it applies.
- (b) On or before the date 10 Business Days prior to the Commitment Date, the Access Holder must deliver Security to Aurizon Network which satisfies the requirements of this **clause 6** for an amount of not less than the Security Amount.

6.2 Requirement to provide Security on certain events occurring

- (a) If at any time during the Term when the Access Holder is not required to provide Security to Aurizon Network under this **clause 6**:
 - (i) the Access Holder does not pay any amount (together with any interest) payable under this Agreement and which is not the subject of a Dispute by the due date for payment or, where there is no due date for payment, within five Business Days after Aurizon Network

- gives written notice to the Access Holder requiring payment; or
- (ii) Aurizon Network considers (acting reasonably) that the Access Holder may:
 - (A) no longer be financially sound;
 - (B) no longer be able to meet its debts as and when they fall due; or
 - (C) not otherwise be capable of performing its obligations under this Agreement,

then the Access Holder must, within 10 Business Days after being required to do so by Aurizon Network, deliver Security to Aurizon Network which satisfies the requirements of this **clause 6** for an amount of not less than the Security Amount.

- (b) In considering whether to require the Access Holder to provide Security under **clause 6.2(a)(ii)**, Aurizon Network may take into consideration:
 - (i) expected future payment obligations under this Agreement and the financial performance of the Access Holder; and
 - (ii) the Access Holder ceasing to have an Acceptable Credit Rating.

6.3 Requirement to provide Security for the Security Amount

- (a) If the Access Holder is required to provide Security under this **clause 6**, the Security must be provided and maintained for an amount of not less than the Security Amount.
- (b) If at any time during the Term:
 - (i) the Access Holder is required to provide Security under this **clause 6**; and
 - (ii) the Security provided by the Access Holder to Aurizon Network under this **clause 6** is for an amount which is less than the Security Amount (including due to Aurizon Network having recourse to the Security under **clause 6.6**),

then the Access Holder must promptly (and in any event within 10 Business Days after being required to do so by Aurizon Network) deliver to Aurizon Network:

- (iii) additional Security; or
- (iv) replacement Security,

which satisfies the requirements of this **clause 6** so that Security is provided and maintained for an aggregate amount of not less than the Security Amount.

6.4 Requirement to provide Security for additional Train Service Type

Without limiting **clause 6.3**, if:

- (a) at any time during the Term:
 - (i) **Schedule 2** is varied to include an additional Train Service Type; or
 - (ii) the Train Description for an existing Train Service Type is varied;

- (b) at the time of the variation referred to in **clause 6.4(a)** the Access Holder is required to provide Security under this **clause 6**; and
- (c) at the time of the variation referred to in **clause 6.4(a)** the Security provided by the Access Holder to Aurizon Network under this **clause 6** is for an amount which is less than the amount which will be the Security Amount on and from, as applicable:
 - (i) the Train Service Commitment Date for that additional Train Service Type; or
 - (ii) the date the variation to the Train Description for that existing Train Service Type takes effect,

having regard to the additional Access Charges payable, in the future, for that Train Service Type, then the Access Holder must promptly (and in any event within 10 Business Days before the applicable date specified in **clause 6.4(c)(i)** or **6.4(c)(ii)**) deliver to Aurizon Network:

- (iii) additional Security; or
- (iv) replacement Security,

which satisfies the requirements of this **clause 6** so that Security is provided and maintained for an aggregate amount of not less than the amount which will be the Security Amount on and from the applicable date specified in **clause 6.4(c)(i)** or **6.4(c)(ii)** (having regard to the additional Access Charges payable, in the future, for that Train Service Type).

6.5 Replacement of Security

- (a) The Access Holder may, with Aurizon Network's consent, replace any Security provided by the Access Holder under this **clause 6** with replacement Security which satisfies the requirements of this **clause 6**.
- (b) If the Security provided by an Access Holder under this **clause 6** is a bank guarantee that has an expiry date, then:
 - (i) the Access Holder must, at least 20 Business Days prior to the expiry of the bank guarantee, deliver to Aurizon Network replacement Security which satisfies the requirements of this **clause 6**; and
 - (ii) if the Access Holder does not deliver to Aurizon Network replacement Security in accordance with **clause 6.5(b)(i)**:
 - (A) Aurizon Network may, in its absolute discretion, draw on the existing bank guarantee;
 - (B) any such amount drawn by Aurizon Network (**Cash Deposit**) will be treated as a deposit of cash delivered by or on behalf of the Access Holder as Security under this Agreement in place of the relevant bank guarantee;
 - (C) this **clause 6** will apply (with any necessary changes) in respect of the Cash Deposit; and
 - (D) if requested by the Access Holder at any time, Aurizon Network must return the Cash Deposit to the Access Holder in exchange for the Access Holder delivering to Aurizon

Network replacement Security which satisfies the requirements of this **clause 6**.

6.6 Recourse to Security

Aurizon Network may have recourse to the Security in respect of any amount which the Access Holder fails to pay under or in connection with this Agreement:

- (a) if the Access Holder fails to pay the amount by the due date for payment under this Agreement, Aurizon Network notifies the Access Holder of the payment default and the Access Holder fails to remedy the payment default within 10 Business Days after the date the notice is given, following the expiry of such period;
- (b) if the amount is not payable by a specified date and the Access Holder fails to make payment within 10 Business Days after Aurizon Network has requested payment of such amount, following the expiry of such period; or
- (c) if the amount is the subject of a Dispute, in accordance with **clause 5.4(c)(i)**.

6.7 Review of requirement to provide Security

If at any time during the Term, the Access Holder:

- (a) is required to provide Security under this **clause 6**; and
- (b) considers that its financial circumstances have changed such that it should no longer be required to provide Security,

then the Access Holder may request (provided that the Access Holder must not request more than once in any Year) that Aurizon Network review the creditworthiness of the Access Holder and Aurizon Network will undertake such a review when requested.

6.8 Return of Security

Aurizon Network must return to the Access Holder (and, where appropriate, give the Access Holder any necessary releases in relation to) any Security provided by the Access Holder under this **clause 6**:

- (a) subject to Aurizon Network's rights of recourse to the Security under **clause 6.6**, promptly and in any event within 10 Business Days after the date of termination or expiry of this Agreement;
- (b) on the Access Holder delivering to Aurizon Network any replacement Security under **clause 6.3(b)(iv)**, **6.4(c)(iv)** or **6.5** which satisfies the requirements of this **clause 6**; or
- (c) if, after a review pursuant to **clause 6.7**, Aurizon Network considers, acting reasonably, that it is no longer necessary for the Access Holder to provide Aurizon Network with Security under this **clause 6**.

7 Accreditation

- (a) Aurizon Network must have and maintain Accreditation to the extent required to perform its obligations and exercise its rights under this Agreement and, if requested to do so in writing by the Access Holder, provide to the Access Holder copies of documentation evidencing

currency, renewal or amendment of its Accreditation within five Business Days of such request.

- (b) Aurizon Network must notify the Access Holder as soon as possible of any notice from an Authority affecting, or likely to affect, its Accreditation, and must provide a copy of that notice to the Access Holder on request.

8 Resumption of Access Rights

- (a) Unless otherwise specified in this Agreement, Aurizon Network may resume some or all of the Access Rights in accordance with the Resumption Provisions which form part of this Agreement under **clause 3**.

- (b) Within the later of two Business Days after:

- (i) a Resumption Notice is given to the Access Holder; and
- (ii) the resolution of the Dispute if:
 - (A) there is a Dispute in connection with a decision by Aurizon Network to resume the Access Holder's Access Rights; and
 - (B) the outcome of the Dispute is that the Access Rights may be resumed,

the Access Holder may give notice to Aurizon Network and each affected Operator in accordance with **clause 4.5(a)** to vary the Access Rights which the Access Holder has allocated to an Operator to take into account any resumption of Access Rights determined or agreed under the Resumption Provisions which form part of this Agreement under **clause 3** or as determined under the relevant dispute resolution process.

- (c) Except to the extent that the Access Holder has given a notice as contemplated in **clause 8(b)**, the resumption of Access Rights for each Train Service Type:
 - (i) firstly, are deemed to reduce the Access Rights for that Train Service Type for which the Access Holder has not nominated an Operator; and
 - (ii) if, after the operation of **clause 8(c)(i)**, there is an Over-Allocation for the relevant Train Service Type, **clause 4.7** applies in respect of that Over-Allocation.

9 Reduction of Conditional Access Rights due to Capacity Shortfall

9.1 Application

- (a) This **clause 9** only applies in respect of a Train Service Type if the Train Description for that Train Service Type specifies that this **clause 9** applies in respect of that Train Service Type.
- (b) If this **clause 9** applies in respect of a Train Service Type, this **clause 9** only applies to the extent that it:
 - (i) is not inconsistent with the Access Undertaking (as amended by any Change in Access Undertaking); and

- (ii) does not oblige Aurizon Network to do or not do anything that would cause Aurizon Network to breach the Access Undertaking (as amended by any Change in Access Undertaking).

9.2 Conditional Access Rights

If this **clause 9** applies in respect of a Train Service Type:

- (a) the Access Rights for that Train Service Type under this Agreement (**Conditional Access Rights**) are conditional upon the completion and commissioning of the Expansion specified in the Train Description for that Train Service Type;
- (b) despite the Train Service Commitment Date specified in the Train Description for the Conditional Access Rights, the Train Service Commitment Date for the Conditional Access Rights will be taken to be the later of:
 - (i) the Train Service Commitment Date for the Conditional Access Rights specified in the Train Description for the Conditional Access Rights; and
 - (ii) the date upon which all Segments of the Expansion are completed and commissioned.

9.3 Effect on Operator nominations

- (a) Within the later of:
 - (i) two Business Days after the Capacity Assessment Notice is given to the Access Holder in accordance with the Conditional Access Provisions which form part of this Agreement under **clause 3**; and
 - (ii) if the Access Holder disputes the Capacity Assessment Notice, two Business Days after the resolution of the Dispute,the Access Holder may notify Aurizon Network and each affected Operator in accordance with **clause 4.5(a)** to vary the Access Rights which the Access Holder has allocated to an Operator to take into account the variation to the Conditional Access Rights under the Conditional Access Provisions which form part of this Agreement under **clause 3**.
- (b) Except to the extent that the Access Holder has given a notice as contemplated in **clause 9.3(a)** in respect of the variation to the Conditional Access Rights under the Conditional Access Provisions which form part of this Agreement under **clause 3** for each affected Train Service Type, the variation to the Conditional Access Rights for each affected Train Service Type:
 - (i) are deemed to reduce the Access Rights for that Train Service Type for which the Access Holder has not nominated an Operator; and
 - (ii) if, after the operation of **clause 9.3(b)(i)**, there remains an Over-Allocation for the relevant Train Service Type, **clause 4.7** applies in respect of that Over-Allocation.

9.4 Future capacity developments

If any Conditional Access Rights are varied under this **clause 9**, the Access Holder acknowledges and agrees that Aurizon Network will only be obliged to develop additional Capacity, and to grant the Access Holder Access Rights in

respect of any such additional Capacity, if, and to the extent that, it is obliged to do so under the Access Undertaking (as amended by any Change in Access Undertaking).

~~10 Reduction of Nominated Monthly Train Services if Maximum Payload exceeded~~

~~10.1 Notification of reduction of Nominated Monthly Train Services~~

- ~~(a) If, at a point in time (**Assessment Date**), the Average Annual Payload for a Train Service Type operated by a particular Operator (**Defaulting Operator**) exceeds the Maximum Payload for that Train Service Type, then Aurizon Network may, within 20 Business Days after the Assessment Date, give the Access Holder and the Defaulting Operator a notice (**Reduction Notice**) in respect of the Affected Train Service Type.~~
- ~~(b) The Reduction Notice must:~~
 - ~~(i) Specify:~~
- ~~(c) the Average Annual Payload for the Affected Train Service Type as at the Assessment Date;~~
- ~~(d) the Revised Nominal Payload for the Affected Train Service Type;~~
- ~~(e) the Revised Maximum Payload for the Affected Train Service Type; and~~
- ~~(f) the Revised Nominated Monthly Train Services for the Affected Train Service Type;~~
- ~~(g) including reasonable details of the calculation of those amounts; and~~
- ~~(h) notify the Access Holder and the Defaulting Operator that, with effect on the date specified in the Reduction Notice (which date must not be less than three months after the date the Reduction Notice is given to the Access Holder and the Defaulting Operator):~~
- ~~(i) the Nominal Payload for the Affected Train Service Type will be taken to be varied to be the Revised Nominal Payload for that Affected Train Service Type (as specified in the Reduction Notice);~~
- ~~(j) the Maximum Payload for the Affected Train Services Type will be taken to be varied to be the Revised Maximum Payload for that Affected Train Service Type (as specified in the Reduction Notice); and~~
- ~~(k) the Nominated Monthly Train Services for the Affected Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for that Affected Train Service Type (as specified in the Reduction Notice).~~

~~10.2 Determining the Affected Train Service Type~~

- ~~(a) If the relevant Train Service Type (**Split Train Service Type**) operated by the Defaulting Operator which has exceeded the Maximum Payload is also operated by another Operator (**Non-Defaulting Operator**):~~
 - ~~(i) the Train Service Type operated by the Defaulting Operator (**New Train Service Type**); and~~
 - ~~(ii) the Train Service Type operated by the Non-Defaulting Operator~~

~~(Original Train Service Type),~~

are deemed to be two different Train Service Types on the basis that:

~~(iii) — the “Nominated Monthly Train Services (for a 30 day Month)” for the New Train Service Type is deemed to be the “Nominated Monthly Train Services (for a 30 day Month)” allocated to the Defaulting Operator in respect of the Split Train Service Type as at the Assessment Date;~~

~~(iv) — the “Nominated Monthly Train Services (for a 30 day Month)” for the Original Train Service Type is deemed to be the “Nominated Monthly Train Services (for a 30 day Month)” which was not allocated to the Defaulting Operator in respect of the Split Train Service Type as at the Assessment Date; and~~

~~(v) — subject to **clauses 10.2(a)(iii)** and **10.2(a)(iv)**, the Train Description for:~~

~~(A) — the New Train Service Type; and~~

~~(B) — the Original Train Service Type;~~

~~is otherwise the same as for the Split Train Service Type.~~

~~(b) — The **Affected Train Service Type** is:~~

~~(i) — if **clause 10.2(a)** applies, the New Train Service Type operated by the Defaulting Operator; and~~

~~(ii) — in any other case, the Train Service Type operated by the Defaulting Operator which has exceeded the Maximum Payload.~~

~~**10.3 — Calculation of Revised Maximum Payload**~~

~~The Revised Maximum Payload for an Affected Train Service Type is the amount which is the maximum Payload of the Train Services operated by the Defaulting Operator of the Relevant Rollingstock Configuration for the Train Service Type (rounded to the nearest whole tonne) which was the Relevant Rollingstock Configuration for the Train Service Type which was most used in the operation of Train Services for the Affected Train Service Type by the Defaulting Operator during the 12 month period ending on the Assessment Date.~~

~~**10.4 — Calculation of Revised Nominal Payload**~~

~~The Revised Nominal Payload for an Affected Train Service Type is the amount (expressed as tonnes) calculated in accordance with the following formula:~~

$$~~RNP = RMP \times LEF~~$$

~~where:~~

~~RMP = the Revised Maximum Payload for the Affected Train Service Type (rounded to the nearest whole tonne)~~

~~RNP = the Revised Nominal Payload for the Affected Train Service Type~~

~~LEF = Loading Efficiency Factor~~

~~10.5 Calculation of Revised Nominated Monthly Train Services~~

~~The Revised Nominated Monthly Train Services for an Affected Train Service Type is the number of Train Services calculated in accordance with the following formula:~~

$$\text{RNMTS} = 2 \times \text{Loaded Train Services}$$

~~where:~~

~~RNMTS = the Revised Nominated Monthly Train Services for the Affected Train Service Type~~

~~Loaded Train Services = IT/RNP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)~~

~~IT = the Indicative Tonnage for the Train Service Type~~

~~RNP = the Revised Nominal Payload for the Affected Train Service Type~~

~~10.6 Dispute~~

- ~~(a) If Aurizon Network gives the Access Holder a Reduction Notice in respect of an Affected Train Service Type, the Access Holder may, within 20 Business Days after Aurizon Network gives the Reduction Notice to the Access Holder, give Aurizon Network a Dispute Notice which Disputes the Reduction Notice in accordance with **clause 28**.~~
- ~~(b) If a Dispute referred to in **clause 10.3(a)** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine:~~
- ~~(i) the Average Annual Payload for the Affected Train Service Type as at the relevant Assessment Date; and~~
 - ~~(ii) if the Expert determines that the Average Annual Payload for the Affected Train Service Type as at the relevant Assessment Date exceeds the Maximum Payload for the Train Service Type:~~
 - ~~(A) the Revised Nominal Payload for the Affected Train Service Type;~~
 - ~~(B) the Revised Maximum Payload for the Affected Train Service Type; and~~
 - ~~(C) the Revised Nominated Monthly Train Services for the Affected Train Service Type.~~

- ~~(c) — If the Access Holder does not give Aurizon Network a Dispute Notice referred to in **clause 10.3(a)** within the time referred to in **clause 10.3(a)**, then:
 - ~~(i) — the Access Holder must not give Aurizon Network a Dispute Notice Disputing the relevant Reduction Notice or the variation of the Nominal Payload, Maximum Payload or the Nominated Monthly Train Services for the relevant Affected Train Service Type under this **clause 10**;~~
 - ~~(ii) — any such Dispute Notice which is given by the Access Holder will be taken to be of no effect; and~~
 - ~~(iii) — the Access Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.~~~~

~~10.7 — Variation to Train Description~~

~~If Aurizon Network gives the Access Holder and the Defaulting Operator a Reduction Notice in respect of a Train Service Type, then:~~

- ~~(a) — the Nominal Payload for the Train Service Type operated by the Defaulting Operator will be taken to be the Revised Nominal Payload for the Train Service Type;~~
 - ~~(b) — the Maximum Payload for the Train Service Type operated by the Defaulting Operator will be taken to be varied to be the Revised Maximum Payload for the Train Service Type; and~~
 - ~~(c) — the Nominated Monthly Train Services for the Train Service Type operated by the Defaulting Operator will be taken to be varied to be the Revised Nominated Monthly Train Services for the Train Service Type,~~
- ~~as:~~
- ~~(d) — specified in the relevant Reduction Notice; or~~
 - ~~(e) — if **clause 10.3(a)** applies, agreed or determined through the Dispute resolution process under **clause 28**,~~

~~with effect on the later of:~~

- ~~(f) — the date specified in the relevant Reduction Notice; and~~
- ~~(g) — if the Access Holder gives Aurizon Network a Dispute Notice referred to in **clause 10.3(a)**, the date agreed through the Dispute resolution process, or the date the Expert notifies the Parties of his or her determination, under **clause 28**.~~

~~10.8 — Variation to Train Operations Deeds~~

~~Where there is a variation to a Train Description in accordance with **clause 10.4**:~~

- ~~(a) — the Access Holder will be deemed to have given a notice to Aurizon Network to reduce the number of Nominated Monthly Train Services the Defaulting Operator may operate for that Train Service Type utilising the Access Rights under a Train Operations Deed in accordance with the Reduction Notice; and~~
- ~~(b) — Aurizon Network shall provide written notice of that reduction to the Defaulting Operator as soon as practicable and shall:~~

- (i) ~~issue a notice to the Access Holder setting out the changes to the “Nominated Monthly Train Services (for a 30 day Month)” set out in **schedule 2** of this Agreement for each of:~~
 - ~~(A) the Affected Train Service Type; and~~
 - ~~(B) the Original Train Service Type (if applicable); and~~
- (ii) ~~issue a notice to the Defaulting Operator and the Access Holder setting out the changes to the Train Description and the “Nominated Monthly Operational Rights (for a 30 day Month)” in schedule 2 of the Defaulting Operator’s Train Operations Deed.~~

10.9 — No prejudice to other rights

~~This **clause 10** does not prejudice Aurizon Network’s other rights and remedies in respect of any non-compliance by the Access Holder, Defaulting Operator or any other Operator with the Train Description for a Train Service Type.~~

11.10 Access Holder initiated increase to Maximum Payload

11.110.1 Request for increased Maximum Payload

- (a) At any time during the Term, the Access Holder may, with the consent of each relevant Customer of the Access Holder (if any) or the consent of each relevant Operator where the Access Holder is not also the Operator, give Aurizon Network a notice requesting that Aurizon Network consider increasing the Maximum Payload for a Train Service Type (**Notice of Enquiry**).
- (b) A Notice of Enquiry must ~~specify~~:
 - (i) specify subject to ~~clause 0~~, the proposed increased Maximum Payload for the relevant Train Service Type (**Proposed Maximum Payload**);
 - (ii) specify the date on which the Access Holder proposes that the ~~p~~Proposed ~~increased~~ Maximum Payload for that Train Service Type takes effect; and
 - (iii) specify whether the Access Holder elects to relinquish or maintain the Surplus Access Rights for the Train Service Type;
 - (iv) specify ~~if clause 11.2(c) would apply to the giving of a Variation Request Notice, the~~ details of the proposed Rollingstock Configuration for the Train Service Type (including the maximum Payload of the proposed Rollingstock Configuration which must not be less than the Proposed Maximum Payload);
 - (v) be accompanied by an ‘Authorisation Request Notice’ (as defined in the relevant Operator’s Train Operations Deed) in respect of the proposed Rollingstock Configuration from each Operator:
 - (A) which operates Train Services in respect of that Train Service Type; and
 - (B) in respect of which it is proposed to increase the Maximum Payload for that Train Service Type; and

(vi) include the written consent of:

(A) each relevant Customer of the Access Holder (if any); or

~~(A) each relevant Operator where the Access Holder is not also the Operator.-~~

~~(B) The proposed increased Maximum Payload for a Train Service Type specified in a Notice of Enquiry must not exceed:~~

~~(C) the maximum Payload of the Authorised Rollingstock Configuration for the Train Service Type which has the greatest maximum Payload; or~~

~~(D)(B) if the Maximum Payload for the Train Service Type exceeds the maximum Payload of the Authorised Rollingstock Configuration for the Train Service Type which has the greatest maximum Payload, the maximum Payload of the proposed Rollingstock Configuration for the Train Service Type specified in the Notice of Enquiry.~~

11.210.2 Response Notice and Variation Request Notice

(a) Aurizon Network will consider (acting reasonably) whether or not the Proposed Maximum Payload for the Train Service Type specified in the Notice of Enquiry can be accommodated (having regard to whether the Access Holder elected in the Notice of Enquiry to relinquish or maintain the Surplus Access Rights for the Train Service Type), which will be taken to be the case if:

(i) the Access Holder demonstrates to the satisfaction of Aurizon Network (acting reasonably) that it holds, or has the benefit of, or is reasonably likely to hold, or have the benefit of, Supply Chain Rights for Train Services operated using the proposed Rollingstock Configuration for the Train Service Type specified in the Notice of Enquiry on and from the Variation Effective Date; and

(ii) Aurizon Network determines (acting reasonably), through a capacity assessment, that the increase to the Proposed Maximum Payload, and the operation of Train Services utilising the proposed Rollingstock Configuration, for the Train Service Type:

(A) will not utilise more Capacity than the Existing Capacity allocated to the Train Service Type under this Agreement; or

(B) will utilise more Capacity than the Existing Capacity allocated to the Train Service Type under this Agreement but there is sufficient Available Capacity to accommodate the additional Capacity that will be utilised; and

(iii) Aurizon Network determines (acting reasonably) that the operation of Train Services utilising the proposed Rollingstock Configuration specified in the Notice of Enquiry or the utilisation of additional Capacity (if **clause 10.2(a)(ii)(B)** applies) will not be likely to cause Aurizon Network to be unable to comply with its obligations under any other access agreement or train operations deed or with applicable Rollingstock Interface Standards.

~~(a)~~(b) Within 20 Business Days after the Access Holder gives Aurizon Network a Notice of Enquiry in respect of a Train Service Type, Aurizon Network must give the Access Holder a notice (**Response Notice**) specifying:

(i) whether or not the ~~proposed increased~~Proposed Maximum Payload for the Train Service Type specified in the Notice of Enquiry can be accommodated in accordance with clause 10.2(a) (including its reasons for that decision); and

(ii) if so:

(A) the Revised Nominal Payload for ~~that the~~ Train Service Type (calculated in accordance with clause 13.1~~as the amount (rounded to the nearest whole tonne) which is 98% of the Maximum Payload for the Train Service Type specified in the Notice of Enquiry~~);

(B) if the Access Holder elected in the Notice of Enquiry to relinquish the Surplus Access Rights for the Train Service Type:

(1) the Revised Nominated Monthly Train Services for ~~that the~~ Train Service Type (calculated in accordance with clause 13.20 as if the Revised Nominal Payload for the Train Service Type for the purpose of that calculation is the Revised Nominal Payload calculated in accordance with clause 11.2(a)(ii)(A)); and

~~(1)~~(2) the SAR Relinquishment Fee for the Surplus Access Rights for the Train Service Type (calculated in accordance with clause 13.5);

(C) the Surplus Access Rights for the Train Service Type (calculated in accordance with clause 13.3);~~the difference between the Nominated Monthly Train Services for the Train Service Type and the Revised Nominated Monthly Train Services for the Train Service Type (Surplus Access Rights)~~;

~~(B)~~(D) if the Access Holder elected in the Notice of Enquiry to maintain the Surplus Access Rights for the Train Service Type, the Revised Indicative Tonnage (calculated in accordance with clause 13.4); and

~~the [Relinquishment Fee] that would be payable under the Relinquishment Provisions which form part of this Agreement under clause Error! Reference source not found. in respect of the relinquishment of the Surplus Access Rights by the Access Holder; and~~

[Drafting note: Aurizon Network and the QRC are working through a mechanism to avoid socialisation of costs among other system users. In its initial form, this mechanism contemplates that where Train Paths are relinquished under these provisions, the Access Holder will pay a fee equal to the AT2 component of access charges that would have been payable in relation to the Train Paths that have been

~~relinquished. Once the mechanism has been fully worked through, Aurizon Network will provide drafting in relation to the appropriate fee that will be payable.]~~

~~(C)~~(E) Aurizon Network's estimate (acting reasonably) of the earliest date on which the increase in the Maximum Payload for the Train Service Type could take effect.

~~(b)~~(c) Within 20 Business Days after Aurizon Network gives the Access Holder a Response Notice that specifies that the ~~proposed increased~~ Proposed Maximum Payload for a Train Service Type specified in the relevant Notice of Enquiry can be accommodated, the Access Holder may give Aurizon Network a notice (**Variation Request Notice**) which:

(i) requests that Aurizon Network increase the Maximum Payload for the Train Service Type to the ~~proposed increased~~ Proposed Maximum Payload specified in the relevant Notice of Enquiry with effect on and from a date specified in ~~the notice~~ the Variation Request Notice (which date must not be earlier, or more than ~~six~~ three months later, than the date specified in the relevant Response Notice in accordance with **clause 10.2(b)(ii)(E)**); and

~~(ii)~~—sets out the details of any changes to the nominations previously given under **clause 4.3** or ~~clause 4.5~~ **Error! Reference source not found.** to take effect from the Variation Effective Date ~~into account the relinquishment of the Surplus Access Rights.~~

~~(iii)~~~~(ii)~~ ~~If the proposed increased Maximum Payload for a Train Service Type specified in a Notice of Enquiry exceeds the maximum Payload of the Authorised Rollingstock Configuration for the Train Service Type which has the greatest maximum Payload, then the Access Holder must not give Aurizon Network a Variation Request Notice in respect of the Train Service Type unless, at the same time, each Operator which operates Train Services in respect of that Train Service Type also gives Aurizon Network an Authorisation Request Notice (as defined in that Operator's Train Operations Deed) in respect of a proposed Rollingstock Configuration which has a maximum Payload which is the same as the proposed increased Maximum Payload.~~

10.3 **Dispute**

(a) An Access Holder may, within 20 Business Days after Aurizon Network gives the Response Notice to the Access Holder, give Aurizon Network a Dispute Notice which Disputes any of the following in accordance with **clause 28**:

(i) Aurizon Network's determination in accordance with **clause 10.2(a)** whether or not the Proposed Maximum Payload for the Train Service Type specified in the Notice of Enquiry can be accommodated; or

(ii) the Revised Nominal Payload, the Revised Nominated Monthly Train Services (if applicable), the Surplus Access Rights, the Revised Indicative Tonnage (if applicable) or the SAR Relinquishment Fee for the Surplus Access Rights (if applicable).

for the Train Service Type specified in the Response Notice.

- (b) If a Dispute referred to in **clause 10.3(a)** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine the Dispute in accordance with **clause 28.3**.
- (c) If the Access Holder does not give Aurizon Network a Dispute Notice within the time referred to in **clause 10.3(a)**, then:
 - (i) the Access Holder must not give Aurizon Network a Dispute Notice Disputing the matters referred to in **clause 10.3(a)**;
 - (ii) any such Dispute Notice which is given by the Access Holder will be taken to be of no effect; and
 - (iii) the Access Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

11.310.4 Consequences of a Variation Request Notice

- (a) The effective date of a Variation Request Notice is the latest of:
 - (i) the date specified in the Variation Request Notice in accordance with **clause 10.2(c)(i)**;
 - (ii) the date the proposed Rollingstock Configuration for the Train Service Type specified in the 'Authorisation Request Notice' (as defined in the relevant Operator's Train Operations Deed) becomes an 'Authorised Rollingstock Configuration' (as defined in the relevant Operator's Train Operations Deed) for the Train Service Type; and
 - (iii) if the Access Holder elected in the relevant Notice of Enquiry to relinquish the Surplus Access Rights for the Train Service Type, the date the Access Holder pays Aurizon Network the SAR Relinquishment Fee for the Surplus Access Rights for the Train Service Type.

(Variation Effective Date).

- ~~(a)(b) If the Access Holder gives Aurizon Network a Variation Request Notice in respect of a Train Service Type and the Access Holder elected in the relevant Notice of Enquiry to relinquish the Surplus Access Rights for the Train Service Type, then with effect on the Variation Effective Date: the Access Holder will be taken, at the same time, to have given Aurizon Network a Notice of Intention to Relinquish under the Relinquishment Provisions which form part of this Agreement under **clause Error! Reference source not found.** in respect of which:~~

~~(A) the Nominated Access Rights under those Relinquishment Provisions will be taken to be the Surplus Access Rights for the Train Service Type specified in the relevant Response Notice; and~~

~~the Relinquishment Date under those Relinquishment Provisions will be taken to be the date specified in the Variation Request Notice.~~

~~(B) Subject to **clause 11.2(c)**, if the Access Holder gives Aurizon Network a Variation Request Notice in respect of a Train~~

~~Service Type, then:~~

~~(ii)(i)~~ the Maximum Payload for the Train Service Type will be taken to be varied to be the ~~proposed increased~~ Proposed Maximum Payload for the Train Service Type (as specified in the relevant Notice of Enquiry);

~~(iii)(ii)~~ the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for the Train Service Type (as specified in the relevant Response Notice or, if clause 10.3(a) applies, as agreed or determined through the Dispute resolution process under clause 28); ~~and~~

~~(iii)~~ the Nominated Monthly Train Services for the Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for the Train Service Type (as specified in the relevant Response Notice or, if clause 10.3(a) applies, as agreed or determined through the Dispute resolution process under clause 28);

~~(iv)~~ the Indicative Tonnage for the Train Service Type will remain unchanged; and

~~(v)~~ the Surplus Access Rights for the Train Service Type (as specified in the relevant Response Notice or, if clause 10.3(a) applies, as agreed or determined through the Dispute resolution process under clause 28) will be relinquished and will cease to form part of the Access Rights.

~~(iv) —,~~

~~(A) — with effect on the latest of:~~

~~the date specified in the Variation Request Notice;~~

~~if **clause 11.2(c)** applies, the date the proposed Rollingstock Configuration for the Train Service Type specified in the Authorisation Request Notice becomes an Authorised Rollingstock Configuration for the Train Service Type; and~~

~~the date the Access Holder pays Aurizon Network the [Relinquishment Fee] under the Relinquishment Provisions which form part of this Agreement under **clause Error! Reference source not found.** in respect of the relinquishment of the Surplus Access Rights.~~

(c) If the Access Holder gives Aurizon Network a Variation Request Notice in respect of a Train Service Type and the Access Holder elected in the relevant Notice of Enquiry to maintain the Surplus Access Rights for the Train Service Type, then with effect on the Variation Effective Date:

(i) the Maximum Payload for the Train Service Type will be taken to be the Proposed Maximum Payload for the Train Service Type (as specified in the relevant Notice of Enquiry);

(ii) the Nominal Payload for the Train Service Type will be taken to be the Revised Nominal Payload for the Train Service Type (as specified in the relevant Response Notice or, if clause 10.3(a)

- applies, as agreed or determined through the Dispute resolution process under **clause 28**);
- (iii) the Indicative Tonnage for the Train Service Type will be taken to be the Revised Indicative Tonnage for the Train Service Type (as specified in the relevant Response Notice or, if **clause 10.3(a)** applies, as agreed or determined through the Dispute resolution process under **clause 28**));
 - (iv) the Nominated Monthly Train Services for the Train Service Type will remain unchanged; and
 - (v) the Surplus Access Rights for the Train Service Type will continue to form part of the Access Rights. **[Drafting note: see above drafting note on the calculation of this fee.]**

11 Reduction of Nominated Monthly Train Services if Maximum Payload exceeded

11.1 Notification of non-compliance with Maximum Payload

- (a) If, at a point in time (**Assessment Date**), the Average Annual Payload for a Train Service Type operated by a particular Operator (**Defaulting Operator**) exceeds the Maximum Payload for that Train Service Type, then Aurizon Network may, within 20 Business Days after the Assessment Date, give the Access Holder, the Defaulting Operator and the relevant Customer (if any) a notice requiring the Access Holder (with the written consent of the Customer) to either:
 - (i) notify Aurizon Network that it elects to maintain the existing Maximum Payload for the Train Service Type and ensure the Defaulting Operator rectifies its non-compliance with the Maximum Payload for the Train Service Type; or
 - (ii) give a Notice of Enquiry requesting an increase to the Maximum Payload for the Train Service Type in accordance with **clause 10**.

(Reduction Notice).
- (b) The Reduction Notice must specify the Average Annual Payload for the Affected Train Service Type as at the Assessment Date, including reasonable details of the calculation of that amount.
- (c) Subject to **clause 11.1(d)**, if:
 - (i) an Access Holder fails to provide a notice under **clause 11.1(a)(i)** or **clause 11.1(a)(ii)** within 20 Business Days after receiving a Reduction Notice under **clause 11.1(a)** (or, if the Access Holder has Disputed that Reduction Notice in accordance with **clause 11.3**, within 20 Business Days after the date of the resolution of that Dispute); or
 - (ii) an Access Holder fails to provide a Variation Request Notice under **clause 10.2(c)** within the time required by that clause where:
 - (A) the Access Holder previously gave a Notice of Enquiry in accordance with **clause 11.1(a)(ii)**; and

(B) Aurizon Network gave a Response Notice that specifies that the Proposed Maximum Payload for the Affected Train Service Type specified in that Notice of Enquiry can be accommodated.

Aurizon Network may give the Access Holder, the Defaulting Operator and the relevant Customer (if any) notice that, with effect on the date that is three months after the date of that notice:

(iii) the Maximum Payload for the Affected Train Service Type will be taken to be varied to:

(A) if **clause 11.1(c)(i)** applies:

(1) the amount which is the maximum Payload of the Train Services operated by the Defaulting Operator of the Relevant Rollingstock Configuration for the Affected Train Service Type (rounded to the nearest whole tonne) which was the Relevant Rollingstock Configuration for the Affected Train Service Type which was most used in the operation of Train Services for the Affected Train Service Type by the Defaulting Operator during the 12 month period ending on the Assessment Date; or

(2) if disputed by the Access Holder under **clause 11.3**, the amount agreed or determined through the Dispute resolution process under **clause 28**;

(B) if **clause 11.1(c)(ii)** applies, the Proposed Maximum Payload specified in the Notice of Enquiry:

(iv) the Nominal Payload for the Affected Train Service Type will be taken to be varied to the Revised Nominal Payload for the Train Service Type (calculated in accordance with **clause 13.1** or if disputed by the Access Holder under **clause 11.3**, the amount agreed or determined through the Dispute resolution process under **clause 28**);

(v) the Indicative Tonnage for the Affected Train Service Type will remain unchanged;

(vi) the Nominated Monthly Train Services for the Affected Train Service Type will be taken to be varied to the Revised Nominated Monthly Train Services for the Train Service Type (calculated in accordance with **clause 13.2** or if disputed by the Access Holder under **clause 11.3**, the amount agreed or determined through the Dispute resolution process under **clause 28**);

(vii) the Surplus Access Rights for the Train Service Type (calculated in accordance with **clause 13.3** or if disputed by the Access Holder under **clause 11.3**, the amount agreed or determined through the Dispute resolution process under **clause 28**) will be relinquished and cease to form part of the Access Rights; and

(viii) the Access Holder must pay the SAR Relinquishment Fee for the Surplus Access Rights for the Affected Train Service Type

(calculated in accordance with **clause 13.5** or if disputed by the Access Holder under **clause 11.3**, the amount agreed or determined through the Dispute resolution process under **clause 28**).

(d) **Clause 11.1(c)** does not apply where:

- (i) Aurizon Network withdraws a Reduction Notice; or
- (ii) a Reduction Notice is Disputed in accordance with **clause 11.3** and the resolution of that Dispute determines that the Reduction Notice should not have been given (including if **clause 11.3(c)** applies).

(e) If the Access Holder gives a Notice of Enquiry for an Affected Train Service Type under this **clause 11.1**, Aurizon Network may give a Response Notice that specifies that the Proposed Maximum Payload for the Affected Train Service Type specified in that Notice of Enquiry can be accommodated even if the Access Holder has not demonstrated the matters specified in **clause 10.2(a)(i)**.

11.2 Determining the Affected Train Service Type

(a) If Aurizon Network gives the Access Holder a Reduction Notice and the relevant Train Service Type (**Split Train Service Type**) operated by the Defaulting Operator which has exceeded the Maximum Payload is also operated by another Operator (**Non-Defaulting Operator**):

- (i) the Train Service Type operated by the Defaulting Operator (**New Train Service Type**); and
- (ii) the Train Service Type operated by the Non-Defaulting Operator (**Original Train Service Type**).

are deemed to be two different Train Service Types on the basis that:

(iii) the “Nominated Monthly Train Services (for a 30 day Month)” for the **New Train Service Type** is deemed to be the “Nominated Monthly Train Services (for a 30 day Month)” allocated to the Defaulting Operator in respect of the Split Train Service Type as at the Assessment Date;

(iv) the “Nominated Monthly Train Services (for a 30 day Month)” for the **Original Train Service Type** is deemed to be the “Nominated Monthly Train Services (for a 30 day Month)” which was not allocated to the Defaulting Operator in respect of the Split Train Service Type as at the Assessment Date; and

(v) subject to **clauses 11.2(a)(iii)** and **11.2(a)(iv)**, the Train Description for:

(A) the **New Train Service Type**; and

(B) the **Original Train Service Type**.

is otherwise the same as for the Split Train Service Type.

(b) The **Affected Train Service Type** is:

- (i) if **clause 11.2(a)** applies, the **New Train Service Type** operated by the Defaulting Operator; and

- (ii) in any other case, the Train Service Type operated by the Defaulting Operator which has exceeded the Maximum Payload.

11.3 Dispute in relation to Reduction Notice

- (a) An Access Holder may, within 20 Business Days after Aurizon Network gives:
 - (i) the Reduction Notice to the Access Holder, give Aurizon Network a Dispute Notice which Disputes any of the following in accordance with **clause 28**:
 - (A) the Average Annual Payload for the Affected Train Service Type specified in that notice;
 - (B) whether the Average Annual Payload for the Affected Train Service Type exceeds the Maximum Payload for the Affected Train Service Type; or
 - (C) Aurizon Network's determination of the Affected Train Service Type in accordance with **clause 11.2**; or
 - (ii) a notice to the Access Holder under **clause 11.1(c)**, give Aurizon Network a Dispute Notice which Disputes any of the following in accordance with **clause 28**:
 - (A) the amount which will be the Proposed Maximum Payload for the Affected Train Service Type in accordance with **clause 11.1(c)(iii)(A)(1)**; or
 - (B) the Revised Nominal Payload, the Revised Nominated Monthly Train Services, the Surplus Access Rights or the SAR Relinquishment Fee for the Surplus Access Rights, for the Train Service Type specified in the notice.
- (b) If a Dispute referred to in **clause 11.3(a)** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine the Dispute in accordance with **clause 28.3**.
- (c) If it is agreed or determined through the Dispute resolution process that the Average Annual Payload for a Affected Train Service Type does not exceed the Maximum Payload for the Affected Train Service Type, then Aurizon Network will be taken not to have given the Reduction Notice.
- (d) If the Access Holder does not give Aurizon Network a Dispute Notice within the time referred to in **clause 11.3(a)**, then:
 - (i) the Access Holder must not give Aurizon Network a Dispute Notice Disputing the matters referred to in **clause 11.3(a)**;
 - (ii) any such Dispute Notice which is given by the Access Holder will be taken to be of no effect; and
 - (iii) the Access Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

11.4 No prejudice to other rights

Subject to **clause 13.6**, this **clause 11** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Access Holder, Defaulting Operator or any other Operator with the Train Description for

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~~**[Not used] Reduction of Nominated Monthly Train Services if Nominal Payload increased**~~

~~**Notice of Intention to Increase Nominal Payload**~~

- ~~(a) Subject to **clause 12.1(b)**, at any time during the Term, Aurizon Network may give the Access Holder a notice of Aurizon Network's intention to increase the Nominal Payload for a Train Service Type (**Notice of Intention to Increase Nominal Payload**).~~
- ~~(i) Aurizon Network must not give a Notice of Intention to Increase Nominal Payload for a Train Service Type unless Aurizon Network has first consulted with all relevant Access Holders and relevant Railway Operators about options for increasing the capacity of the relevant part of the Network on which Train Services for the Train Service Type are operated.~~
- ~~(b) If Aurizon Network gives a Notice of Intention to Increase Nominal Payload to the Access Holder, Aurizon Network must also give a copy of that Notice of Intention to Increase Nominal Payload to each affected Operator (if any).~~
- ~~(c) A Notice of Intention to Increase Nominal Payload must:~~
- ~~(d) specify:~~
- ~~(e) the increased Nominal Payload (Revised Nominal Payload) for the Train Service Type (as determined by Aurizon Network in its discretion); and~~
- ~~(f) the Revised Maximum Payload for the Train Service Type; and~~
- ~~(g) the Revised Nominated Monthly Train Services for the Train Service Type,~~
- ~~(h) including reasonable details of the calculation of those amounts;~~
- ~~(i) specify the date (**Effective Date**) on which the variations specified in the Notice of Intention to Increase Nominal Payload will take effect (provided that such Effective Date must not be less than 18 months (or such other period as agreed between the Parties) after the date on which Aurizon Network gives the Notice of Intention to Increase Nominal Payload to the Access Holder); and~~
- ~~(ii) notifying the Access Holder that, subject to clause 12.4(c)(iii), with effect on the Effective Date:~~
- ~~(iii) the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for the Train Service Type (as specified in the Notice of Intention to Increase Nominal Payload);~~
- ~~(iv) the Maximum Payload for the Train Services Type will be taken to be varied to be the Revised Maximum Payload for that Train Service Type (as specified in the Notice of Intention to Increase Nominal Payload); and~~
- ~~(v) the Nominated Monthly Train Services for that Train Service Type~~

~~will be taken to be varied to be the Revised Nominated Monthly Train Services for that Train Service Type (as specified in the Notice of Intention to Increase Nominal Payload).~~

~~(vi) Calculation of Revised Maximum Payload~~

~~(vii) The Revised Maximum Payload for a Train Service Type is the amount (expressed as tonnes) calculated in accordance with the following formula:~~

~~(x) $RNP \times CF$~~

~~(xiii)~~

~~(xvi) the Revised Maximum Payload for the Train Service Type (rounded to the nearest whole tonne)~~

~~(xix) the Revised Nominal Payload for the Train Service Type as specified in the relevant Notice of Intention to Increase Nominal Tonnage~~

~~(xxii) 1.02 (or such other conversion factor agreed between the Parties)~~

~~(xxiii)~~

~~(xxiv) Calculation of Revised Nominated Monthly Train Services~~

~~(xxv) The Revised Nominated Monthly Train Services for a Train Service Type is the number of Train Services calculated in accordance with the following formula:~~

~~(xxviii) $2 \times$ Loaded Train Services~~

~~(xxxi)~~

~~(xxxiv) the Revised Nominated Monthly Train Services for the Train Service Type~~

~~(xxxvii) — IT/RNP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)~~

~~(xl) — the Indicative Tonnage for the Train Service Type~~

~~(xlili) — the Revised Nominal Payload for the Train Service Type as specified in the relevant Notice of Intention to Increase Nominal Payload~~

~~12.2 — Dispute in relation to variations to Train Description~~

- ~~(a) — If Aurizon Network gives the Access Holder a Notice of Intention to Increase Nominal Payload in respect of a Train Service Type, the Access Holder may, within 20 Business Days after Aurizon Network gives the Notice of Intention to Increase Nominal Payload to the Access Holder, give Aurizon Network a Dispute Notice which Disputes:~~
- ~~(b) — the Revised Maximum Payload for the Train Service Type; and/or~~
- ~~(c) — the Revised Nominated Monthly Train Services for the Train Service Type;~~
- ~~(d) — specified in the Notice of Intention to Increase Nominal Payload in accordance with **clause 28**.~~
- ~~(e) — The Access Holder must not Dispute the Revised Nominal Payload specified in a Notice of Intention to Increase Nominal Payload and any Dispute Notice which is given by the Access Holder in respect of such a Dispute will be taken to be of no effect.~~

- ~~(f) — If a Dispute referred to in **clause 12.4(a)** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine:
 - ~~(i) — the Revised Maximum Payload for the Train Service Type; and~~~~
- ~~(g) — the Revised Nominated Monthly Train Services for the Train Service Type;~~
- ~~(h) — in each case, based on the Revised Nominal Payload specified in the Notice of Intention to Increase Nominal Payload.~~
- ~~(i) — If the Access Holder does not give Aurizon Network a Dispute Notice referred to in **clause 12.4(a)** within the time referred to in **clause 1.1(a)**, then:
 - ~~(i) — the Access Holder must not give Aurizon Network a Dispute Notice Disputing the
 - ~~(A) — the Revised Maximum Payload for the Train Service Type; and/or~~
 - ~~(B) — the Revised Nominated Monthly Train Services for the Train Service Type;~~~~
 - ~~(ii) — specified in the Notice of Intention to Increase Nominal Payload;~~
 - ~~(iii) — any such Dispute Notice which is given by the Access Holder will be taken to be of no effect; and~~
 - ~~(iv) — the Access Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.~~~~

~~12.3 — Withdrawal of Notice of Intention to Increase Nominal Payload~~

- ~~(i) — Aurizon Network may, in its absolute discretion, withdraw a Notice of Intention to Increase Nominal Payload at any time before the date which is 10 months before the Effective Date.~~

~~If Aurizon Network withdraws a Notice of Intention to Increase Nominal Payload under **clause 12.8(a)**, the variations to the Nominal Payload, Maximum Payload and Monthly Nominal Train Services for the Train Service Type set out in the Notice of Intention to Increase Nominal Payload will not take effect.~~

~~12.4 — Variation to Train Description~~

~~If Aurizon Network gives the Access Holder a Notice of Intention to Increase Nominal Payload in respect of a Train Service Type, then, unless the Notice of Intention to Increase Nominal Payload is withdrawn under **clause 12.4(c)(iii)**, with effect on the Effective Date:~~

- ~~(i) — the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for the Train Service Type;~~
- ~~(ii) — the Maximum Payload for the Train Service Type will be taken to be varied to be the Revised Maximum Payload for the Train Service Type; and~~
- ~~(iii) — the Nominated Monthly Train Services for the Train Service Type will be taken to be varied to be the Revised Nominated Monthly~~

~~Train Services for the Train Service Type,~~

~~as:~~

~~specified in the relevant Notice of Intention to Increase Nominal Payload;~~

~~or~~

- ~~(b) if **clause 1.1(a)** applies, agreed or determined through the Dispute resolution process under **clause 28**.~~

~~12.5 Variation of Train Operations Deeds and Operator nominations~~

- ~~(a) If Aurizon Network gives the Access Holder a Notice of Intention to Increase Nominal Payload in respect of a Train Service Type, then, unless the Notice of Intention to Increase Nominal Payload is withdrawn under **clause 12.3**, with effect on the Effective Date the Access Holder will be deemed to have given a notice to Aurizon Network in accordance with **clause 4.5(a)** varying the Access Rights which the Access Holder has allocated to each Operator under a Train Operations Deed in respect of that Train Service Type:~~

- ~~(i) if the Access Holder has only nominated one Operator, so as to be consistent with the Revised Nominal Payload, Revised Maximum Payload and Revised Nominated Monthly Services for the Train Service Type set out in the relevant Notice of Intention to Increase Nominal Payload; and~~

~~if the Access Holder has nominated multiple Operators, so as to ensure that, in aggregate, the train descriptions under those Train Operations Deeds for that Train Service Type are consistent with the Revised Nominated Payroll, Revised Maximum Payload and Revised Nominated Monthly Services for the Train Service Type set out in the relevant Notice of Intention to Increase Nominal Payload (based on a consistent variation of those train descriptions, having regard to the proportion of all Train Services for that Train Service Type allocated to each Operator).~~

13 Calculations for changes to payload

13.1 Calculation of Revised Nominal Payload

The Revised Nominal Payload for a Train Service Type for an Affected Train Service Type is the amount (expressed as tonnes) calculated in accordance with the following formula:

$$\underline{\text{RNP}} \quad \equiv \quad \underline{\text{RPMP} \times \text{LEF}}$$

where:

$$\underline{\text{RRNPMP}} \quad \equiv \quad \underline{\text{the Revised Revised Nominal Payload Maximum Payload for the Train Service Type for the Affected Train Service Type (rounded down to the nearest whole tonne)}}$$

$$\underline{\text{RNPPMP}} \quad \equiv \quad \underline{\text{the Proposed Maximum Payload Revised Nominal Payload for the Train Service Type or, if applicable, the amount determined in accordance with **clause 11.1(c)(iii)(A)** for the Train Service Type (rounded to the nearest whole tonne)}}$$

LEF \equiv the Affected Train Service Type
Loading Efficiency Factor (as defined in the definition of
“Gross Tonnes” in item 1.1 of schedule 4) for a Train
Service for the Train Service Type.

13.2 Calculation of Revised Nominated Monthly Train Services

The Revised Nominated Monthly Train Services for a Train Service Type ~~for an Affected Train Service Type~~ is the number of Train Services calculated in accordance with the following formula:

RNMTS \equiv 2 x Loaded Train Services

where:

RNMTS \equiv the Revised Nominated Monthly Train Services for the Train Service Type ~~for the Affected Train Service Type~~

Loaded Train Services \equiv IT/RNP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)

IT \equiv the Indicative Tonnage for the Train Service Type

RNP \equiv the Revised Nominal Payload for the Affected Train Service Type (if the calculation is being undertaken under clause 10.2(b)(ii)(B) or clause 11.1(c)(vi))

13.3 Calculation of Surplus Access Rights

The Surplus Access Rights for a Train Service Type is the difference between the Nominated Monthly Train Services for the Train Service Type and the Revised Nominated Monthly Train Services for the Train Service Type.

13.4 Calculation of Revised Indicative Tonnage

The Revised Indicative Tonnage for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

Revised Indicative Tonnage \equiv NMTS/2 x RNP

where:

NMTS \equiv the Nominated Monthly Train Services for the Train Service Type

RNP \equiv the Revised Nominal Payload for the Train Service Type

13.5 Calculation of SAR Relinquishment Fee

The SAR Relinquishment Fee for the Surplus Access Rights for a Train Service

Type is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate AT2 Component of the TOP Charges for the Surplus Access Rights that would have been payable for the remainder of the Term assuming:

- (a) that the Surplus Access Rights were not relinquished; and
- (b) the Surplus Access Rights were not operated for the Access Holder for a reason other than Aurizon Network Cause and TOP Charges are payable for the remainder of the Term.

13.6 No resumption during process to change payload

Where **clause 10** or **clause 11** has been triggered by an Access Holder or Aurizon Network, Aurizon Network must not take steps to resume any Access Rights in accordance with **clause 8**.

13.14 Relinquishment of Access Rights

The Access Holder may relinquish some or all of the Access Rights in accordance with the Relinquishment Provisions which form part of this Agreement under **clause 3**.

14.15 Transfer of Access Rights by Access Holder

The Access Holder may Transfer all or part of the Access Rights to itself or a Third Party in accordance with the Transfer Provisions which form part of this Agreement under **clause 3**.

15.16 Reduction Factor

15.16.1 Determination of the Reduction Factor

If Nominated Access Rights are intended to be relinquished or transferred under the Relinquishment Provisions or the Transfer Provisions which form part of this Agreement under **clause 3**, the Reduction Factor must be calculated in accordance with the Reduction Factor Provisions which form part of this Agreement under **clause 3**.

15.216.2 Replacement Access Agreement

If Aurizon Network identifies an opportunity for it to enter into an Access Agreement with an existing or prospective Network Customer that would result in a lessening of the Relinquishment Fee or Transfer Fee (as applicable) that would otherwise be payable to Aurizon Network under the Relinquishment Provisions or the Transfer Provisions which form part of this Agreement under **clause 3** (as applicable), Aurizon Network will not unreasonably delay the process for negotiating and executing an Access Agreement with that existing or prospective Network Customer.

16.17 Resumptions, reductions, relinquishments and transfers - General

16.17.1 Termination where no Access Rights remain

- (a) Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this Agreement (including under the Resumption Provisions, the Conditional Access Provisions, the Relinquishment Provisions and the Transfer Provisions which form part of this Agreement under **clause 3** and **clauses 8, 9, 14, 15** and **29.6**) to the extent that there is no longer any Access Rights remaining the subject of this Agreement, then Aurizon Network may terminate this Agreement by notice to the Access Holder (without prejudice to those provisions which are stated to survive this Agreement).
- (b) Any termination under this **clause 17.1** is without prejudice to any rights of any Party which accrued on or before termination.

16.17.2 Effect on entitlement to operate and Access Charge Rates

Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this Agreement (including under the Resumption Provisions, the Conditional Access Provisions, the Relinquishment Provisions and the Transfer Provisions which form part of this Agreement under **clause 3** and **clauses 8, 9, 11, 14, 15** and **29.6**), then for the avoidance of doubt:

- (a) the Access Holder's entitlement to have an Operator operate Train Services is also reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights;
- (b) the Access Holder's Nominated Monthly Train Services for each applicable Train Service Type will be taken to be varied to be reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights; and
- (c) the Access Holder will no longer be obliged to pay Access Charges in respect of the resumed, reduced, relinquished or transferred Access Rights (except for any such Access Charges that accrued prior to the resumption, reduction, relinquishment or transfer, including any TOP Charge payable in respect of the part of the Year prior to the resumption, reduction, relinquishment or transfer).

16.17.3 No compensation or liability

- (a) Except for any payment specifically provided in this Agreement or liability for any breach by Aurizon Network of this Agreement, Aurizon Network is not liable for any loss or damage, however caused (including in contract, tort (including negligence) or otherwise) suffered or incurred by the Access Holder in connection with any resumption, reduction, relinquishment or transfer of Access Rights in accordance with the Resumption Provisions, the Conditional Access Provisions, the Relinquishment Provisions and the Transfer Provisions which form part of this Agreement under **clause 3** and **clauses 8, 9, 1, 15** and **29.6**.

- (b) The Access Holder releases Aurizon Network from any Claim for loss or damage referred to in **clause 17.3(a)** that the Access Holder may otherwise have.

47.18 Consequences of a failure of an Operator to satisfy conditions

47.18.1 Reduction of allocation of Access Rights

If:

- (a) an Operator (**Defaulting Operator**) fails to satisfy the conditions for:
 - (i) the commencement of Train Services under clause 10.2 of its Train Operations Deed; or
 - (ii) the commencement of Train Services for a Train Service Type under clause 10.3 of its Train Operations Deed; and
- (b) Aurizon Network has given a notice to the Access Holder and the Defaulting Operator in accordance with clause 10.2(c) or clause 10.3(c)(iv)(A)(1) (as applicable) of the Defaulting Operator's Train Operations Deed,

then, on such notice being given by Aurizon Network:

- (c) the Access Holder is deemed to have withdrawn its allocation of Access Rights to the Defaulting Operator in respect of:
 - (i) in the case of a notice under clause 10.2(c) of the Defaulting Operator's Train Operations Deed, all of the Access Rights for which the Defaulting Operator has been nominated; and
 - (ii) in the case of a notice under clause 10.3(c)(iii) of the Defaulting Operator's Train Operations Deed, that part of the Access Rights for which the Defaulting Operator has been nominated but in respect of which the Defaulting Operator has failed to satisfy the relevant conditions in clause 10.3 of its Train Operations Deed; and
- (d) without limiting the Access Holder's rights under **clauses 4.3** and **4.5**, the Access Holder will have the right under **clauses 4.3(b)** and **4.5** to nominate a new Operator to use, or vary the previous nomination of another Operator to include, the Access Rights which were previously allocated to the Defaulting Operator.

47.218.2 Reversing changes to Train Descriptions

(a) If:

- (i) a Defaulting Operator fails to satisfy the conditions for the commencement of Train Services for a Train Service Type (**relevant Train Service Type**) under clause 10.3 of its Train Operations Deed; and
- (ii) Aurizon Network has given a notice to the Access Holder and the Defaulting Operator in accordance with clause 10.3(c)(iv)(B)(1) of the Defaulting Operator's Train Operations Deed,

the Access Holder may elect to allocate the varied Train Service Type to another Operator (either through a new nomination or variation of an

existing nomination).

- (b) If the Access Holder fails to notify Aurizon Network of its election within 10 Business Days then the Train Description for the relevant Train Service Type will be taken not to have been varied (even if the relevant variation has taken effect) and the Train Description for the relevant Train Service Type will be taken to be the Train Description for the relevant Train Service Type in force immediately before the variation took effect.

48.19 Compliance

48.19.1 General requirements – Parties

To the extent relevant to the performance of its obligations under this Agreement, each Party must observe and comply with:

- (a) all applicable Laws;
- (b) the lawful requirements of relevant Authorities; and
- (c) to the extent applicable to that Party:
 - (i) the terms of the Access Undertaking (as amended by any Change in Access Undertaking); and
 - (ii) the IRMP (subject to, in the Access Holder's case, receipt of the IRMP from Aurizon Network in accordance with **clause 4.3(f)(ii)**).

48.219.2 General Requirements – Aurizon Network

To the extent relevant to the performance of its obligations under this Agreement, Aurizon Network must observe and comply with:

- (a) the conditions of its Accreditation;
- (b) all licences and permits affecting its operations;
- (c) the Network Management Principles; and
- (d) any Environmental Authority it holds from time to time.

48.319.3 Non-compliance by Operator with Train Description

- (a) If:
 - (i) Train Services for a Train Service Type operated by an Operator (**Defaulting Operator**) do not comply, in any material respect, with the Train Description for the Train Service Type, except where such non-compliance is attributable to another Railway Operator or Aurizon Network;
 - (ii) the Defaulting Operator fails to demonstrate to the reasonable satisfaction of Aurizon Network, within 20 Business Days of being requested to do so, that those Train Services operated by the Defaulting Operator will consistently comply with the applicable Train Description for the remainder of the Term; and
 - (iii) Aurizon Network provided a copy of the request to the Defaulting Operator to the Access Holder on or about the same time as providing it to the Defaulting Operator,

then, without limiting any right Aurizon Network has to suspend or

terminate the Train Services for a Train Service Type under a Train Operations Deed, Aurizon Network must promptly:

- (iv) notify the Access Holder of any such non-compliance and the failure to demonstrate future consistent compliance with the relevant Train Description (**Notice of Defaulting Operator**); and
 - (v) commence consultation with the Access Holder and the Defaulting Operator in respect of the non-compliance.
- (b) Without limiting any right Aurizon Network has to suspend or terminate the Train Services for a Train Service Type under the Train Operations Deed, before taking any steps under **clause 19.3(c)**, Aurizon Network must provide the Access Holder with at least 20 Business Days from the date of the Notice of Defaulting Operator to:
- (i) unless the Train Services for a Train Service Type have been terminated under a Train Operations Deed, procure the Defaulting Operator to rectify the non-compliance notified under **clause 18.3(a)**; or
 - (ii) nominate an alternative Operator to provide the relevant Train Services in accordance with its rights to do so under this Agreement, and

unless the Train Services for a Train Service Type have been terminated under a Train Operations Deed, provide the Access Holder prior notice of any action Aurizon Network intends to take under **clause 19.3(c)**.

- (c) If, following the provision of the Notice of Defaulting Operator under **clause 18.3(a)** and taking of the steps in **clause 19.3(b)**, the Access Holder has not nominated an alternative Operator to provide the relevant Train Services within 20 Business Days from the provision of the Notice of Defaulting Operator or Aurizon Network continues to not be reasonably satisfied that the Defaulting Operator will consistently comply with the Train Description under the Train Operations Deed for the remainder of the term of that Train Operations Deed, Aurizon Network may:
- (i) vary the Train Description for the applicable Train Service Type to a level it reasonably expects to be achievable by the Defaulting Operator for the remainder of the Term, having regard to the extent of previous compliance with the applicable Train Description (but not taking into account, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator or to Aurizon Network); and
 - (ii) reasonably vary this Agreement in accordance with **clauses 36.3(f), 36.3(g) and 36.3(h)** to reflect the impact of the change in the applicable Train Description.
- (d) If Aurizon Network varies the Train Description for a Affected Train Service Type under **clause 19.3(c)(i)**, it must issue a notice to the Access Holder setting out the changes to the “Nominated Monthly Train Services (for a 30 day Month)” set out in **Schedule 2** of this Agreement.

- (e) The Access Holder is entitled to dispute any variation proposed by Aurizon Network pursuant to this **clause 19.3** in accordance with the process set out in **clause 36.3(h)**.

~~19~~20 Weighbridges and Overload Detectors

~~19.120.1~~19.120.1 Verification

- (a) If a Weighbridge or Overload Detector is located en route between an Origin and Destination for a Train Service Type, the Party responsible for that Weighbridge or Overload Detector (as specified in item 5 of Schedule 3) must use reasonable endeavours to ensure that such Weighbridge or Overload Detector is operational, calibrated and available to weigh Trains operated over such Weighbridge or Overload Detector.
- (b) Aurizon Network may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Access Holder.
- (c) If a party to the Train Operations Deed gives a notice under clause 17.5 of the Train Operations Deed, then:
 - (i) subject to **clause 20.1(c)(ii)**, unless otherwise determined by calibration testing under clause 17.5 of the Train Operations Deed, the relevant Weighbridge or Overload Detector (as applicable) is deemed to have malfunctioned from the date the notice is given under clause 17.5(a) of the Train Operations Deed until the testing referred to in clause 17.5(b) of the Train Operations Deed has been carried out and, if required, the Weighbridge or Overload Detector has been recalibrated. Until such testing has been carried out and the Weighbridge or Overload Detector has been recalibrated, the mass of the relevant Train or Wagon which would otherwise have been measured by that Weighbridge or Overload Detector will be the Maximum Desirable Gross Tonnage (as the term is defined in the Train Operations Deed) for the Train or Wagon, as applicable; and
 - (ii) where the person conducting the test in accordance with clause 17.5(b) of the Train Operations Deed determines that the Weighbridge or Overload Detector (as applicable) is measuring within the tolerances specified in item 5 of Schedule 3 of the Train Operations Deed, the Weighbridge or Overload Detector will be treated as having been measuring accurately from the date on which the relevant notice was given under clause 17.5(a) of the Train Operations Deed.
 - (iii) If **clause 20.1(c)(ii)** applies in respect of a Weighbridge, the invoice for Access Charges for the Billing Period immediately following the Billing Period in which the determination in **clause 20.1(c)(ii)** is made will be adjusted to appropriately account for the difference in payment of Access Charges arising from the Weighbridge having been treated as malfunctioning under **clause 20.1(c)(i)**.

20.21 Infrastructure management

20.121.1 Notifications

- (a) As soon as is reasonably practicable after it becomes aware, the Access Holder must notify Aurizon Network of any damage to or disrepair or failure in operation or function of any part of the Nominated Network.
- (b) The Access Holder:
 - (i) unless permitted under this Agreement or authorised by Aurizon Network, must not cause any Obstruction or permit to continue any Obstruction caused by the Access Holder; and
 - (ii) must notify Aurizon Network as soon as reasonably practicable after the Access Holder's Staff or Access Holder's directors discover or become aware of:
 - (A) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures; or
 - (B) anything which the Access Holder, the Access Holder's Staff or Access Holder's directors, observe which may reasonably be considered to cause or contribute to the occurrence of an Incident or Obstruction; or
 - (C) any harm to the Environment caused or contributed to by the Access Holder's use of its Access Rights within the area of the Nominated Network, which the Access Holder knows would result in a breach by Aurizon Network of the terms of any environmental authority it holds in connection with the Nominated Network.

20.221.2 Investigations

- (a) If an Incident occurs, an Investigation into the Incident must be:
 - (i) commenced as soon as practicable unless otherwise agreed between the Parties; and
 - (ii) conducted in accordance with the Investigation Procedures.
- (b) Each Party must cooperate, and ensure that Aurizon Network's Staff or the Access Holder's Staff (as applicable) cooperate, fully with any Investigation.
- (c) The Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the Investigation Procedures.

21.22 Interface management

21.122.1 Compliance with Interface Risk Management Plan

Each Party must advise the other Party of any failure to comply with the IRMP as soon as reasonably practicable after the Party becomes aware of such non-compliance, including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

21.222.2 Interface representative

- (a) Prior to the commencement of any Train Services, each Party must nominate one or more appropriately qualified representatives (by identifying the name, title, experience (including length of experience) and qualifications of each representative) (**Interface Representative**) who is or are (as applicable) to be responsible for:
 - (i) making decisions in relation to interface issues that arise in connection with this Agreement;
 - (ii) liaising and cooperating with representatives of the other Party on those interface issues; and
 - (iii) meeting with representatives of the other Party at locations, times and by means (including in person) specified by Aurizon Network from time to time.
- (b) Each Party must ensure that any representative it nominates under this **clause 22.2** is available to efficiently and effectively perform the responsibilities of the Interface Representative specified in **clause 22.2(a)** and that it has nominated an Interface Representative under this **clause 22.2** at all times during the Term.

22.23 Insurance by Access Holder

22.123.1 Maintain insurance policies

Before the commencement of Train Services, the Access Holder must, at its expense, take out and subsequently maintain current at all times during the Term insurance with a corporation (as defined in the Corporations Act) licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to Aurizon Network) those policies of insurance required by this Agreement.

22.223.2 Required insurance policies

The Access Holder must effect and maintain insurance for the risks and on the terms specified in **Schedule 5**.

22.323.3 Disclosure of insurance policies

The Access Holder must provide to Aurizon Network evidence of the insurance policies effected and maintained pursuant to this **clause 23** (including evidence that the cover provided under those insurance policies complies with this **clause 23** and of the currency of those insurance policies) to Aurizon Network's reasonable satisfaction:

- (a) at least 10 Business Days before the commencement of Train Services;
- (b) within 10 Business Days after renewal of each insurance policy during the Term; and
- (c) within 10 Business Days after being requested to do so in writing by Aurizon Network.

22.423.4 Failure to disclose insurance policies

Without prejudice to Aurizon Network's other rights and remedies in respect of such default, if the Access Holder, whenever required to do so under this Agreement, fails to produce to Aurizon Network evidence to the reasonable

satisfaction of Aurizon Network of insurances that have been effected or maintained by it and does not remedy that default within 10 Business Days after Aurizon Network gives notice to the Access Holder requiring that default to be remedied, Aurizon Network may effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Access Holder to Aurizon Network.

22.523.5 Minimum terms of policies

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

- (a) note the interests of the Access Holder, any contractor of the Access Holder engaged by the Access Holder in relation to the performance of the Access Holder's obligations under this Agreement and Aurizon Network;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of Aurizon Network (not to be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **Schedule 5**.

22.623.6 Access Holder not to render policy void

The Access Holder must not render any of the insurances effected in accordance with this **clause 23** void or voidable or liable to refusal of any claim.

22.723.7 Compliance

The Access Holder must at all times comply with the terms and conditions of all insurance policies effected pursuant to this **clause 23**.

22.823.8 Notice of potential claims

In addition to any other obligation on the Access Holder under this Agreement, the Access Holder must:

- (a) notify Aurizon Network as soon as practicable after the making of any Claim under any insurance policy required by this Agreement;
- (b) notify Aurizon Network of the Claim in reasonable detail; and
- (c) keep Aurizon Network informed of subsequent developments concerning any Claim,

to the extent that such Claim is in connection with this Agreement.

22.923.9 Access Holder to pay all excess/deductibles

- (a) The Access Holder must, in respect of any Claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected in accordance with this **clause 23**.
- (b) If the Access Holder fails to pay any excess/deductible provided for in any insurances effected in accordance with this **clause 23**, Aurizon Network may pay the relevant excess/deductible and any amount so paid will be a debt due from the Access Holder to Aurizon Network.

22.1023.10 Settlement of claims

If:

- (a) Aurizon Network makes a Claim against the Access Holder for damage to the Infrastructure;
- (b) the Claim is in respect of the same matter as the Access Holder claims under a policy required by this Agreement for damage to Infrastructure; and
- (c) the Access Holder has not disputed Aurizon Network's Claim,

then upon settlement of the Access Holder's Claim, under such policy, the portion of monies owed by the Access Holder to Aurizon Network must be paid to Aurizon Network from the monies received by the Access Holder under the policy against which the Access Holder made a Claim.

~~23~~24 Indemnities

~~23.1~~24.1 Indemnity for personal injury and property damage

Subject to **clause 24.2** and **clause 25**, each Party is solely liable for, and releases, indemnifies and will keep indemnified the other Party, its directors and Staff against, all Claims of any nature suffered or incurred by, or made or brought against, the other Party, its directors or Staff in respect of:

- (a) any loss of, damage to or destruction of property (including property of the other Party); or
- (b) personal injury to or death of any person,
in each case caused by or contributed to (to the extent of the contribution) by:
- (c) any breach of this Agreement by the Party; or
- (d) any negligent act or omission of, the Party or the Party's Staff in connection with this Agreement.

~~23.2~~24.2 Indemnity by Access Holder for certain liabilities to Third Parties

Despite **clause 24.1** but subject to **clause 25**, the Access Holder is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network, Aurizon Network's directors and Aurizon Network's Staff against, all Claims of any nature made or brought by a Third Party against, Aurizon Network, Aurizon Network's directors or Aurizon Network's Staff in respect of:

- (a) any loss of, damage to or destruction of property; or
- (b) personal injury to or death of any person,
in each case caused by or contributed to (to the extent of the contribution) by:
- (c) any breach of this Agreement by the Access Holder; or
- (d) any negligent act or omission of the Access Holder or the Access Holder's Staff.

~~23.3~~24.3 Duty to mitigate

Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Agreement applies.

23.424.4 General provisions regarding indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties and survives the expiry or termination of this Agreement.
- (b) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Agreement.

24.25 Limitations and exclusions of liability

24.125.1 Exclusion of Consequential Loss

Except as expressly provided otherwise in **clause 31** or the IRMP Provisions which form part of this Agreement under **clause 3**, neither Party is liable to the other under or in connection with this Agreement (including under an indemnity) for any Consequential Loss however caused (including any breach of this Agreement or negligent act or omission of a Party).

24.225.2 Time limit and minimum threshold on Claims

Neither Party (**first Party**) is liable for, and the other Party must not make any Claim against the first Party under or in connection with this Agreement unless:

- (a) notice of the Claim has been given to the first Party within 12 Months after the other Party becomes aware of the occurrence of the event or circumstance giving rise to the Claim; and
- (b) the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action, provided that if this condition is satisfied then the other Party may proceed for the full amount of the Claim and not only the amount in excess of \$100,000.

24.325.3 Claims and exclusions in respect of Infrastructure standard

Despite any other provision of this Agreement, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Access Holder for any Claim, and the Access Holder must not make any Claim against Aurizon Network, Aurizon Network's directors and/or Aurizon Network's Staff, in respect of any:

- (a) loss of or damage to real or personal property, including property of the Access Holder;
- (b) personal injury to or death of any person; or
- (c) any other damage, expense, injury, cost or loss whatsoever,

arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure, except to the extent that such loss, damage, injury or death, cost or expense results directly from the failure of Aurizon Network to perform its obligations under clause 19.2(a) of a Train Operations Deed or Aurizon Network's negligence in performing those obligations.

24.425.4 Claims and exclusions in respect of non-provision of access

- (a) Subject to **clause 25.4(b)**, only and despite any other provision of this Agreement, Aurizon Network, Aurizon Network's directors and Aurizon

Network's Staff are not liable to the Access Holder for any Claim, and the Access Holder must not make any Claim against Aurizon Network, Aurizon Network's directors and/or Aurizon Network's Staff, in respect of any failure by Aurizon Network to make the Infrastructure available for an Operator to operate a Train Service for the Access Holder at the Scheduled Time in the Train Schedule.

- (b) Aurizon Network is liable to the Access Holder in respect of any failure by Aurizon Network to make the Infrastructure available to enable an Operator to operate a Train Service for the Access Holder at the Scheduled Time in the Train Schedule if (and then only to the extent that):
- (i) Aurizon Network did not reschedule the relevant Train Service if required to do so under a Train Operations Deed; and
 - (ii) the failure by Aurizon Network to make the Infrastructure available was caused by or was the result of an Operational Constraint, that Operational Constraint resulted from a breach of this Agreement by Aurizon Network or the negligence of Aurizon Network; and
 - (iii) the failure by Aurizon Network to make the Infrastructure available was not permitted under this Agreement or the relevant Train Operations Deed or was attributable to a breach of this Agreement by, or negligent act or omission of, Aurizon Network; and
 - (iv) the failure by Aurizon Network to make the Infrastructure available was not attributable to:
 - (A) the Access Holder or the Access Holder's Staff;
 - (B) an Operator or an Operator's Staff;
 - (C) another Railway Operator (other than Aurizon Network) or any employees, contractors, volunteers or agents of another Railway Operator (other than Aurizon Network);
 - (D) a Force Majeure Event;
 - (E) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles;
 - (F) if:
 - (1) the Access Rights for the relevant Train Service are Conditional Access Rights;
 - (2) there is a Capacity Shortfall in respect of any Segment of the applicable Expansion; and
 - (3) the Conditional Access Rights have not been varied under the Conditional Access Provisions which form part of this Agreement under **clause 3**,the unavailability in the Infrastructure is attributable to the Capacity Shortfall in relevant Infrastructure;
 - (G) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or

- (H) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (v) either:
 - (A) the Parties and the relevant Operator have not agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed and the total number of Train Services (expressed as a percentage) cancelled in a Billing Period as a result of a failure by Aurizon Network to make the Infrastructure available (other than any failure by Aurizon Network to make the Infrastructure available which is attributable to an event or circumstance specified in **clauses 25.4(b)(iv)(A) to 25.4(b)(iv)(H)**) exceeds five percent of the total number of Train Services scheduled in the Daily Train Plan for that Billing Period; or
 - (B) the Parties and the relevant Operator have agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed, but the failure to make the Infrastructure available is of a magnitude which is beyond the scope of that performance and adjustment regime.

24.525.5 **Claims and exclusions in respect of delays to Train Movements**

Despite any other provision of this Agreement, a Party (**Defaulting Party**) is not liable to the other Party (**Affected Party**) for any Claim, and the Affected Party must not make any Claim against the Defaulting Party, in respect of delays to Train Movements unless (and then only to the extent that):

- (a) the delay was a result of a breach of this Agreement by the Defaulting Party, or a negligent act or omission on the part of the Defaulting Party; and
- (b) if the delay was caused by or the result of an Operational Constraint:
 - (i) where Aurizon Network is the Affected Party, the Operational Constraint resulted from a breach of this Agreement by the Access Holder; or
 - (ii) where the Access Holder is the Affected Party, the Operational Constraint was not permitted under this Agreement or the relevant Train Operations Deed or resulted from a breach of this Agreement by, or negligent act or omission of, Aurizon Network; and
- (c) the delay is not attributable to:
 - (i) the Affected Party or where the Affected Party is:
 - (A) Aurizon Network - Aurizon Network's Staff; or
 - (B) the Access Holder - the Access Holder's Staff, an Operator or an Operator's Staff;
 - (ii) another Railway Operator (other than the Defaulting Party) or any employees, contractors, volunteers or agents of another Railway Operator (other than the Defaulting Party);

- (iii) a Force Majeure Event;
 - (iv) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
 - (v) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
 - (vi) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
- (i) the Parties and the relevant Operator have not agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed; or
 - (ii) the Parties and the relevant Operator have agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed, but the delays are of a magnitude which is beyond the scope of that performance and adjustment regime.

24.625.6 Defence of Claims by Third Parties

- (a) Each Party must provide such reasonable assistance as requested by the other Party in the defence of any Claim made against the other Party by a Third Party arising out of any Incident or other event giving rise to the Claim.
- (b) The Party that requested assistance under **clause 25.6(a)** must, within five Business Days after a demand is made, pay to the other Party any costs and expenses reasonably incurred by the other Party in providing the assistance requested under **clause 25.6(a)**.

24.725.7 Exclusion of Claims in certain other circumstances

- (a) Except to the extent that an Operational Constraint results from a breach by, or negligent act or omission of, Aurizon Network of this Agreement or a Train Operations Deed, any delays or cancellations of Train Services caused by or resulting from Operational Constraints will not constitute a default by Aurizon Network of its obligations under this Agreement and Aurizon Network will not be liable for any Claims suffered or incurred by or made or brought by or against the Access Holder as a result of or arising from the imposition of such an Operational Constraint.
- (b) Except as otherwise provided in this Agreement, Aurizon Network will not be liable for any delays or cancellations of Train Services or Claims suffered or incurred by or made or brought by or against the Access Holder and the Access Holder must not make any Claim against Aurizon Network, its director and/or Aurizon Network's Staff as a result of an Operator complying with a request by Aurizon Network in accordance with clause 20.4(i) of a Train Operations Deed.
- (c) If Aurizon Network takes action in accordance with clause 20.4(e) of a Train Operations Deed, then Aurizon Network has no liability for any damage to or loss of freight caused by such actions.

- (d) Aurizon Network will not be liable for any delays or cancellations of Train Services or Claims suffered or incurred by or made or brought by or against the Access Holder as a result of the exercise by Aurizon Network of its rights under clause 23 of a Train Operations Deed, provided that Aurizon Network complies with the relevant provisions under the IRMP regarding conduct of an audit or inspection.

25.26 Determination of liability and loss adjustment

25.126.1 Determination of liability

In the event of an Incident involving the Access Holder or any other event which results or could result in a Claim by or against the Access Holder or Aurizon Network, liability as between the Access Holder and Aurizon Network is determined, for the purposes of **clauses 24** and **25.3**:

- (a) as agreed between the Parties;
- (b) subject to **clause 26.1(c)**, failing such agreement within one Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed under **clause 26.2**; or
- (c) where the amount of the Claim exceeds \$200,000 and either Party is dissatisfied with the report of the loss adjuster, by a court of competent jurisdiction.

25.226.2 Loss Adjuster

Subject to **clause 36**, where a matter is to be referred to a loss adjuster in accordance with **clause 26.1**:

- (a) the loss adjuster:
 - (i) must be appointed by the Parties; or
 - (ii) in default of such appointment within 10 Business Days after the need to appoint a loss adjuster, is to be nominated at either Party's request by the President of The Australasian Institute of Chartered Loss Adjusters;
- (b) if the loss adjuster is to be nominated under **clause 26.2(a)(ii)** and the President of The Australasian Institute of Chartered Loss Adjusters declines to nominate a person as the loss adjuster but provides a list of people that could be appointed as the loss adjuster, then:
 - (i) the first person specified in that list will be taken to be nominated as the loss adjuster;
 - (ii) if the first person specified in that list does not accept the appointment as the loss adjuster, 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 loss adjuster; and
 - (iii) the process specified in **clause 26.2(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 loss adjuster accepts the appointment as the loss adjuster;

- (c) the Parties must comply with, and do all things necessary to satisfy and give effect to, the reasonable requirements of an agreed or nominated loss adjuster (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 the President of The Australasian Institute of Chartered Loss Adjusters agreeing to nominate a loss adjuster;
- (d) the loss adjuster must:
 - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
 - (ii) have no interest or duty which conflicts or may conflict with the loss adjuster's function as a loss adjuster (the loss adjuster being required to fully disclose any such interest or duty before their appointment); and
 - (iii) not be, or have been in the last five years, an employee of an Operator, the Access Holder or Aurizon Network or of a Related Body Corporate of any of them;
- (e) the loss adjuster appointed under this **clause 26.2**:
 - (i) is not permitted to act until the loss adjuster has given written notice of the acceptance of the appointment to both Parties;
 - (ii) is required to undertake to keep confidential all matters coming to the loss adjuster's knowledge by reason of their appointment and the performance of their duties; and
 - (iii) is deemed to be and act as an expert and not an arbitrator, and the Law relating to arbitration, including the *Commercial Arbitration Act 2013* (Qld), does not apply to the loss adjuster or their determination or the procedures by which they may reach a determination.

25.326.3 Parties to assist loss adjuster

- (a) Each Party must ensure to the best of its ability that the loss adjuster appointed under **clause 26.2** is given the opportunity to interview any employee, agent or contractor involved in, or with knowledge of, the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (b) Each Party must make available to the loss adjuster appointed under **clause 26.2** any files, documents, data, recordings or other information in the possession or control of the Party that may be of use to, or is requested by, the loss adjuster for the purposes of their investigation.

25.426.4 Decision of the loss adjuster

- (a) The loss adjuster appointed under **clause 26.2** will determine the quantum of the relevant Claim and the liability of the Access Holder and/or Aurizon Network in respect of such Claim and must provide a copy of their report on such matters to each of the Parties within a reasonable time after their appointment.

- (b) In the absence of manifest error, the decision of the loss adjuster is final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than \$200,000.

25.526.5 Costs of the loss adjuster

The costs of the loss adjuster must be borne by the Parties in such proportions as liability is determined by the loss adjuster, or where the liability is ultimately determined by a court of competent jurisdiction, in such proportions as liability is determined by the court.

2627 Material Change

26.127.1 Adjustment for a Material Change

- (a) If there is no Reference Tariff applicable to the Train Services for a Train Service Type under this Agreement, then:
- (i) if at any time after the Commencement Date a Material Change occurs which affects the financial position of Aurizon Network or the cost to Aurizon Network of performing its obligations or exercising its rights under this Agreement and/or a Train Operations Deed, then Aurizon Network must notify the Access Holder giving details of the Net Financial Effect on Aurizon Network of the Material Change;
 - (ii) within 10 Business Days after receipt of a notice under **clause 27.1(a)(i)**, the Parties must meet and negotiate in good faith any appropriate adjustments to the amounts payable under this Agreement to remove as far as practicable the Net Financial Effect on Aurizon Network of the Material Change and return Aurizon Network to the position it would have been in had it not been for the Material Change; and
 - (iii) if the Parties have not agreed on the relevant adjustments within 15 Business Days after Aurizon Network's notice, then either Party may refer the matter to an Expert for determination in accordance with **clause 28.3**.
- (b) If there is a Reference Tariff applicable to the Train Services for a Train Service Type under this Agreement, then the relevant Reference Tariff Provisions which form part of this Agreement under **clause 3** will provide for the consequences of Material Change.

26.227.2 Parties' obligations continue

The Parties' obligations under this Agreement continue despite the existence of a Material Change.

2728 Disputes

27.128.1 Method

If any claim, dispute or question (**Dispute**) arises under this Agreement, then unless otherwise expressly provided to the contrary in this Agreement, such Dispute must be resolved in accordance with this **clause 28** and either Party

may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with in accordance with this **clause 28**.

27.228.2 **Authorised representative resolution**

- (a) Except as otherwise provided in this Agreement, within five Business Days after a Dispute Notice is given, the Dispute must be referred for resolution to an authorised representative of each of the Parties with authority to settle the Dispute on behalf of the relevant Party.
- (b) Within 10 Business Days after a Dispute Notice is given, the officers referred to in **clause 28.2(a)** must meet to resolve the Dispute.
- (c) Meetings referred to in **clause 28.2(b)** may be held in person or by telephone, video conference or other means of instantaneous communication.
- (d) If the Dispute is not resolved within 10 Business Days (**Resolution Period**) after:
 - (i) the date that the authorised representatives first meet to resolve the Dispute in accordance with **clause 28.2(b)**; or
 - (ii) if the authorised representatives do not meet within the time required under **clause 28.2(b)**, the date the Dispute Notice is given,then the relevant Dispute may, by agreement between the Parties within 10 Business Days of expiration of the Resolution Period, be referred for determination by an Expert in accordance with **clause 28.3** or by arbitration in accordance with **clause 28.4**.
- (e) If the Parties fail to agree, within 10 Business Days of expiration of the Resolution Period, whether to refer the Dispute to an Expert or to arbitration, either Party may refer the Dispute to the courts of the State in accordance with **clause 28.6**.

27.328.3 **Expert**

Subject to **clause 36.1**, where any matter may be referred to an expert (**Expert**) pursuant to **clause 28.2(d)**, or is expressly required by this Agreement to be referred to an Expert, then except as otherwise provided for in this Agreement:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within 10 Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) if the Parties agree the Dispute is purely of:
 - (A) a financial or accounting nature; or
 - (B) a technical nature,the President (for the time being) of the Resolution Institute in Australia; or
 - (ii) in any other case, the President (for the time being) of the Queensland Law Society Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 28.3(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, then:

- (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, then the next person specified in that list will be taken to be nominated as the Expert; and
 - (iii) the process specified in **clause 28.3(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 28.3(b)**, if the Expert is to be nominated by a person referred to in **clause 28.3(a)** and the person nominated as the Expert does not accept 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 28.3(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 28.3(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, the Expert 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 an Operator, the Access Holder, or Aurizon Network or of a Related Body Corporate of any of them;
 - (iv) not be permitted to act until the Expert has given notice to the Parties that the Expert 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 either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter provided to the Expert by the Parties;
 - (vi) provide both Parties with a copy of the Expert's 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; and

- (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);
- (g) the Expert is deemed to be and must act as an expert and not an arbitrator and the Law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)) will not apply to the Expert or the determination or the procedures by which the Expert may reach a determination;
- (h) in the absence of manifest error, the decision of the Expert is final and binding upon the Parties;
- (i) the costs of the Expert (and the costs of any advisers to the Expert) must be borne severally (and not jointly and severally) by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties);
- (j) the expert determination will be conducted in accordance with the expert determination rules adopted by the Resolution Institute from time to time, except that to the extent of any inconsistency between those rules and this Agreement, the terms of this Agreement prevail;
- (k) any determination made by an Expert must be consistent with the provisions of this Agreement; and
- (l) the Parties must:
 - (i) procure the Expert to use reasonable endeavours to make its determination or finding in respect of the Dispute within 2 Months from the date the initial statement regarding the Dispute is submitted by the claimant to the Expert; and
 - (ii) do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including providing or making available to the Expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the Expert and attending any hearing convened by the Expert.

27.428.4 Arbitration

- (a) Subject to **clause 36.1**, the Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Parties and, failing agreement upon such arbitrator within 10 Business Days after the date of notice from one Party to the other requiring the appointment of an arbitrator, by an arbitrator appointed by the President of the Resolution Institute. Every such reference will be an arbitration within the meaning of the *Commercial Arbitration Act 2013* (Qld), and subject to the provisions relating to arbitration contained in that Act.
- (b) If the Resolution Institute declines to nominate a person as the arbitrator but provides a list of people that could be appointed as the arbitrator, then:
 - (i) the first person specified in that list will be taken to be nominated as the arbitrator;

- (ii) if the first person specified in that list does not accept the appointment as the arbitrator, then the next person specified in that list will be taken to be nominated as the arbitrator; and
 - (iii) the process specified in **clause 28.4(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 arbitrator accepts the appointment as the arbitrator;
- (c) subject to **clause 28.4(b)**, if the person nominated as the arbitrator under **clause 28.4(a)** does not accept appointment, then either Party may request that the Resolution Institute appoints an alternative person as the arbitrator.

~~27.5~~28.5 **Queensland Competition Authority (QCA)**

Subject to **clause 36.1**, the Parties may agree to refer, and where required by this Agreement must refer, any Dispute to the QCA.

~~27.6~~28.6 **Determination by Court**

If any Dispute is not:

- (a) resolved in accordance with **clause 28.2**;
- (b) referred to an Expert in accordance with **clause 28.3**; nor
- (c) referred to the QCA in accordance with **clause 28.5**,

then either Party may refer the Dispute to the courts of the State.

~~28~~29 **Force Majeure**

~~28.1~~29.1 **Notice of Force Majeure**

- (a) If, by reason of a Force Majeure Event affecting Aurizon Network, Aurizon Network is prevented or hindered (or likely to be prevented or hindered) from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay money), then Aurizon Network must, as soon as reasonably practicable after it becomes aware of the Force Majeure Event, give the Access Holder prompt (and, in any event, within 5 Business Days after it becomes aware of the event or circumstance causing the Force Majeure Event) notice (which may be provided in electronic form) of the Force Majeure Event including:
 - (i) details of the Force Majeure Event and (if applicable) that part of the Nominated Network affected or likely to be affected; and
 - (ii) the details of the obligations affected or likely to be affected.
- (b) Aurizon Network must provide the Access Holder with a further notice as soon as reasonably practicable and in any event within 2 Business Days of the notice provided under **clause 29.1(a)** if the notice provided in **clause 29.1(a)** either is in electronic form or does not include the following information:
 - (i) the information in **clause 29.1(a)**; and
 - (ii) full particulars of all relevant matters including:
 - (A) details of the action Aurizon Network has taken to remedy the

situation and details of the action that Aurizon Network proposes to take to remedy the situation (to the extent that they are known); and

- (B) a reasonable estimate of the time during which Aurizon Network will be (or is likely to be) prevented or hindered from carrying out, whether wholly or in part, its obligations under this Agreement due to the Force Majeure Event.
- (c) Without prejudice to its rights under this **clause 29.1**, Aurizon Network may issue further notices in respect of the Force Majeure Event as it considers reasonably necessary to update the Access Holder as to each of the matters set out above.
- (d) Aurizon Network must:
 - (i) include the Access Holder (and its Customer, if any) and its Train Operator, if any, in any meeting which Aurizon Network may have in respect of the Force Majeure Event; and
 - (ii) provide a copy of any notice given to the Access Holder to that Access Holder's Customer, if any, and Train Operator, if any.

28.229.2 Suspension of obligations

- (a) Subject to compliance with the requirements of **clause 29.1**, Aurizon Network's obligations under this Agreement are suspended during the time and to the extent that Aurizon Network's performance of its obligations is prevented or hindered by the Force Majeure Event.
- (b) If the notice is not provided in accordance with **clause 29.1(a)** or **29.1(b)**, then the obligations of Aurizon Network under this Agreement will be suspended on and from the later of the time the notice requirements of **clause 29.1(a)** and **29.1(b)** are satisfied.

28.329.3 Duty to mitigate

- (a) Subject to **clause 29.3(b)**, Aurizon Network must use all reasonable endeavours to remedy or overcome the effect of the Force Majeure Event affecting its obligations under this Agreement as soon as possible and must attempt to:
 - (i) mitigate the effect of the Force Majeure Event; and
 - (ii) identify alternative viable means of performing its obligations, including the provision of the Access Rights affected (if applicable).
- (b) Aurizon Network is not obliged to settle any strike, lockout or other labour dispute other than on terms acceptable to it.

28.429.4 End of period of Force Majeure Event

The suspension of the obligations of Aurizon Network due to a Force Majeure Event ends when, but only to the extent that, Aurizon Network is no longer prevented or hindered from performing, whether wholly or in part, its obligations under this Agreement by reason of the relevant Force Majeure Event, at which time Aurizon Network must as soon as reasonably practicable:

- (a) issue a notice to the Access Holder advising the extent to which it is recommencing the performance of its obligations; and
- (b) recommence the performance of its obligations to the extent outlined in the notice.

28.529.5 Reduction of Access Rights due to loss or damage to Nominated Network

- (a) If:
 - (i) any part of the Nominated Network specified in **item 2 of Schedule 3** is damaged or destroyed by a Force Majeure Event; and
 - (ii) in Aurizon Network's reasonable opinion the cost of repairing such damage or destruction or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network,

then Aurizon Network may, by notice, advise the Access Holder (and its Customer, if applicable), other affected Access Holders (as defined in the Access Undertaking), each affected Railway Operator and the QCA of:

- (iii) the estimated cost of effecting the necessary repairs or replacement;
 - (iv) the level of insurance available to effect the necessary repairs and replacement;
 - (v) a detailed explanation as to why the cost of repairing or replacing is not economic; and
 - (vi) Aurizon Network's intention to not repair or replace the relevant part of the Nominated Network unless the Access Holder and other Access Holders (or their Customers or Railway Operators, as applicable) using that part of the Nominated Network pay the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.
- (b) If the Access Holder (or its Customer or Operator, as applicable) notifies Aurizon Network that:
 - (i) it agrees to bear the whole incremental cost of necessary repairs or replacement (after the amount of insurance available has been applied); or
 - (ii) it agrees to bear that part requested by Aurizon Network of the incremental cost of necessary repairs or replacement (and subject to Aurizon Network being satisfied that all other relevant Access Holders (or their Customers or Railway Operators, as applicable) have also agreed to bear their respective part of such costs) (after the amount of insurance available has been applied),

then Aurizon Network will proceed with the repairs or replacement within a reasonable time after:

- (iii) if clause **29.5(b)(i)** applies, receipt by Aurizon Network from the Access Holder (or its Customer or Operator) of payment of the relevant amount; and

- (iv) if clause **29.5(b)(ii)** applies, receipt by Aurizon Network from the Access Holder (or its Customer or Operator) of the last payment of the relevant amount.
- (c) If an Access Holder (or its Customer or Operator, as applicable) pays to Aurizon Network any of the costs under **clause 29.5(b)**, on completion of the necessary repairs or replacement:
 - (i) Aurizon Network must, within a reasonable time, refund to the party who made such payment any amount by which the amount paid that party exceeds the actual cost; or
 - (ii) the Access Holder (or its Customer or Operator, if applicable) must, within a reasonable time, pay to Aurizon Network the amount by which the actual cost exceeds proportionately the amount agreed to be paid by that party,
 (as applicable).
- (d) If, within 40 Business Days after receipt of a notice from Aurizon Network under **clause 29.5(a)**, the Access Holder (or its Customer or Operator, as applicable) has not given notice to Aurizon Network under **clause 29.5(b)**, then Aurizon Network may, by giving not less than 20 Business Days' notice in writing to the Access Holder (**Nominated Network FM Reduction Notice**), reduce the Access Rights by the FM Access Rights, in which case, the FM Access Rights will cease to form part of the Access Rights of the Access Holder on and from the date specified in the Nominated Network FM Reduction Notice (which must be at least 20 Business Days from the date of the Nominated Network FM Reduction Notice).

28-629.6 Effect of Nominated Network FM Reduction Notice on Operator nominations

- (a) Within 10 Business Days after the Nominated Network FM Reduction Notice is given to the Access Holder, the Access Holder may give written notice to Aurizon Network and each affected Operator in accordance with **clause 4.5(a)** to vary the Access Rights which the Access Holder has allocated to an Operator to take into account the reduction to the Access Rights by the FM Access Rights.
- (b) Except to the extent that the Access Holder has given a notice as contemplated in **clause 29.6(a)** in respect of the reduction to the Access Rights by the FM Access Rights, the FM Access Rights for each Train Service Type:
 - (i) firstly, are deemed to reduce the Access Rights for that Train Service Type for which the Access Holder has not nominated an Operator; and
 - (ii) if, after the operation of **clause 29.6(b)(i)**, there remains an Over-Allocation for the relevant Train Service Type, **clause 4.7** applies in respect of that Over-Allocation.
- (c) As soon as practicable after the expiry of the period referred to in **clause 29.6(a)**, Aurizon Network must issue a notice to the Access Holder

and each affected Operator summarising, in respect of each Train Service Type affected by the FM Access Rights, the changes to:

- (i) the “Nominated Monthly Train Services (for a 30 day Month)” set out in **Schedule 2** of this Agreement; and
- (ii) the “Nominated Monthly Operational Rights (for a 30 day Month)” in schedule 2 of each affected Operator’s Train Operations Deed.

28.729.7 Termination after extended Force Majeure Event

If, by reason of a Force Majeure Event, Aurizon Network is wholly prevented or hindered from carrying out its obligations under this Agreement (other than an obligation to pay money) for a period of more than three consecutive Months, then:

- (a) the Parties must meet to endeavour to identify any alternative viable means to perform the suspended obligations; and
- (b) failing any alternative means being agreed within one Month after the end of the three Month period, the Access Holder may terminate this Agreement by 20 Business Days’ notice to Aurizon Network and **clauses 29.4 and 29.5** apply without prejudice to any of the rights of the Parties which accrued before the date of such termination.

2930 Suspension

29.130.1 Suspension of Access Rights

If a Suspension Event specified in **Schedule 6** occurs, Aurizon Network may, by notice in writing to the Access Holder and the relevant Operator (**Suspension Notice**), suspend the Access Rights of the Access Holder.

29.230.2 Details of suspension

A Suspension Notice given by Aurizon Network to the Access Holder and the relevant Operator under **clause 30.1** must set out:

- (a) the rights of the Access Holder which are affected by the suspension;
- (b) the reason for the suspension; and
- (c) the actions the Access Holder must take to have the suspension lifted.

29.330.3 Effect of suspension

The suspension of any rights under this **clause 30** does not affect or suspend any other obligation of the Access Holder, including the obligation to pay Access Charges under this Agreement, and is without prejudice to Aurizon Network’s other rights and remedies in respect of that or any other default.

29.430.4 Duration of suspension

The suspension of any rights under **clause 30.1** continues until such time as the Access Holder has remedied the relevant default or non-compliance notified in the Suspension Notice.

29.530.5 Suspension of an Operator’s rights under a Train Operations Deed

- (a) The Access Holder acknowledges that, under a Train Operations Deed, Aurizon Network has a right to suspend the right of a particular Operator

to operate some or all of the Operator's Train Services for a Train Service Type or Train Services generally upon the occurrence of any one or more of a number of specified events or circumstances in respect of that Operator.

- (b) Aurizon Network will notify the Access Holder if it suspends the right of a particular Operator to operate some or all of the Operator's Train Services for a Train Service Type or Train Services generally under a Train Operations Deed and the Access Holder will have the right to nominate an alternate Operator to operate the affected services in accordance with **clause 4.3** or **4.4**.
- (c) The suspension of any of an Operator's rights under a Train Operations Deed does not affect or suspend any obligation of the Access Holder, including the obligation to pay Access Charges under this Agreement.

3031 Liability for wrongful suspension

Where Aurizon Network suspends some or all of the Access Holder's Access Rights or an Operator's rights under a Train Operations Deed, Aurizon Network will be liable to the Access Holder in respect of loss or damage (including damages for Consequential Loss arising from the suspension) if, and only if:

- (a) no reasonable person in Aurizon Network's position could have formed the view that the stated grounds for the suspension existed (Aurizon Network must bear the burden of establishing that a reasonable person in Aurizon Network's position could have formed that view);
- (b) where the suspension is of an Operator's rights under a Train Operations Deed, the Access Holder's loss or damage is not, and has not been, included in a claim by the Operator in respect of that suspension; and
- (c) the Access Holder has used all reasonable endeavours to mitigate the loss or damage arising from the suspension.

3132 Termination

31.132.1 Termination of Agreement

- (a) Subject to **clause 32.1(b)** and without limiting any rights of termination contained elsewhere in this Agreement, Aurizon Network may, by notice in writing to the Access Holder, terminate this Agreement if a Termination Event specified in **Schedule 6** occurs.
- (b) If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 32.1(a)**, then Aurizon Network may only exercise its rights under **clause 32.1(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 30**.

31.232.2 Termination by the Access Holder

Without limiting any rights of termination contained elsewhere in this Agreement, the Access Holder may, by notice in writing to Aurizon Network, terminate this Agreement if any of the following occurs:

- (a) an Insolvency Event in relation to Aurizon Network occurs and continues

for a period of 40 Business Days;

- (b) Aurizon Network's Accreditation is cancelled or amended such that it cannot perform its obligations generally under this Agreement, and such default continues for at least 20 Business Days after the Access Holder gives Aurizon Network notice of the default;
- (c) Aurizon Network fails to pay when due any amount payable under this Agreement, and such default continues for at least 20 Business Days after the Access Holder gives Aurizon Network notice of the default; or
- (d) Aurizon Network is in default of the due performance of any other obligation under this Agreement, and such default continues for at least 40 Business Days after the Access Holder gives Aurizon Network notice of the default.

31.332.3 Grounds for termination to be specified

A notice given under **clause 32.1** or **32.2** must set out the grounds for the termination.

31.432.4 Obligations and other rights upon termination or expiry

- (a) Neither termination of this Agreement by a Party under this **clause 32** nor expiry of this Agreement prejudices:
 - (i) a Party's right to make a Claim, recover damages or avail itself of other remedies under this Agreement or at law; or
 - (ii) either Party's rights to recover money due to it under this Agreement.
- (b) On termination of this Agreement, Aurizon Network and the Access Holder are released from all further obligations or liabilities under this Agreement, except for:
 - (i) rights which accrued on or before termination, including for any breach of this Agreement which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this Agreement; or
 - (ii) any provisions which are expressed as surviving the expiry or termination of this Agreement.

3233 Assignment

32.133.1 Assignment by Aurizon Network

- (a) Aurizon Network may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the Access Holder, provided that:
 - (i) the Assignee is Accredited; and
 - (ii) Aurizon Network procures that the Assignee covenants with the Access Holder by deed to be bound by and to perform the obligations of Aurizon Network under this Agreement to the extent of the rights and obligations Assigned to the Assignee.
- (b) On the Assignee entering into the deed referred to in **clause 33.1(a)**, Aurizon Network is released and discharged from further liability under

this Agreement in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

32-233.2 **Assignment by the Access Holder**

- (a) The Access Holder may not Assign its rights or obligations under this Agreement other than in accordance with this **clause 33.2**.
- (b) The Access Holder may, provided it is not in default in the performance or observance of any of its obligations under this Agreement, Assign the whole or any part of its rights and obligations under this Agreement to:
 - (i) a Related Body Corporate of the Access Holder which is capable of performing the obligations of the Access Holder under this Agreement, provided that:
 - (A) the Access Holder remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee; and
 - (B) the performance by the Assignee will (to the extent of such performance) discharge the Access Holder's liability for the performance of the duties, responsibilities and obligations Assigned; or
 - (ii) a person other than a Related Body Corporate of the Access Holder with the prior written consent of Aurizon Network, provided that such consent will not be unreasonably withheld if Aurizon Network is satisfied that such person is:
 - (A) financially sound; and
 - (B) otherwise capable of performing the obligations of the Access Holder under this Agreement.
- (c) Any Assignment by the Access Holder of its rights and obligations under this Agreement is conditional on and will not take effect until:
 - (i) the Assignee covenants with Aurizon Network by deed, in such terms as Aurizon Network may reasonably require, to be bound by and to perform the obligations of the Access Holder under this Agreement; and
 - (ii) if required by Aurizon Network, the Assignee delivers Security to Aurizon Network which satisfies the requirements of **clause 6** for an amount of not less than the Security Amount.
- (d) Subject to **clause 33.2(e)**, if a Change in Control of the Access Holder occurs without Aurizon Network's prior written consent, the occurrence of the Change in Control will be taken to be an Assignment of the Access Holder's rights and obligations under this Agreement which is not permitted under this **clause 33.2**.
- (e) **Clause 33.2(d)** does not apply to a Change in Control where:
 - (i) the Access Holder or its Ultimate Holding Company is listed on a recognised stock exchange;
 - (ii) the Change in Control is a result of a Change in Control of that listed entity; and

- (iii) that listed entity remains listed on that recognised stock exchange both before and after that Change in Control.
- (f) This **clause 33.2** does not limit the Access Holder's right to Transfer Access Rights in accordance with the Transfer Provisions which form part of this Agreement under **clause 3**.

~~32.3~~33.3 **Charging**

A Party (**Chargor**) may create a Charge over all of its rights under this Agreement in favour of a recognised financial institution (**Chargee**) to secure financial accommodation provided to the Chargor in relation to its obligations under this Agreement, provided that the Chargee must first covenant in writing in favour of the other Party (**Non-Charging Party**), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee will comply with the provisions of this **clause 33** as if it were originally a party to this Agreement, and will not exercise any power of sale of the rights and/or obligations of the Chargor under this Agreement except in accordance with this **clause 33**.

~~33~~34 **GST**

~~33.1~~34.1 **Construction**

In this **clause 34**:

- (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*; 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.

~~33.2~~34.2 **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.

~~33.3~~34.3 **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.

~~33.4~~34.4 **Timing of GST payment**

The recipient will pay the amount referred to in **clause 34.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

~~33.5~~34.5 **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 34.3**. The

recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

33.634.6 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 34.3** 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.

33.734.7 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.

3435 Confidentiality

34.135.1 Confidentiality

Subject to **clause 35.2**, the Recipient must:

- (a) keep confidential, and must not disclose to any Third Party, any Confidential Information disclosed to the Recipient by the Discloser; and
- (b) not use the Confidential Information for any purpose other than for the purposes of this Agreement or, if Aurizon Network is the Recipient, for the purposes of:
 - (i) capacity assessment and capacity modelling;
 - (ii) investigation and planning of Maintenance Work;
 - (iii) planning Infrastructure Enhancements; and
 - (iv) complying with its obligations under the Access Undertaking.

34.235.2 Permitted disclosures

The Recipient may disclose Confidential Information disclosed to it by the Discloser to a Third Party where:

- (a) the Recipient has obtained the prior written approval of the Discloser to such disclosure. The Discloser must not unreasonably withhold such approval if the Recipient has procured a confidentiality undertaking in respect of the information from such Third Party in favour of both Parties on terms and conditions satisfactory to both Parties, acting reasonably; or
- (b) disclosure is:
 - (i) required or compelled by any order of a court of competent jurisdiction;
 - (ii) required or compelled by any Law;

- (iii) required or compelled by notice validly issued by any Authority;
- (iv) necessary for the conduct of any legal proceedings, including any dispute resolution process under this Agreement;
- (v) reasonably required for the performance of Train Control functions;
- (vi) required under any stock exchange listing requirement or rule;
- (vii) required by the Rail Safety Regulator or an Environmental Regulator;
- (viii) to an Operator provided that:
 - (A) the Disclosure is:
 - (1) required by the terms of this Agreement;
 - (2) reasonably necessary for the performance of obligations or the exercise of rights under this Agreement or the Operator's Train Operations Deed; or
 - (3) reasonably necessary in connection with the safe operation of the Nominated Network; and
 - (B) the Discloser must ensure that the Operator keeps the Confidential Information confidential on terms no less onerous than this **clause 35**;
- (ix) to the Recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (x) to an expert for the purposes of a dispute resolution process, or an auditor for the purposes of an audit, under a "User Funding Agreement" (as defined in the Access Undertaking), if such expert or auditor has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (xi) to legal practitioners and accountants of the Recipient or a Related Body Corporate of it:
 - (A) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (B) who are under a duty of confidentiality to the Recipient; and
 - (C) who have been advised of the confidential nature of the Confidential Information; or
- (xii) otherwise permitted or required in accordance with this Agreement or the Access Undertaking (as amended by any Change in Access Undertaking).

34.335.3 Discloser may give certain directions

On expiry or termination of this Agreement, the Discloser may direct the Recipient to do any combination of the following in respect of some or all of the Confidential Information disclosed by the Discloser to the Recipient:

- (a) subject to the lawful requirements of the Recipient to retain copies of Confidential Information for business records and document control registers, to immediately deliver to the Discloser the Confidential Information specified by the Discloser;
- (b) to immediately destroy the Confidential Information specified by the Discloser; and
- (c) where the Recipient has disclosed the Confidential Information to any Third Party, to procure the compliance by that Third Party with the requirements of this **clause 35.3** as if that Third Party were the Recipient.

34.435.4 PPS Act

In addition to the obligations imposed under this **clause 35**, each Party agrees to not disclose any information of the kind described in section 275(1) of the PPS Act, including:

- (a) information about this Agreement including a copy of it;
- (b) information about the amount or the obligation secured by any Security Interest created by or under this Agreement and the terms of such payment or performance at any time; or
- (c) information about Relevant Collateral at any time.

34.535.5 Survival

Without limiting **clause 38.1**, this **clause 35** survives the destruction or return of Confidential Information in accordance with this Agreement.

34.635.6 Injunctive relief

The Recipient acknowledges and agrees that a breach of this **clause 35** would be harmful to the business interests of the Discloser and that, as a result, the Discloser may seek urgent injunctive relief, specific performance or a similar remedy to prevent the occurrence or continuance of any breach or suspected breach of this **clause 35** in addition to any other remedies available at law or in equity under or independently of this Agreement.

3536 Relationship with Train Operations Deed

35.136.1 Disputes

- (a) Prior to any referral of a matter to a loss adjuster, expert, arbitrator or the QCA (**Adjudicator**) in accordance with **clause 26.1** or **28**, either Party may notify the other Party that an Operator should be a party to that referral and, if such a notice is given, then the Party which has given the notice must:
 - (i) notify the relevant Operator of the matter to be referred to the Adjudicator; and
 - (ii) provide the relevant Operator with a copy of the provisions of this Agreement governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, the Adjudicator.
- (b) If an Operator is given a notice under **clause 36.1(a)**, then:

- (i) where the Adjudicator is to be a loss adjuster, expert or arbitrator, the Parties are deemed not to have agreed the appointment of the loss adjuster, expert or arbitrator unless the Operator has also agreed to the appointment of that loss adjuster, expert or arbitrator;
 - (ii) the Parties must comply with **clause 26.1 or 28**, as applicable, in respect of the Operator as though the Operator was a Party to this Agreement for the purposes of the matter referred to the Adjudicator; and
 - (iii) the Adjudicator, in addition to determining the matter between the Parties, must also determine any claim, dispute, question or liability involving the Operator and the relevant Train Operations Deed arising in connection with any of the events or facts the subject of the matter referred to the Adjudicator (unless that claim, dispute, question or liability has already been agreed by Aurizon Network and the Operator or otherwise determined).
- (c) If the Access Holder is notified of a matter to be referred to an Adjudicator in accordance with a Train Operations Deed, then the Access Holder:
- (i) must comply with the provisions of that agreement governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, an Adjudicator;
 - (ii) must provide the Adjudicator with a copy of this Agreement;
 - (iii) agrees that **clauses 26.1 and 28** do not apply to any claim, dispute, question or liability involving the Access Holder and this Agreement in connection with the matter referred to the Adjudicator; and
 - (iv) agrees that, for the avoidance of doubt, the decision of that Adjudicator, in the absence of manifest error, will be final and binding upon the Access Holder.

35.236.2 Performance Levels

- (a) If a notice is given under the Train Operations Deed that a party considers that the Performance Levels are no longer appropriate:
 - (i) Aurizon Network must promptly provide a copy of the notice to the Access Holder; and
 - (ii) the Parties and the Operator must use reasonable endeavours to agree on varied Performance Levels.
- (b) If the Parties and the Operator are unable to agree to such variations then the existing Performance Levels will continue to apply unless varied by Aurizon Network in accordance with clause 12.2(a)(iv) of the Train Operations Deed.

35.336.3 Amendments due to changes to Train Operations Deed

If:

- (a) modified or additional Rollingstock or Rollingstock Configurations are authorised under a Train Operations Deed;
- (b) the Performance Levels specified in a Train Operations Deed are varied;

- (c) an Interface Risk Management Plan or Environmental Management Plan is prepared, reviewed, amended or audited, in accordance with a Train Operations Deed;
- (d) the Train Description under a Train Operations Deed is varied; or
- (e) a Train Operations Deed is otherwise amended as a result of or in connection with any of the matters in paragraphs (a) to (d),

then:

- (f) the Parties must amend this Agreement (including, but not limited to, by Aurizon Network varying the Access Charge Rates or Train Description) as reasonably necessary to reflect the change or variation to the Train Operations Deed and otherwise comply with this Agreement (including, for example, the Access Holder varying its nomination of the Operator (if necessary)), provided that any such amendment ceases to apply to the extent the relevant Operator ceases to be nominated as the Operator of the relevant Train Services;
- (g) Aurizon Network must advise the Access Holder of any variations to the Access Charge Rates payable by the Access Holder as a result of that change or variation; and
- (h) where the Parties cannot agree on the amendments to this Agreement, to the extent that those amendments:
 - (i) are not variations to the Access Charge Rates, the matter will be referred to an expert in accordance with **clause 28.3**; and
 - (ii) are variations to the Access Charge Rates (and any other amendments have been agreed by the Parties or otherwise determined), either Party may refer the matter to the QCA for determination in accordance with **clause 28.5**,

provided that any such amendment or variation will not result in any increase to the total capacity allocated to the Access Holder under this Agreement.

35.436.4 Notice to Access Holder

- (a) If any of the matters referred to in **clauses 36.3(a) to 36.3(e)** is proposed by Aurizon Network or the Operator and the proposal, if agreed, would require amendments to this Agreement or otherwise adversely affect the Access Rights or utilisation of the Access Rights, then Aurizon Network must provide:
 - (i) written notice to the Access Holder of the proposal as soon as practicable; and
 - (ii) the Access Holder with a reasonable opportunity to participate in any negotiations or discussions between Aurizon Network and the Operator of such a proposal.
- (b) If the Access Holder disputes the proposed amendments to this Agreement or the effect on the Access Rights or utilisation of the Access Rights (as applicable) arising from a matter referred to in **clauses 36.3(a) to 36.3(e)**, then the Access Holder may refer the dispute to the QCA for determination in accordance with **clause 28.5**.

36.37 Notices

36.137.1 Form of Notice

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

36.237.2 Method of service

A Notice may be given by being:

- (a) personally delivered to a Party;
- (b) left at the Party's current address for service;
- (c) sent to the Party's current address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the Party's current facsimile number for service; or
- (e) if agreed by the Parties, sent by email to the Party's current email address for service.

36.337.3 Deemed Notice

Subject to **clause 37.5**, a Notice given in accordance with this **clause 37** is deemed to be given if:

- (a) personally delivered, upon delivery;
- (b) posted to an address in Australia, three Business Days after posting;
- (c) posted to an address outside Australia, 10 Business Days after posting;
- (d) sent by facsimile, on the next Business Day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number; or
- (e) sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

36.437.4 Addresses for notices

- (a) Each Party's address for notices is as set out in **item 2** of **Schedule 1**.
- (b) A Party may from time to time change its particulars for service by giving notice of that change to the other Party.

36.537.5 Train Control Direction or Incident Commander's Direction

- (a) A Train Control Direction is deemed to have been given at the time the direction is given, issued or made.
- (b) A direction from an Incident Commander is deemed to have been given at the time the direction is communicated by the Incident Commander.

37.38 General

37.138.1 Survival

This **clause 38** and **clauses 5, 6, 17, 21, 25, 26, 28, 32, 34, 35** and **37** survive

the expiration or termination of this Agreement.

37.238.2 Amendment

- (a) Except as otherwise provided in this Agreement, any variation or amendment to this Agreement must be in writing signed by both Parties.
- (b) The Access Holder must provide each Operator with a copy of any written agreement to variations or amendments to this Agreement.

37.338.3 Entire agreement

- (a) This Agreement, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect. No Party is liable to any other Party in respect of those matters.
- (c) Neither Party has relied on any representations made by the other Party relating to the subject matter of this Agreement or otherwise.
- (d) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

37.438.4 Counterparts

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

37.538.5 Non-merger

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

37.638.6 Authority to enter into agreement

- (a) Each Party warrants to the other Party that, in respect of itself, it has full power to enter into and perform its obligations under this Agreement, and that this Agreement constitutes valid and binding obligations on it, enforceable in accordance with its terms.
- (b) If this Agreement is executed by an attorney, the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Agreement.

37.738.7 Consents and approvals

Unless otherwise stated in this Agreement, if a Party has a right to accept, reject, decide, determine, consent or make any decision or exercise any discretion or decide to give any notice under this Agreement, the Party may do so conditionally or unconditionally at its discretion.

37.838.8 Relationship

The relationship between the Parties is entirely contractual. Nothing in this Agreement creates, or is to be taken to create, any partnership, joint venture or relationship of employer and employee between the Parties or any of them.

37.938.9 Certificate

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

37.1038.10 Costs

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

37.1138.11 Duty

- (a) The Access Holder is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it.
- (b) If Aurizon Network pays any stamp duty (including any fine or penalty) on or relating to this Agreement, or any document executed under or in connection with it, the Access Holder must, within 10 Business Days after receiving such demand, reimburse Aurizon Network the amount paid.

37.1238.12 Waiver and exercise of rights

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

37.1338.13 Computation of time

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

37.1438.14 Severance of invalid or illegal terms

- (a) If any term of this Agreement, or its application to any Party, person or circumstance, is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever, then:
 - (i) that term, or its application to such Party, person or circumstance, is severed from this Agreement;

- (ii) the remainder of this Agreement, excluding the severed part, remains in force, and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
 - (iii) to the extent permissible by Law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this **clause 38.14** as to a replacement term.
 - (c) If the Parties cannot agree upon a replacement term, this Agreement is continued in accordance with **clauses 38.14(a)(i)** and **38.14(a)(ii)**.

~~37.15~~38.15 **Rights cumulative**

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

~~37.16~~38.16 **Approvals and consents**

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

~~37.17~~38.17 **Third Party Land**

The Access Holder acknowledges that:

- (a) the land specified in **item 4 of Schedule 3 (Third Party Land)** is not owned or controlled by Aurizon Network; and
- (b) entry onto that Third Party Land is not included within the definition of Access,

and agrees that in respect of that Third Party Land:

- (c) the Access Holder will comply with the requirements of the person that owns or controls that Third Party Land (**Landowner**) in relation to that Third Party Land as notified to the Access Holder by Aurizon Network from time to time;
- (d) if, after the Commencement Date, there is a change in the costs incurred by Aurizon Network due to the requirements of the Landowner in respect of that Third Party Land, then that change is deemed to be a Material Change; and
- (e) if Aurizon Network's rights in respect of that Third Party Land are terminated for any reason other than the default of Aurizon Network of any agreement that affects Aurizon Network's use of that Third Party Land or other than by agreement with the Landowner, then Aurizon Network may, by notice to the Access Holder, suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that Third Party Land.

~~37.18~~38.18 **Implementation of agreement**

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

~~37.19~~38.19 **Governing law and jurisdiction**

- (a) This Agreement is governed by, and is to be construed in accordance with, the law in force in the State.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State, and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

~~37.20~~38.20 **PPS Act**

- (a) If a Party (**first party**) reasonably determines that this Agreement contains a "Security Interest" for the purposes of the PPS Act (**Security Interest**), the other Party (**second party**) agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the first party (after consultation with the second party) reasonably asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the first party to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the first party; or
 - (iii) enabling the first party to exercise rights in connection with the Security Interest.
- (b) A Party is not required to give any notice under the PPS Act to the other Party or any other person and each Party waives the right to receive any such notice (including a notice of 'Verification Statement' as this term is defined under the PPS Act) unless the notice is required by the PPS Act and that obligation cannot be excluded.
- (c) To the extent that this Agreement gives rise to a Security Interest, the Parties agree that for the purposes of section 115 of the PPS Act, the following sections of the PPS Act will not apply to any Relevant Collateral:
 - (i) section 95 (notice by Secured Party of removal of Accession);
 - (ii) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
 - (iii) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
 - (iv) section 130, to the extent that it requires a party to give any notice to the other party (notice by Secured Party of disposal of Collateral);
 - (v) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);

- (vi) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
- (vii) section 135 (notice by Secured Party of retention of Collateral);
- (viii) section 142 (redemption of Collateral); and
- (ix) section 143 (reinstatement of Security Agreement).

38.39 Most favoured nation status

38.139.1 Notice of contravention of price differentiation limitations

If the Access Holder (**Claimant Access Holder**) believes on reasonable grounds that:

- (a) Aurizon Network has entered into an Access Agreement with another Network Customer for a Network Train Service that transports the same specified commodity in the same specified geographic area as a Train Service operated using the Access Rights granted under this Agreement (**Like Train Service**); and
- (b) the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in the Access Undertaking (including the value of the access charge, take or pay terms and terms of payment),

then the Claimant Access Holder may provide written notification to Aurizon Network which must include the reasons why the Claimant Access Holder considers this to be the case.

38.239.2 Aurizon Network's response

Within 20 Business Days after receipt of such notification, Aurizon Network must advise the Claimant Access Holder:

- (a) whether or not Aurizon Network agrees that the Access Agreement with the other Network Customer is for a Like Train Service and, if not, the reasons why Aurizon Network considers this to be the case;
- (b) if Aurizon Network agrees that the Access Agreement with the other Network Customer is for a Like Train Service, whether or not Aurizon Network agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in the Access Undertaking and, if not, the reasons why Aurizon Network considers that the access charge applicable to the Like Train Service has not been developed in contravention of the limits on price differentiation; and
- (c) if Aurizon Network agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation, then within 40 Business Days after the advice provided under this **clause 39.2**, Aurizon Network must advise the Claimant Access Holder:
 - (i) whether or not Aurizon Network has been able to vary the access charge applicable to the Like Train Service such that it no longer contravenes the limits on price differentiation set out in the Access Undertaking; or

- (ii) if Aurizon Network has not been able to vary the access charge applicable to the Like Train Service, that Aurizon Network agrees to the reduction of the Access Charges payable by the Claimant Access Holder, including the amount of the proposed reduced Access Charges.

38.339.3 Disputes

If the Access Holder does not agree with Aurizon Network's response, the dispute must be referred to an Expert for resolution in accordance with **clause 28.3**.

38.439.4 Interaction with other Network Customers

If:

- (a) another Network Customer notifies Aurizon Network that it believes that some or all of the Claimant Access Holder's Train Services are a "Like Train Service" as defined in the other Network Customer's Access Agreement to a Network Train Service operated by the other Network Customer, and that the Access Charge has been developed in contravention of the limits on price differentiation set out in the Access Undertaking; and
- (b) Aurizon Network agrees that this Agreement is for a Like Train Service and that any Access Charge under this Agreement has been developed in contravention of the limits on price differentiation set out in the Access Undertaking,

then Aurizon Network has the right by notice to the Claimant Access Holder to vary the Access Charge such that it no longer contravenes the limits on price differentiation set out in the Access Undertaking.

39.40 JV Participants and liability

39.140.1 Applicability

This **clause 40** only applies if **item 5 of Schedule 1** states that it applies.

39.240.2 Warranty

The Access Holder 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.

39.340.3 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified by the Access Holder to Aurizon Network from time to time, in accordance with this Agreement.
- (b) As at the Commencement Date, the respective percentage interests of the JV Participants in the Joint Venture are as specified in **item 7 of Schedule 1**.

39.440.4 Liability of JV Participants

- (a) The liability of each JV Participant under this Agreement will, subject to **clause 40.4(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) Subject to **clause 40.4(e)**, if a JV Participant is in default of a Financial Obligation, and the Access Holder 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 Access Holder 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 Access Holder under **clause 40.4(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.
- (e) If a Financial Obligation is a payment obligation which does not have a specified due date, then **clause 40.4(c)** comes into effect only if:
 - (i) Aurizon Network notifies the JV Participants of the failure to comply with the Financial Obligation; and
 - (ii) the default is not remedied after a reasonable time (of at least 20 Business Days) from the date the JV Participants receive the notice under **clause 40.4(e)(i)**.

39.540.5 Termination and Suspension

For the avoidance of doubt, where a Suspension Event or Termination Event is attributable to or relates to an act or omission of one or more (but not all) of the JV Participants, Aurizon Network will be entitled to suspend or terminate (as applicable) this Agreement under **clauses 30** and **32** (as applicable) despite the Suspension Event or Termination Event (as applicable) not being attributable to or relating to an act or omission of all of the JV Participants.

Execution

Executed as an agreement

Executed by Aurizon Network Pty Ltd)
ABN 78 132 181 116:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Executed by [the Access Holder])
ABN [insert]:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Schedule 1 – Reference schedule

Item	Description	Details	
Access Holder details			
1	Access Holder	Name:	[insert]
		ABN:	[insert]
Particulars for Notices			
2	Address for Notices	Aurizon Network	
		Address:	[insert]
		Facsimile:	[insert]
		Email:	[insert]
		Attention:	[insert]
		Access Holder	
		Address:	[insert]
		Facsimile:	[insert]
		Email:	[insert]
		Attention:	[insert]
Security details			
3	Does clause 6.1 apply?	[yes/no]	
4	Security Amount	<p>The Security Amount (if applicable), at a time, will be an amount estimated by Aurizon Network (acting reasonably) as equivalent to the maximum amount of aggregate TOP Charges for all Train Service Types under this Agreement that could potentially be payable in up to 6 months assuming:</p> <p>(a) all of the Train Services were not operated for the Access Holder during the applicable period; and</p> <p>(b) the reason that the Train Services are not operated is not as a result of an Aurizon Network Cause.</p>	
[Joint Venture]			
5	Does clause 40 apply?	[yes/no]	
6	Name of Joint Venture	[insert name of Joint Venture or "Not Applicable" if no Joint Venture]	
7	JV Participants and percentage interests	Name of JV Participant	Percentage Interest
		[insert name]:	[insert interest]%
		[insert name]:	[insert interest]%

Item	Description	Details
		[insert name]: [insert interest]%

Schedule 2 – Train Descriptions

Part A – Matters applicable to specific Train Service Types

1 Train Service Type #1

1.1 Applicable Reference Tariff

[insert name of applicable type of Reference Tariff]

1.2 Matters relevant to Train Service Type – irrelevant to Reference Tariff

Details of dates	
Train Service Compliance Date	[insert]
Train Service Commitment Date	[insert]
Train Service Expiry Date	[insert]
General details	
Commodity	Coal
Coal System	[insert]
Reference Train Service	[yes /no]
Conditional Access Rights	
Do the Conditional Access Provisions apply?	[yes/no] [if yes, insert description of Expansion]
Operator(s)	
Name:	[insert]
Address:	[insert]
Facsimile:	[insert]
Email:	[insert]
Attention:	[insert]

1.3 Key characteristics of Train Service Type #1 – Reference Tariff sensitive

Details of route and facilities	
Origin	[insert]
Destination	[insert]
Loaded distance from Origin to Destination (km)	[insert]
Empty distance from Destination to	[insert]

Details of route and facilities	
Origin (km)	
Loading Facility	[insert]
Unloading Facility	[insert]
Depot	[insert]
Through-Running Train Service Type	[yes /no]
Details of maximum dwell times	
Maximum Time at Loading Facility (hours)	[insert]
Maximum Time at Unloading Facility (hours)	[insert]
Maximum Time at Depot (hours)	[insert]
Maximum Other Dwell Times (hours)	[insert]
Maximum Sectional Running Times	
Maximum Sectional Running Times	The Maximum Sectional Running Time for a Section for the Train Service Type are set out in appendix A to this Schedule 2 .
Nominated Monthly Train Services	
Nominated Monthly Train Services	The Nominated Monthly Train Services for the Train Service Type is set out in appendix B to this Schedule 2 .
Maximum Payload	
Maximum Payload	The Maximum Payload for the Train Service Type is set out in appendix B to this Schedule 2 .

1.4 Special operating restrictions

Without limiting the special operating restrictions which are specified in **item 1.2** of **Part B** of **Schedule 2** as being applicable to all Train Service Types, in scheduling Train Services for the Train Service Type in accordance with the Network Management Principles, Aurizon Network will comply with the following special operating restrictions (if any):

Item	Special operating restriction
1	[insert]
2	[insert]

1.5 Cycle description

Subject to:

- (a) any Train Control Direction given to the Operator in respect of a Train Service;
- (b) any exceptions which are specified in **part B** of this **Schedule 2** as being applicable to all Train Service Types; and
- (c) any exceptions specified in the table below,

the Operator must operate Train Services for the Train Services Type over the most direct route on the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

Where there is duplicated Track or multiple roads (eg yards), Aurizon Network will have the ability to schedule the Train Service over any of the Tracks or roads.

1.6 Permitted Train Movements on the Nominated Network

Item	Permitted Movements
1	[Insert any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times.]
2	[insert]

Part B – Matters applicable to all Train Service Types

1 Matters applicable to all Train Service Types

1.1 Overview

The matters set out in this **part B** of **Schedule 2** are applicable to all Train Service Types and form part of the Train Description for all Train Service Types.

1.2 Special operating restrictions

Without limiting the special operating restrictions for a Train Service Type which are specified in **item 1.4** of **Part A** of **Schedule 2** (if any), in scheduling Train Services in accordance with the Network Management Principles, Aurizon Network will comply with the following special operating restrictions:

Item	Special operating restriction
1	[insert]
2	[insert]

1.3 Cycle description

Subject to the exceptions set out in the table below, Train Services cycle description is the most direct route over the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

1.4 Stowage

Item	Stowage requirements
1	[Insert short term Stowage requirements additional to that provided in the relevant Reference Tariff Provisions.]
2	[insert]

Appendix A to Schedule 2 - Sectional Running Times

1 Train Services that are Reference Train Services

[Drafting note: This item will set out the Maximum Sectional Running Times for Train Services that are Reference Train Services.]

Maximum Sectional Running Times: Reference Train Services

Location From	Location To	Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Reference Train Services

Location From	Location To	Empty (mins)			Loaded (mins)		
		Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

2 Train Services that are not Reference Train Services

[Drafting note: If a Train Service for a Train Service Type is a not a Reference Train Service, the Maximum Sectional Running Times for Train Services for that Train Service Type for each Section will be specifically set out in this item.]

Maximum Sectional Running Times: Non- Reference Train Services

Location From	Location To	Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Non-Reference Train Services

Location From	Location To	Empty (mins)			Loaded (mins)		
		Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

Appendix B to Schedule 2 – Nominated Monthly Train Services

1 Train Service Type #1

Nominated Monthly Train Services (for a 30 day Month)	[insert]
Maximum Payload	[insert] tonnes
Nominal Payload	[insert] tonnes
Indicative Tonnage (for a 30 day Month)	[insert] tonnes

Note for information purposes only: The Nominated Monthly Train Services (for a 30 day Month) for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

$$\text{NMTS} = 2 \times \text{Loaded Train Services}$$

where:

NMTS = the Nominated Monthly Train Services (for a 30 day Month) for the Train Service Type

Loaded Train Services = IT/AAP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)

IT = the Indicative Tonnage (for a 30 day Month) for the Train Service Type

AAP = the Nominal Payload for the Train Service Type

Appendix C to Schedule 2 – Conditional Access Rights

1 Train Service Type #1

Details of Expansion	
Details of Expansion	[insert]
Details of Segments	
Details of Segment #1	Description: [insert] Initial Available Capacity: [insert]
Details of Segment #2	Description: [insert] Initial Available Capacity: [insert]
Details of Segment # [#]	Description: [insert] Initial Available Capacity: [insert]

Schedule 3 – Nominated Network

1 Nominated Network

The Nominated Network is that part of the Infrastructure described by reference to the diagrams and/or tables set out below, but does not include any freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

[Insert line diagram(s) depicting the Nominated Network]

2 Parts of Nominated Network subject to clause 29.2

For the purpose of **clause 29.2**, the specified parts of the Nominated Network are those parts of the Nominated Network described by reference the diagrams and/or tables set out below:

[Insert line diagram(s) depicting the Nominated Network]

[Drafting note: Aurizon Network may specify parts of the Nominated Network for the purpose of **clause 29.2** which are life expired, obsolete and/or only used by a single user.]

3 Train Control centres and signal cabins

The movement of an Operator's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins at locations to be notified by Aurizon Network from time to time.

4 Third Party Land

[Insert diagram(s)/table(s) (if applicable)]

5 Weighbridges and Overload Detectors

5.1 Weighbridges

Location	Party responsible for Weighbridge	Tolerance
[insert]	[insert]	[The tolerances required to achieve verification under the <i>National Measurement Act 1960</i> (Cth)]

5.2 Overload Detectors

Location	Party responsible for Overload Detector	Tolerance
[insert]	[insert]	+/- [insert] %

Schedule 4 – Access Charges

1 Definitions

1.1 Definitions

In this **Schedule 4**:

Access Charge Rates for a Train Service Type means the rates specified in **item 2** of this **Schedule 4** for that Train Service Type.

Access Charges for the purposes of this **Schedule 4** means:

- (a) for a Billing Period means the amount calculated in accordance with **item 3.1** of this **Schedule 4** for the Billing Period; and
- (b) for a Train Service Type for a Billing Period means the amount calculated in accordance with **item 3.2** of this **Schedule 4** for the Train Service Type and Billing Period.

Adjustment Charge for a Billing Period means the amount calculated and approved as an Adjustment Charge (as defined in the Access Undertaking) in accordance with the Access Undertaking for that Billing Period.

Advice Date in respect of a Change in Reference Tariff Provisions means the date on which the QCA's decision making or approving the Change in Reference Tariff Provisions is first published by the QCA.

Change in Reference Tariff Provisions means any change (including variation, repeal or replacement) of:

- (a) the Reference Tariff Provisions; or
- (b) the Reference Tariffs (including the creation of a new Reference Tariff), made or approved by the QCA from time to time.

Corresponding Train Service for a Train Service Type means a Network Train Service which:

- (a) has an origin and destination which is the same as the Origin and Destination for the Train Service Type;
- (b) has the same End User for the Train Service Type; and
- (c) is subject to the same type of Reference Tariff as the Reference Tariff Type for that Train Service Type,

and operated under an Access Agreement.

egtk means the electric gross tonne kilometres attributed to the relevant Train Service, being:

- (a) the gtk for the Train Service, if that Train Service uses electric traction; and
- (b) zero, if the Train Service does not use electric traction.

End User means in respect of Network Train Services operated in relation to an origin to destination, the person who is either:

- (a) the “Customer” (as defined under the Access Undertaking) for those Network Train Services; or
- (b) if there is no “Customer” (as defined under the Access Undertaking), the Access Holder for those Network Train Services under an Access Agreement.

Expansion Tariff has the meaning given in the Access Undertaking.

Gross Tonnes for a Train Service (whether loaded or empty) operated for a Train Service Type means the amount which is the sum of:

- (a) for each locomotive comprised in the Train Service, the Maximum Gross Mass for that locomotive;
- (b) for each loaded or partly loaded Wagon comprised in the Train Service:
 - (i) if there is a functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the mass of the Wagon as determined at such Weighbridge (provided that if there is more than one functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the mass will be determined by the Weighbridge that is located closest to the Origin for the Train Service Type); and
 - (ii) if there is no functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the amount (expressed in tonnes rounded to two decimal places) calculated in accordance with the following formula for each loaded or partly loaded Wagon comprising the Train Service:

$$(MGM - TW) \times LEF + TW$$

Where:

MGM = the Maximum Gross Mass for the Wagon

TW = the Tare Weight for the Wagon

LEF = the Loading Efficiency Factor for the Train Service

- (c) for each empty Wagon comprised in the Train Service, the Tare Weight for the Wagon; and
- (d) for all other Rollingstock comprised in the Train Service, the Maximum Gross Mass for the Rollingstock.

gtk for an operated Train Service (whether loaded or empty) for a Train Service Type means the amount which is the Gross Tonnes for the Train Service for the Train Service Type multiplied by:

- (a) if the Train Service was operated from the Origin to Destination for the Train Service Type, the number of kilometres of the loaded distance from Origin to Destination for the Train Service Type as specified in the Train Service Description for that Train Service Type; or
- (b) if the Train Service was operated from the Destination to Origin for the Train Service Type, the number of kilometres of the empty distance from the Destination to Origin for the Train Service Type as specified in the Train Service Description for that Train Service Type.

Gtk Forecast has the meaning given in the Access Undertaking.

Loading Efficiency Factor for a ~~loaded~~ Train Service means:

- (a) if a loading efficiency factor has been agreed in writing between Aurizon Network and the QCA as applicable to this Access Agreement, that loading efficiency factor;
- (b) if paragraph (a) does not apply and a loading efficiency factor (however described) is specified in or can be determined from Aurizon Network's Access Undertaking, that loading efficiency factor (expressed as a percentage); or
- (c) if paragraph (a) or (b) does not apply, 98%.

Maximum Gross Mass for a Wagon or other Rollingstock has the meaning given in the applicable Train Operations Deed.

Net Tonnes or "nt" for a Train Service (whether loaded or empty) operated for a Train Service Type means:

- (a) the Gross Tonnes for the Train Service; less
- (b) the sum of:
 - (i) for each locomotive comprised in the Train Service, the Maximum Gross Mass for the locomotive;
 - (ii) for each Wagon (whether loaded or empty) comprised in the Train Service, the Tare Weight for the Wagon; and

for all other Rollingstock (whether loaded or empty) comprised in the Train Service, the Tare Weight for the Rollingstock.

Nominal Train Payload has the meaning given in the Access Undertaking.

ntk for a Train Service (whether loaded or empty) operated for a Train Service Type means the amount which is the Net Tonnes for the Train Service multiplied by:

- (a) if the Train Service was operated from the Origin to Destination for the Train Service Type, the number of kilometres of the loaded distance from Origin to Destination for the Train Service Type as specified in the Train Service Description for that Train Service Type; or
- (b) if the Train Service was operated from the Destination to Origin for the Train Service Type, the number of kilometres of the empty distance from the Destination to Origin for the Train Service Type as specified in the Train Service Description for that Train Service Type.

Reference Train Path or **RTP** has the meaning given to the term "rtp" in the Access Undertaking.

Review Date in respect of a Change in Reference Tariff Provisions means the first day of the Month during which the Change in Reference Tariff Provisions takes effect.

Schedule 4 Variation Notice has the meaning given in **item 5.2(a)** of this **Schedule 4**.

Tare Weight for a Wagon or other Rollingstock has the meaning given in the applicable Train Operations Deed.

Tariff Gtk has the meaning given in the Access Undertaking.

TOP Charge:

- (a) for a Year means the amount which is the sum of the “TOP Charge” (as defined in **paragraph (b)** of this definition) for each Train Service Type for the Year; and
- (b) for a Train Service Type for a Year means, subject to **item 5.2** of this **Schedule 4**, the amount calculated in accordance with **item 4** of this **Schedule 4** for the Train Service Type and Year.

1.2 Access Charge Rates definitions

In this **Schedule 4**, a reference to any Access Charge Rate for a Train Service Type means the Access Charge Rate as varied from time to time in accordance with this Agreement.

1.3 Final Year of Agreement

For the purposes of this **Schedule 4**, if this Agreement does not end on 30 June of any Year, the final Year of this Agreement will be the twelve (12) Month period commencing on the 1 July occurring before the date of the expiration or termination of this Agreement and ending on the 30 June occurring after the date of the expiration or termination of this Agreement.

2 Access Charge Rates

Description of Access Charge Rate	Definition	Access Charge Rate (ex GST)	
		\$	Unit
Train Service Type # [insert]			
Incremental Maintenance Tariff	AT ₁	[insert]	\$ / '000 gtk
Incremental Capacity Tariff	AT ₂	[insert]	\$ / RTP
Allocated Tariff 1	AT ₃	[insert]	\$ / '000 ntk
Allocated Tariff 2	AT ₄	[insert]	\$ / Net Tonne
Electric Tariff	AT ₅	[insert]	\$ / '000 egtk
Electric Energy Charge	EC	[insert]	\$ / '000 egtk
QCA Levy	QL	[insert]	\$ / Net Tonne
Train Service Type # [insert]			
Incremental Maintenance Tariff	AT ₁	[insert]	\$ / '000 gtk
Incremental Capacity Tariff	AT ₂	[insert]	\$ / RTP
Allocated Tariff 1	AT ₃	[insert]	\$ / '000 ntk
Allocated Tariff 2	AT ₄	[insert]	\$ / Net Tonne
Electric Tariff	AT ₅	[insert]	\$ / '000 egtk
Electric Energy Charge	EC	[insert]	\$ / '000 egtk

Description of Access Charge Rate	Definition	Access Charge Rate (ex GST)	
		\$	Unit
QCA Levy	QL	[insert]	\$ / Net Tonne

[Drafting note: If a Train Service Type has a cross system component to it, this table will be populated in accordance with the cross system pricing rules in Schedule F of the Access Undertaking, and in particular for clarity note that the access charge is based on a cross system reference tariff. Where there is an ‘Expansion Tariff’ (as defined in the Access Undertaking), this table will be populated in accordance with Schedule F of the Access Undertaking for the correct expansion tariff.]

3 Calculations for Access Charge

3.1 Calculation of Access Charges for Billing Period

The Access Charge for a Billing Period is the sum of each of the following for the Billing Period:

- (a) the Access Charge for each Train Service Type operated during the Billing Period calculated in accordance with **item 3.2** of this **Schedule 4**; and
- (b) the Adjustment Charge (if any) applicable to the Billing Period.

3.2 Calculation of Access Charges for Train Service Type

The Access Charge for a Train Service Type is calculated as:

$$\left(AT_1 \times \frac{gtk}{1000} \right) + (AT_2 \times rtp) + \left(AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt) + \left(AT_5 \times \frac{egtk}{1000} \right) + \left(EC \times \frac{egtk}{1000} \right) + (QCALevy \times nt) + TOP\ Charge$$

where:

- (a) AT_1 is the incremental maintenance tariff specified as the AT_1 input in the Access Charge Rates for the relevant Train Service Type;
- (b) AT_2 is the incremental capacity tariff specified as the AT_2 input in the Access Charge Rates for the relevant Train Service Type;
- (c) AT_3 is an allocative tariff specified as the AT_3 input in the Access Charge Rates for the relevant Train Service Type;
- (d) AT_4 is an allocative tariff specified as the AT_4 input in the Access Charge Rates for the relevant Train Service Type;
- (e) AT_5 is the electric access tariff specified as the AT_5 input in the Access Charge Rates for the relevant Train Service Type;
- (f) EC is the electric energy charge which is initially (from the Commencing Date) as specified as the EC input in the Access Charge Rates for the relevant Train Service Type), and after the Commencing Date as otherwise published by Aurizon Network on the Website on or about each 31 May during the Term after Aurizon Network seeks and obtains the

QCA's approval for a new electric energy charge (taking into account any over or under recovery in the previous Year);

- (g) QCALevy is the QCA levy charge specified as the QL input in the Access Charge Rates for the relevant Train Service Type;
- (h) TOPCharge is, if the Billing Period is a Billing Period ending on 30 June, the TOP Charge for each Train Service Type for the Year in which that 30 June occurs; and
- (i) each of gtk, rtp, ntk, nt, egtk is the sum of the gtk, rtp, ntk, nt, egtk, as applicable, for all Train Services for the relevant Train Service Type operated during the relevant Billing Period.

3.3 Clarification matters for calculation of Access Charges

- (a) The Access Charge is GST exclusive.
- (b) For clarity, for the purposes of this **Schedule 4**, a Train Service is a one way Train Service, that is, the journey from the Origin to the Destination is one Train Service, and the return journey from the Destination to the Origin is a second Train Service.

4 Calculation of TOP Charge

4.1 System Test

- (a) This **item 4.1** of **Schedule 4** only applies to a Train Service which has a Reference Tariff Type which is a 'System Reference Tariff' (as defined in the Access Undertaking).
- (b) Subject to **items 4.1(a)** and **5.2** of this **Schedule 4**, the TOP Charge for a Train Service for a Year will be zero if:

$$TGtkY > (FGtkY - NGtkY)$$

where:

- TGtkY = the Tariff Gtk for that Train Service for the relevant Year
- FGtkY = the Gtk Forecast for the relevant Year
- NGtkY = the "gtk" (as defined in the Access Undertaking) not achieved due to the non-operation of Network Train Services (that are subject to the same type of Reference Tariff as the Reference Tariff Type for that Train Service) for Aurizon Network Cause for the relevant Year.

4.2 TOP Charge

- (a) If the TOP Charge for a Train Service Type for a Year is not zero as a result of the operation of **item 4.1** of this **Schedule 4**, the TOP Charge for that Train Service Type for the Year, subject to **item 5.2** of this **Schedule 4**, is calculated as follows:
 - (i) first, the maximum potential TOP Charge will be calculated based on **items 4.2(c)** to **4.2(d)** of this **Schedule 4**; and
 - (ii) second, that maximum potential TOP Charge will be adjusted by applying each of:

- (A) **item 4.2(f) (Mine capping)**; and
- (B) **item 4.2(g) to (i) (Tariff capping)**,

as applicable and in that order to determine the actual TOP Charge for that Train Service Type.

- (b) If the TOP Charge for a Train Service Type for a Year is not zero as a result of the operation of **item 4.1** of this **Schedule 4**, the TOP Charge for that Train Service Type for the Year:
 - (i) is determined for each Year;
 - (ii) is invoiced for each Year following completion of that Year; and
 - (iii) must not be less than zero.
- (c) The maximum potential TOP Charge for a Train Service Type will be calculated as the amount which is 100% of the amount calculated as:

$$(AT_2 \times rtp \times NTS) + \left(AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt)$$

where:

- (i) each of AT2, AT3 and AT4 are the incremental capacity tariffs specified as the AT2, AT3 and AT4 inputs in the Access Charge Rates for the relevant Train Service Type;
- (ii) the nt and ntk (as applicable) are calculated by:
 - (A) the aggregate nt and ntk (as applicable) that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Service Type; less
 - (B) the aggregate nt and ntk (as applicable) not railed for the relevant Year due to the non-operation of Train Services for an Aurizon Network Cause; less
 - (C) the aggregate nt and ntk (as applicable) railed for the relevant Year; and
- (iii) NTS is calculated as:
 - (A) the number of Train Services for the relevant Train Service Type that the Access Holder would have operated for the relevant Year had the full contracted entitlement been railed; less
 - (B) the number of those Train Services that either:
 - (1) were not able to be operated solely as a result of an Aurizon Network Cause; or
 - (2) were operated (whether loaded or empty) during that Year.
- (d) To calculate nt and ntk for the purpose of **item 4.2(c)(ii)** of this **Schedule 4**, Aurizon Network must:
 - (i) identify the number of Train Services for the relevant Train Service Type that would have operated under this Agreement had the full

- contracted entitlement been used; and
- (ii) determine the number of Train Services for the relevant Train Service Type that did not operate under that contracted entitlement due to an Aurizon Network Cause, provided that if the Access Holder has more than one Access Agreement for the same origin to destination pair, Aurizon Network will allocate those Train Services as between this Agreement and the other Access Agreements in the order in which those Access Agreements were executed (unless the relevant Access Holder has nominated a different order, in which case that order will be applied),
- and calculate the nt and ntk by using the Nominal Train Payload applicable for the relevant Reference Tariff.
- (e) For the purpose of calculating TOP Charges, the Access Holder's entitlement to operate Train Services is, without limitation, determined by reference to the Train Services that could have been operated in accordance with this Agreement including even if:
 - (i) where the Access Holder is not a Train Operator:
 - (A) the Access Holder has not nominated a Train Operator to utilise Access Rights relevant to all or any of the Train Services;
 - (B) either:
 - (1) the Access Holder must ensure a Train Operator does not operate; or
 - (2) Aurizon Network suspends the right of the Access Holder to have a Train Operator operate,
 all or any of the Train Services; or
 - (C) under the relevant Train Operations Deed, either:
 - (1) the relevant Train Operator must not operate; or
 - (2) Aurizon Network suspends the right of the relevant Train Operator to operate,
 all or any of the Train Services; or
 - (ii) where the Access Holder is a Train Operator, the Access Holder must not operate, or Aurizon Network suspends the right of the Access Holder to operate, all or any of the Train Services,

except to the extent of any express exceptions specified in this Agreement for the purpose of calculating the TOP Charge where the Access Holder is taken to not have an entitlement to operate the relevant Train Service Type.

Mine capping

- (f) If:
 - (i) Train Services operated in relation to a Train Service Type in respect of an End User under this Agreement, has not exceeded the Train Service Entitlement in this Agreement; and

- (ii) there is another Access Agreement (excluding Access Agreements executed or renewed prior to 1 October 2010) (**Other Agreement**) with Corresponding Train Services that have been exceeded,

then the TOP Charge under this Agreement will be reduced by the amount of the additional revenue from Access Charges for AT2-4 from those excess Train Services under the Other Agreement but only to the extent that:

- (iii) both that Take or Pay liability and those Access Charges are set by reference to the same Reference Tariff;
- (iv) the additional revenue under the Other Agreement has not been utilised to reduce the Take or Pay liability under another Access Agreement (other than this Agreement or the Other Agreement); and
- (v) the additional revenue from the Other Agreement can only be used for a reduction of TOP Charge under this **item 4.2(f)** of this **Schedule 4**, in respect of the Year in which that additional revenue arose and cannot be accrued, rolled over or otherwise used to reduce a TOP Charge for any other Year.

Tariff capping

- (g) **Item 4.2(h)** of this **Schedule 4**, must only be applied after **item 4.2(f)** of this **Schedule 4**, (if applicable) has been applied.
- (h) Subject to **items 4.2(i)**, and to **item 4.2(f)** of this **Schedule 4**, (if applicable) having first been applied, if the Total Actual Revenue (as defined in the Access Undertaking) for AT₂₋₄ in relation to access charges for all Access Agreements set by reference to the relevant Reference Tariff less the aggregate amount of Tariff Take or Pay (as defined in the Access Undertaking) that Aurizon Network is entitled to earn from all Access Agreements executed or renewed on or after 30 June 2006 (other than any new or varied Access Agreement to the extent entered or varied as part of transferring Access Rights from existing Access Agreements in place on the day immediately prior to 30 June 2006 under a provision of the Access Agreement which permits the transfer of Access Rights) (**Total Revenue**) is:
 - (i) greater than or equal to the Allowable Revenue (as defined in the Access Undertaking) for AT₂₋₄ in relation to the relevant Reference Tariff, the TOP Charge is not payable for that Year under this Agreement; or
 - (ii) less than the Allowable Revenue (as defined in the Access Undertaking) for AT₂₋₄ in relation to the Reference Tariff:
 - (A) Aurizon Network must calculate the aggregate amount of Tariff Take or Pay (as defined in the Access Undertaking) that Aurizon Network is entitled to earn from all Full Take or Pay Agreements (as defined in the Access Undertaking) (**Total Actual Take or Pay**); and
 - (B) if the Total Actual Take or Pay exceeds the amount by

which the Allowable Revenue for AT_{2-4} in relation to the relevant Reference Tariff exceeds the Total Revenue from Access Charges set by reference to the relevant Reference Tariff (**Maximum Take or Pay Amount**), then:

- (1) Aurizon Network will calculate for each relevant Access Holder, the proportion that the Access Holder's Tariff Take or Pay amount bears to the Total Actual Take or Pay (**Proportion**); and
 - (2) the TOP Charge will be reduced by an amount equal to the Access Holder's Proportion of the Maximum Take or Pay Amount.
- (i) In determining what Aurizon Network would be entitled to earn for the purposes of **item 4.2(h) of Schedule 4**, Aurizon Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement, except for:
- (i) those Access Agreements which have been altered by agreement from that form in a manner consistent with the terms of any Approved Undertaking or approval of the QCA, in which case Aurizon Network's entitlement will be calculated in accordance with the terms of such Access Agreements; and
 - (ii) a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under the 2001 Undertaking, under a provision of the Access Agreement which permits the transfer of Access Rights, in which case Aurizon Network's entitlement to Tariff Take or Pay amounts will be calculated on the basis that Aurizon Network has contracted on the terms of the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement.

The capitalised terms used in this **item 4.2(h) of Schedule 4** have the meaning given them in the Access Undertaking.

4.3 TOP Charge on Expansion Tariff

- (a) This item 4.3 of **Schedule 4** applies if the Access Charge Rates include a rate set by reference to an Expansion Tariff.
- (b) The TOP Charge for each Train Service Type will be calculated in accordance with:
 - (i) the formulae in **item 4.2(c) of Schedule 4**; plus
 - (ii) $AT_5 \times egtk / 1000$;where:

AT₅ is the electric access tariff specified as the AT₅ input in the Access Charge Rates for the relevant Train Service Type; and
egtk is calculated by:

- (A) the aggregate egtk that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Service Type; less
 - (B) the aggregate egtk not railed for the relevant Year due to the non-operation of that Train Service Type for an Aurizon Network Cause; less
 - (C) the aggregate egtk railed for the relevant Year;
- provided always that the amount of TOP Charge for the Year must not be less than zero.
- (c) In order to calculate egtk for the purposes of **item 4.3(b)** of **Schedule 4**, Aurizon Network must:
 - (i) identify the number of Train Services that would have operated had the full contracted entitlement been used;
 - (ii) determine the number of Train Services that did not operate under that contracted entitlement due to an Aurizon Network Cause; and
 - (iii) convert this to egtk by using the Nominal Train Payload for the relevant Reference Tariff as reasonably determined by Aurizon Network.
 - (d) For clarity:
 - (i) there is no Take or Pay trigger test, that is **item 4.1** of **Schedule 4** does not apply; and
 - (ii) there are no capping mechanisms, that is **items 4.2(f) to 4.2(i)** of **Schedule 4** do not apply.

5 Review of schedule 4

5.1 Acknowledgment

The Parties agree that **items 2 to 4** of this **Schedule 4** were determined by reference to the Reference Tariff Provisions as at:

- (a) if the Train Service Type was a Train Service Type as at the Commencement Date – the Commencement Date; or
- (b) if **Schedule 2** was varied to include the Train Service Type – the date **Schedule 2** was varied to include the Train Service Type.

5.2 Review of schedule 4

- (a) Within 20 Business Days after the Advice Date for a Change in Reference Tariff Provisions, Aurizon Network must give the Access Holder a notice (**Schedule 4 Variation Notice**) specifying variations to:
 - (i) the Access Charge Rates for any Train Service Type;
 - (ii) the TOP Methodology; and
 - (iii) any other aspect of this **Schedule 4**.
- (b) In considering any variations to this **Schedule 4** under **item 5.2(a)** of this **Schedule 4** as a result of a Change in Reference Tariff Provisions, Aurizon Network must have regard to:

- (i) any change to Reference Tariffs (including new Reference Tariffs);
- (ii) any change to the methodology for calculating take or pay charges under the Access Undertaking;
- (iii) any change to the characteristics of the Reference Train Service;
- (iv) any differences between the Train Service Description for a Train Service Type and the characteristics of the Reference Train Service;
- (v) any change to RTP for the Train Service Type or its calculation;
- (vi) other related factors in the Reference Tariff Provisions; and
- (vii) the Access Undertaking.

5.3 Dispute

- (a) If Aurizon Network gives the Access Holder a Schedule 4 Variation Notice in respect of a Change in Reference Tariff Provisions, the Access Holder may, within 10 Business Days after Aurizon Network gives the Schedule 4 Variation Notice, give Aurizon Network a Dispute Notice which Disputes the variations specified in the Schedule 4 Variation Notice in accordance with **clause 28**.
- (b) If a Dispute referred to in **item 5.3(a)** of this **Schedule 4** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine the Dispute in accordance with **clause 28.3** and **item 5.4** of this **Schedule 4**.
- (c) If the Access Holder does not give Aurizon Network a Dispute Notice referred to in **item 5.3(a)** of this **Schedule 4** within the time referred to in **item 5.3(a)** of this **Schedule 4**, then:
 - (i) the variations specified in the Schedule 4 Variation Notice will take effect on the Review Date for relevant the Change in Reference Tariff Provisions;
 - (ii) the Access Holder must not give Aurizon Network a Dispute Notice Disputing the variations specified in the Schedule 4 Variation Notice;
 - (iii) any such Dispute Notice which is given by the Access Holder will be of no effect; and
 - (iv) the Access Holder must not make any Claim against Aurizon Network in respect of that Dispute.

5.4 Expert determination

If a Dispute referred in **item 5.3(a)** of this **Schedule 4** is referred to an Expert, then:

- (a) promptly after the date the Dispute is referred to the Expert, Aurizon Network must provide the Expert with documentation to support the variations specified in the Schedule 4 Variation Notice;
- (b) the Expert must:
 - (i) undertake to keep confidential all matters coming to its knowledge

- by reason of the Expert's appointment and performance of its duties, other than that already in the public domain; and
- (ii) not include such information in its reasons for reaching the determination;
- (c) the Expert must review the documentation provided by Aurizon Network under **item 5.4(a)** of this **Schedule 4** and determine whether or not the variations specified in the Schedule 4 Variation Notice are consistent with the Access Undertaking and the relevant Change in Reference Tariff Provisions;
 - (d) if the Expert determines that the variations specified in the Schedule 4 Variation Notice are consistent with the Access Undertaking and the relevant Change in Reference Tariff Provisions, the variations will take effect on the Review Date for the relevant Change in Reference Tariff Provisions;
 - (e) if the Expert determines that the variations specified in the Schedule 4 Variation Notice are not consistent with the Access Undertaking and the relevant Change in Reference Tariff Provisions, then:
 - (i) the Expert must use reasonable endeavours to attempt to reach agreement with Aurizon Network as to, and failing such agreement must determine, the variations to this **Schedule 4** which are reasonable as a result of the relevant Change in Reference Tariff Provisions, having regard to:
 - (A) the matters specified in **item 5.2(b)** of this **Schedule 4**; and
 - (B) any other matters which a Party submits that the Expert should have regard to in determining the Dispute.
 - (ii) the variations agreed between the Expert and Aurizon Network, or determined by the Expert, in accordance with **item 5.4(e)(i)** of this **Schedule 4** will take effect on the Review Date for the relevant Change in Reference Tariff Provisions.
 - (f) Despite **clause 28.3(j)**, the costs of the Expert (and the costs of any advisers to the Expert) will be borne by:
 - (i) the Access Holder if the Expert determines that the variations specified in the Schedule 4 Variation Notice are reasonable as a result of the relevant Change in Reference Tariff Provisions;
 - (ii) Aurizon Network if the Expert determines that the variations specified in the Schedule 4 Variation Notice are not reasonable as a result of the relevant Change in Reference Tariff Provisions; or
 - (iii) in such other proportion as the Expert may otherwise determine.

Schedule 5 – Insurance

1 Workers compensation insurance

The Access Holder must effect and maintain insurance covering such liability as may arise at common law or by virtue of any applicable workers' compensation legislation in respect of any Access Holder's Staff.

Schedule 6 – Suspension Events and Termination Events

Item	Suspension Event	Termination Event
1	The Access Holder fails to pay by the due date any amount payable under this Agreement, and such default continues for at least 10 Business Days after Aurizon Network notifies the Access Holder of the default (and always subject to clause 5.4).	The Access Holder fails to pay by the due date any amount payable under this Agreement, and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default (and always subject to clause 5.4).
2	An Insolvency Event occurs in respect of the Access Holder.	An Insolvency Event occurs in respect of the Access Holder and continues for a period of at least 40 Business Days.
3	The Access Holder fails to: (a) effect or maintain the insurances required under clause 23.2 ; or (b) provide evidence of the insurances required under clause 23.2 having been effected and maintained, and such default continues for at least five Business Days after Aurizon Network notifies the Access Holder of the default.	The Access Holder fails to: (a) effect or maintain the insurances required under clause 23.2 ; or (b) provide evidence of the insurances required under clause 23.2 having been effected and maintained, and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default.
4	The Access Holder fails to establish, maintain or replace the Security as required under this Agreement, and such default continues for at least five Business Days after Aurizon Network notifies the Access Holder of the default.	The Access Holder fails to establish, maintain or replace the Security as required under this Agreement, and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default.
5	The Access Holder purports to Assign any of its rights or interests in this Agreement other than as permitted in this Agreement.	The Access Holder purports to Assign any of its rights or interests in this Agreement other than as permitted by this Agreement.
6	The Access Holder fails to comply with any obligation under this Agreement (other than any obligation which, if not complied with by the Access Holder, may (either of itself or if other requirements are satisfied) result in any other Suspension Event occurring), and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default.	The Access Holder fails to comply with any obligation under this Agreement (other than any obligation which, if not complied with by the Access Holder, may (either of itself or if other requirements are satisfied) result in any other Termination Event occurring), and such default continues for at least 40 Business Days after Aurizon Network notifies the Access Holder of the default.

Schedule 7 – Pro forma Access Interface Deed

Aurizon Network Pty Ltd

[Insert Customer]

Access Interface Deed

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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**)

[insert] of [insert address] (**Customer**)

Background

- A Aurizon Network and the Access Holder are parties to the Access Agreement.
 - B Aurizon Network and the Access Holder (in its capacity as the 'Operator' under the Train Operations Deed) are also parties to the Train Operations Deed.
 - C The Access Holder (in its capacity as 'Operator') and the Customer are parties to the Rail Haulage Agreement.
 - D In accordance with the Access Agreement, the Parties enter into this Deed to create a contractual relationship between Aurizon Network and the Customer and record their agreement in respect of circumstances in which they will be liable to each other for loss suffered in connection with the provision or utilisation of Access.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Deed:

Access Agreement means the Access Agreement [insert] between Aurizon Network and the Access Holder dated on or about [insert], as amended from time to time.

Access Agreement Liability Provisions has the meaning given in clause 2.4(a).

Access Holder means [insert].

Access Rights means rights of access granted by Aurizon Network to the Access Holder under the Access Agreement.

Access Undertaking means the access undertaking submitted by Aurizon Network to the QCA and approved by the QCA under the *Queensland Competition Authority Act 1997* (Qld) as in force at the time of entering into the Access Agreement.

Business Day means a day which is not a Saturday, Sunday or public holiday

in Brisbane or, if and to the extent that this Deed expressly refers to another place, in that other place.

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

Consequential Loss means:

- (a) any loss of revenue, 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) any wasted overheads or demurrage;
- (f) loss of or damage to credit rating;
- (g) in respect of a breach of an agreement, loss or damage that does not naturally, according to the usual course of things, arise from the breach; and
- (h) loss or damage suffered or incurred by a Party arising out of a Claim against that Party by a Third Party, to the extent that the loss or damage would not be recoverable by the Third Party if the Party was not liable to the Third Party for "Consequential Loss" (as defined in this definition) in respect of the Claim by the Third Party,

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

- (i) any costs or expenses incurred by the party in connection with mitigating the effects of any breach of the Access 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 the Access Agreement) provided that if a loss arising from the breach of the Access Agreement is itself not recoverable because it is a Consequential Loss, the costs or expenses incurred in mitigating that loss must also be treated as (non-recoverable) Consequential Loss;
- (j) 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
- (k) 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
- (l) 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 Access 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 failure or breaches.

Deed means this Access Interface Deed.

Financial Obligation means any obligation of the Customer to pay, or cause to be paid, an amount of money.

Haulage Services means the haulage services provided by the Access Holder to the Customer under the Rail Haulage Agreement.

Infrastructure has the meaning given to the term "Rail Infrastructure" in the Access Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

Joint Venture means the unincorporated joint venture (if any) between the JV Participants specified in Item 2 of Schedule 1.

JV Participants means the entities (if any) specified in Item 3 of Schedule 1.

Party means a party to this Deed.

Product has the meaning given in **clause 3.1(a)**.

Queensland Competition Authority or **QCA** means the authority established under the *Queensland Competition Authority Act 1997* (Qld).

Rail Haulage Agreement means the agreement between the Access Holder and the Customer for the provision of rail haulage services to the Customer and for which purpose the Access Holder requires the Access Rights.

Staff of a party, means the employees, contractors, volunteers and agents of the party and any other person under the control or supervision of the party which is involved in:

- (a) in the case of Aurizon Network, any activity associated with the Access Agreement, the Infrastructure or the provision of Access Rights; and
- (b) in the case of the Customer, any activity associated with:
 - (i) the Haulage Services; or
 - (ii) the Customer's mine or other production facility (if any) or any loading or unloading facility to which the Haulage Services relate.

Third Party means a person other than the Customer or Aurizon Network.

Train Operations Deed means the Train Operations Deed referred to in paragraph B of the Background of this Deed.

1.2 Definitions in the Access Undertaking

Words or expressions which are used and not defined in this Deed, but are defined in the Access Undertaking have the meaning given to them in the Access Undertaking.

1.3 Construction

In this Deed, unless expressed to the contrary:

- (a) the singular include the plural and vice versa;
- (b) a gender includes all other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (e) a reference to:
 - (i) a person includes a partnership, unincorporated association, corporation or other entity, government or statutory body;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) conduct includes any omission or any representation, statement or undertaking, whether or not in writing;
 - (iv) conduct includes a benefit, remedy, discretion or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) the words "include", "includes" or "including" must be read as if they are followed by the words "without limitation";
 - (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
 - (viii) time is to local time in Brisbane, Queensland;
 - (ix) "A\$", "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (x) this or any other document or agreement includes the document or agreement as novated, varied or replaced from time to time and despite any change in the identity of the parties;
 - (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (xii) under a clause includes in accordance with that clause;
 - (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Deed;
 - (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision

substituted for it and all regulations and statutory instruments issued under it;

- (xv) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body;
- (xvi) access or access rights does not include rights granted by the Railway Manager to a Railway Operator under a train operations deed; and
- (xvii) subject to **clause 6**, the Customer, if the Customer is comprised of more than one entity (for example, if the Customer is comprised of the participants in an unincorporated joint venture), is a reference to each entity comprising the Customer.

1.4 Headings

Headings do not affect the interpretation of this Deed.

2 Relations between the Parties

2.1 No liability for Consequential Loss

A Party (**first Party**) is not liable to the other Party, and the other Party must not make any Claim against the first Party under or in connection with this Deed, the Access Agreement, the Access Rights or the Infrastructure in respect of any Consequential Loss whether as a result of:

- (a) the performance, non-performance or breach of this Deed, the Access Agreement or any other obligation;
- (b) the standard of or any failure of or defect in the Infrastructure;
- (c) negligence;
- (d) breach of warranty or representation; or
- (e) any other act, omission or circumstance whatsoever.

2.2 Indemnities for personal injury and property damage and duty to mitigate

- (a) Subject to **clauses 2.1** and **2.4**, each Party (indemnifying Party) is solely liable for and releases, indemnifies and will keep indemnified the other Party, its directors and Staff against all Claims of any nature suffered or incurred by or made or brought against the other Party, its directors or Staff due to or arising out of the Access Agreement or this Deed in respect of:

- (i) any loss of or damage to or destruction of property (including property of the other Party); or
- (ii) personal injury to or death of any person,

in each case caused by or (to the extent of the contribution) contributed to by:

- (iii) the wilful default of; or
- (iv) any deliberate act or omission (unless that act or omission is permitted under the Access Agreement or Train Operations Deed) or negligent act or omission of,

the

- (v) indemnifying Party or the directors or Staff of the indemnifying Party; or
- (vi) Access Holder (where the indemnifying Party is the Customer), if the default or act or omission is caused by, or (to the extent of the contribution) contributed to by, an act or omission of the Customer,

in connection with this Deed, the Access Agreement or the Access Rights.

2.3 Extent of Aurizon Network's liability to Customer for non-Consequential Loss

Subject to **clauses 2.1** and **2.4**, Aurizon Network will be liable to the Customer for any Claim to the same extent that Aurizon Network would have been liable for that Claim under the Access Agreement if the Claim was made by the Access Holder.

2.4 Exclusions of liability in Access Agreement apply

- (a) Each provision of the Access Agreement that directly or indirectly has the purpose or effect of regulating, excluding or limiting the liability of, or the making of a Claim against, Aurizon Network or the Access Holder (including limiting what conduct will constitute a breach and setting out when and how a Claim may be brought including any preconditions to doing so) (**Access Agreement Liability Provision**) will also operate to regulate, exclude or limit:

- (i) the liability of Aurizon Network or the Customer (as applicable); and
- (ii) the making of a Claim against, Aurizon Network or the Customer (as applicable) by the other Party under or in connection with this Deed or the Access Agreement, the Access Rights or the Infrastructure,

on the basis that all references to the Access Holder in the Access Agreement Liability Provisions will be deemed to include a reference to the Customer (unless **clause 2.4(b)** or **2.4(c)** applies).

- (b) If an Access Agreement Liability Provision refers to or requires the Access Holder or Aurizon Network and the Access Holder to agree anything:

- (i) the matter to be agreed solely relates to the Claim or subject of the Claim by the Customer; and
- (ii) the matter has not, before the Claim is first notified to the other Party, been agreed by Aurizon Network and the Access Holder,

the reference to, or requirement for, the agreement of the Access Holder or the Access Holder and Aurizon Network in the Access Agreement Liability Provision (as applied under **clause 2.4(a)**) is to be read as if it was a reference to the agreement of the Customer or the agreement of the Customer and Aurizon Network (as applicable).

- (c) If:
 - (i) an Access Agreement Liability Provision refers to or requires the Access Holder or Aurizon Network and the Access Holder to agree anything;
 - (ii) the matter to be agreed partly relates to the Claim or subject of the Claim by the Customer; and
 - (iii) the matter has, before the Claim is first notified to the other Party, been agreed by Aurizon Network and the Access Holder,

the Access Agreement Liability Provision (as applied under **clause 2.4(a)**) must be read subject to the matter as agreed by Aurizon Network and the Access Holder.
- (d) The Customer acknowledges that it has been provided with a copy of the Access Agreement Liability Provisions by the Access Holder.
- (e) For the avoidance of doubt, nothing in this **clause 2.4** operates to make the Customer liable or to increase any otherwise existing liability, or to entitle Aurizon Network to make any Claim against the Customer, for or to satisfy (whether in full or in part) any liability or obligation of the Access Holder or any act or omission of the Access Holder, its directors or Staff.

2.5 Duty to mitigate

Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this **clause 2** applies.

2.6 Acceptance of benefit

To the extent that the Rail Haulage Agreement or the Access Holder's (in its capacity as 'Operator') conditions of carriage with the Customer includes any exclusion or limitation of liability for Aurizon Network's benefit, this **clause 2.6** constitutes Aurizon Network's notice to the Customer of Aurizon Network's acceptance of the benefit of any such exclusion or limitation of liability for the purposes of section 55 of the *Property Law Act 1974* (Qld).

2.7 No effect on other arrangements

Nothing in this Deed, including **clauses 2.1, 2.3 and 2.4**, will operate to limit, exclude or qualify any liability or obligation of:

- (a) one Party to the other Party arising under or in connection with any agreement or deed (other than this Deed) to which Aurizon Network and the Customer are parties, whether alone or together with one or more other persons; or
- (b) any liability or obligation of the Access Holder (in its capacity as 'Operator') to the Customer arising under or in connection with the Rail Haulage Agreement or the Haulage Services.

2.8 General provisions regarding indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties.
- (b) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Deed.

3 Warranties by the Customer

[Drafting note: Where the Customer is unable to give each of the following warranties, (because the Customer does not own the mine, does not own the coal, or is not entitled to the proceeds of sale) Aurizon Network intends to enter into individual deeds with relevant parties which can give these warranties, where each deed will include clauses from the Access Interface Deed relevant to that party.]

3.1 Warranties

Each Customer warrants that at all times during the term of the Access Agreement and whilst the Customer is a party to this Deed, the Customers together are:

- (a) the owner of all of the mine or other production facility (if any) which produces the product which is to be transported using the Access Rights (**Product**);
- (b) the owner of the Product while that Product is being transported using the Access Rights; and
- (c) entitled to the proceeds of the sale of the Product while that Product is being transported using the Access Rights.

3.2 Reliance on warranties

The Customer acknowledges that Aurizon Network has entered (or will enter) into the Access Agreement and this Deed in reliance upon the warranties in **clause Error! Reference source not found.**

4 Assignment

A Party must not assign its interests under the Access Agreement or the Rail Haulage Agreement (as applicable) to another person (**intended assignee**) unless the intended assignee has first executed and delivered to the other Party a deed of assumption, in a form acceptable to the other Party, acting reasonably, under which the intended assignee undertakes to be bound by the terms of this Deed.

5 General

5.1 Amendment

This Deed may only be varied or replaced by a written document executed by the Parties.

5.2 Entire understanding

- (a) This Deed and the Access Agreement contain the entire understanding and agreement between the Parties as to the subject matter of this Deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Deed are merged in and superseded by this Deed and are of no effect whatsoever. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:

- (i) affects the meaning or interpretation of this Deed; or
- (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

5.3 Counterparts

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

5.4 Duty

- (a) The Customer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a Party other than the Customer pays any duty (including any fine or penalty) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it, the Customer must pay that amount to the paying Party on demand.

5.5 GST

- (a) In this **clause 5.5**:
 - (i) words and expressions which are not defined in this Deed but which have a defined meaning in GST Law have the same meaning as in the GST Law;
 - (ii) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) If GST is or will be imposed on a supply made under or in connection with this Deed by a Party (Supplier), the Supplier may, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:
 - (i) increase the consideration otherwise provided for that supply under this Deed by the amount of that GST; or
 - (ii) otherwise recover from the recipient of the supply the amount of that GST.
- (c) Subject to **clause 5.5(d)**, the recipient of the supply will pay the amount referred to in **clause 5.5(b)** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.
- (d) The Supplier must deliver a tax invoice to the recipient of the supply before the Supplier is entitled to payment of any amount under **clause 5.5(b)**.

5.6 Legal costs

Except as expressly stated otherwise in this Deed, each Party must bear its own legal and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Deed.

5.7 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.

- (b) No failure or delay by either Party to exercise any right or remedy under this Deed may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Deed does not constitute a waiver of later defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Deed does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Deed.
- (e) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

5.8 Computation of time

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

5.9 Governing law and jurisdiction

- (a) This Deed is governed by, and is to be construed in accordance with, the law in force in Queensland.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

5.10 Liability

Subject to **clause 6**, an obligation of two or more persons binds them separately and together.

6 JV Participants and liability

6.1 Applicability

This **clause 6** only applies if Item 1 of Schedule 1 states that it applies.

6.2 Warranty

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

6.3 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified by the Customer to Aurizon Network from time to time.
- (b) As at the date the Customer executes and delivers this Deed, the respective percentage interests of the JV Participants in the Joint Venture are as specified in Item 3 of Schedule 1.

6.4 Liability of JV Participants

- (a) The liability of each JV Participant under this Deed will subject to **clause 6.4(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 Deed that are not Financial Obligations.
- (c) Subject to **clause 6.4(e)**, if a JV Participant is in default of a Financial Obligation and the Customer has not given notice to Aurizon Network identifying the defaulting JV Participant within 5 Business Days after the date Aurizon Network notifies the Customer identifying the default, all JV Participants will be jointly and severally liable for the performance of the Financial Obligation.
- (d) Any notice given by the Customer under **clause 6.4(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.
- (e) If the Financial Obligation is a payment obligation which does not have a specified due date, then **clause 6.4(c)** comes into effect only if:
 - (i) Aurizon Network notified the JV Participants of the failure to comply with the Financial Obligation; and
 - (ii) the default is not remedied after a reasonable time (of at least 20 Business Days) from the date the JV Participants receive the notice under **clause 6.4(e)(i)**.

Execution

Executed as a deed

Executed by Aurizon Network Pty Ltd)
ABN 78 132 181 116:)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Executed by [insert]:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Schedule 1

Joint Venture

1	Does clause 6.4 apply?	[yes/no]
2	Name of Joint Venture	[insert name of Joint Venture or "Not Applicable" if no Joint Venture]
3	JV Participants and percentage interests	Name of JV Participant Percentage Interest [insert name] [insert interest]% [insert name] [insert interest]% [insert name] [insert interest]%

Annexure 9 – SAA marked up against QRC February Submission

Aurizon Network 2017 DAU Draft - 21 November 2016

Aurizon Network Pty Ltd

[Insert name of Access Holder]

Access Agreement – Coal

QRC mark-up of provisions regarding changes to payload 17 ~~February 2017~~[March 2017](#)
[\(collaboration draft marked up against QRC February Submission\)](#)

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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 person specified in **item 1** of **Schedule 1 (Access Holder)**

Background

- A Aurizon Network is responsible for the provision of Access to the Nominated Network in accordance with the Access Undertaking.
 - B The Access Holder wishes to secure non-exclusive rights of Access to the Nominated Network for the operation of Train Services by an Operator (or Operators).
 - C Aurizon Network has agreed to grant non-exclusive Access Rights to the Access Holder for the operation of Train Services over the Nominated Network by an Operator (or Operators) in accordance with one or more Train Operations Deed.
 - D The Parties may enter into separate agreements for the provision of services by Aurizon Network to the Access Holder other than the grant of the Access Rights.
-

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Acceptable Credit Rating means a minimum long term credit rating of not less than BBB- from Standard & Poor's Ratings Services (or equivalent rating by another internationally recognised ratings agency).

Access has the meaning given in the Access Undertaking.

Access Agreement means an access agreement made under the Access Undertaking, other than this Agreement.

Access Charges means:

- (a) where the term is used in respect of a Billing Period, the Access Charges for that Billing Period as calculated in accordance with **Schedule 4**; and
- (b) otherwise, the charges calculated in accordance with **Schedule 4** and any interest payable in relation to such charges under this Agreement.

Access Charge Rates are the rates set out in **Schedule 4**.

Access Holder Agreement means each of the following types of agreements between Aurizon Network and the Access Holder:

- (a) a licence in respect of a train loadout facility;
- (b) an agreement allowing the connection of Private Facilities to the Infrastructure; or
- (c) an agreement in relation to the funding and/or construction of Connecting Infrastructure.

Access Holder's Staff means the employees, contractors, volunteers and agents of the Access Holder and any other person under the control or supervision of the Access Holder involved in any activity associated with the Train Services but does not include an Operator or the employees, contractors, volunteers or agents of an Operator.

Access Interface Deed means a deed in the form contained in **Schedule 7**.

Access Rights means the rights of access to the Nominated Network granted under this Agreement (whether or not utilised by an Operator from time to time).

Access Seeker has the meaning given in the Access Undertaking.

Access Undertaking means the access undertaking submitted by Aurizon Network to the QCA and approved by the QCA under the *Queensland Competition Authority Act 1997* (Qld) from time to time.

Accreditation means the ability to lawfully carry out railway operations under the Rail Safety Act (whether by being accredited under the Rail Safety Act or by being exempt from the requirement to be accredited under the Rail Safety Act), and **Accredited** means to have Accreditation.

Ad Hoc Train Service for a Train Service Type means:

- (a) a Network Train Service which is additional to the Nominated Monthly Train Services for that Train Services Type but which is otherwise in accordance with the Train Description for that Train Service Type; or
- (b) a Network Train Service which is not a Train Service for a Train Service Type but which Aurizon Network permits an Operator to operate for the Access Holder under this Agreement as if it was a Train Service for the Train Service Type (subject to any derogations to the Train Description for the Train Service Type permitted by Aurizon Network, which includes a change in the Origin and Destination for that Train Service Type provided that the changed Origin and Destination forms part of the Nominated Network).

Adjoining Network means a rail network which is not part of the Infrastructure but which connects to the Infrastructure.

Affected Train Service Type has the meaning given in **clause 11.2**.

Agreement means this document, including the schedules and annexures to it.

Assessment Date has the meaning given in **clause 11.1**.

Assign means to assign, novate, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber, but does not include the nomination of an Operator by the Access Holder and the execution of a Train Operations Deed.

[AT2 Component](#) means [that part of the formula for calculating the TOP Charges that is calculated by multiplying and/or dividing one or more variables](#)

by “AT2” (as defined in [Schedule 4](#)).

Aurizon Network Cause has the meaning given in the Access Undertaking.

Aurizon Network’s Staff means the employees, contractors and agents of Aurizon Network and any other person under the control or supervision of Aurizon Network involved in the provision of Access Rights.

Authority has the meaning given in the Access Undertaking.

Available Capacity has the meaning given in the Access Undertaking.

Average Annual Payload for a Train Service Type and for an Operator means, at a point in time, the average of the Payloads (expressed in tonnes) for each Train [Service for that Train Service Type](#) operated by ~~a particular~~ that Operator from the Origin to the Destination [\(as recorded by a Weighbridge or Overload Detector\)](#) during the 12 month period ending at that point in time.

Billing Period means the period of a Month, except that:

- (a) the first Billing Period starts on the Commitment Date and ends on the last day of the Month in which the Commitment Date occurs; and
- (b) the last Billing Period commences on the first day of the Month during which this Agreement terminates or expires and ends on the date of termination or expiry.

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

Capacity has the meaning given in the Access Undertaking.

Capacity Assessment Notice has the meaning given in the Access Undertaking.

Capacity Shortfall has the meaning given in the Access Undertaking.

Change in Access Undertaking means:

- (a) any amendment to or replacement of the Access Undertaking or any successor undertaking to the Access Undertaking; or
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of the Access Undertaking resulting from a decision of a court or other Authority.

Change in Control in relation to any entity (the first mentioned entity) means:

- (a) a change in the entity that Controls the first mentioned entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change);
- (b) an entity that Controls the first mentioned entity ceases to Control that entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change); or
- (c) if the first mentioned entity is not Controlled, another entity acquires Control of the first mentioned entity.

Change in Law has the meaning given in the Access Undertaking, except that the reference to “Commencing Date” is replaced with “Commencement Date” (as defined under this Agreement).

Change in Relevant Taxes has the meaning given in the Access Undertaking.

Charge means:

- (a) any mortgage, charge, a general or special notarial bond, pledge, hypothec or lien; or
- (b) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

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

Coal System has the meaning given in the Access Undertaking.

Collateral has the meaning given in the PPS Act.

Commencement Date means the date of this Agreement.

Commitment Date means the earliest Train Service Commitment Date under this Agreement.

Compliant Nomination Requirements means:

- (a) subject to **paragraph (b)** of this definition, the Train Description for the Train Service Type which the Access Holder wishes to allocate to the nominee Operator in the nominee Operator’s new or existing Train Operations Deed (as applicable) must be the same as the Train Description for that Train Service Type in this Agreement;
- (b) in respect of each Train Service Type which is the subject of the nomination, the aggregate of:
 - (i) the “Nominated Monthly Operational Rights (for a 30 day Month)” in the Train Description for that Train Service Type in the nominee Operator’s Train Operations Deed; and
 - (ii) the “Nominated Monthly Operational Rights (for a 30 day Month)” in the Train Description for that Train Service Type in all other Train Operations Deeds (if any),

must not exceed the “Nominated Monthly Train Services (for a 30 day Month)” set out in the Train Description for that Train Service Type in this Agreement. For the avoidance of doubt, where the nomination is accompanied by the statement in **clause 4.3(b)(ii)(B), paragraph (b)(i)** of this definition is to be determined on the basis of the nominee Operator’s Train Operations Deed taking into account the additional Access Rights for the relevant Train Service Type which the Access Holder wishes to allocate to the nominee Operator.

Conditional Access Rights has the meaning given in **clause 9.2**.

Conditional Access Provisions means:

- (a) the provisions of the Access Undertaking which include the details of the Conditional Access Rights (which, as at the Commencement Date, is clause 8.9 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the Conditional Access Rights.

Confidential Information means the terms of this Agreement and any information, data or other matter disclosed to a Recipient by or on behalf of the Discloser in relation to this Agreement where:

- (a) the disclosure of the information, data or other matter by the Recipient might reasonably be expected to affect the commercial affairs of the Discloser; or
- (b) the information, data or matter is marked confidential by the Discloser when disclosed,

but excluding any such information, data or other matter which:

- (c) is already in the public domain or becomes available to the public through means other than a breach of the confidentiality undertaking by the Parties under this Agreement;
- (d) was in the Recipient's lawful possession before the disclosure by the Discloser;
- (e) is received by the Recipient independently from a Third Party who is free to disclose such information, data or other matter to the Recipient; or
- (f) has ceased to retain its confidential nature, for example, where the disclosure of the information, data or other matter by the Recipient would no longer reasonably be expected to affect the commercial affairs of the Discloser.

Connecting Infrastructure has the meaning given in the Access Undertaking.

Consequential Loss means:

- (a) any loss of revenue, 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) any wasted overheads or demurrage;
- (f) loss of or damage to credit rating;
- (g) in respect of a breach of an agreement, loss or damage that does not naturally, according to the usual course of things, arise from the breach; and
- (h) loss or damage suffered or incurred by a Party arising out of a Claim against that Party by a Third Party, to the extent that the loss or damage would not be recoverable by the Third Party if the Party was not liable to the Third Party for "Consequential Loss" (as defined in this definition) in respect of the Claim by the Third Party,

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

- (i) 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 this Agreement is itself not recoverable because it is a Consequential Loss, the costs or expenses incurred in mitigating that loss must also be treated as (non-recoverable) Consequential Loss;
- (j) 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 property of any person (including a Party) that has been lost, damaged or destroyed;
 - (ii) personal injury to or death of any person; or
- (k) 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
- (l) any fines or penalties imposed by an Authority 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 this 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.

Control has the meaning given in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Corresponding Suspension Event in respect of a Termination Event means the Suspension Event specified in the same row as that Termination Event in **Schedule 6**.

Customer has the meaning given in the Access Undertaking.

Daily Train Plan means a "Daily Train Plan" under the relevant Train Operations Deed.

Default 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 trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 28.3**).

Defaulting Operator

- (a) in **clause 11**, has the meaning given in **clause 11.1(a)**; and

(b) in **clause 18**, has the meaning given in **clause 18.1(a)**.

Depot for a Train Service Type means a depot, as specified in the Train Description for that Train Service Type.

Destination for a Train Service Type means the destination specified as such in the Train Description for that Train Service Type.

Discloser means a Party that discloses Confidential Information to the other Party.

Discount Rate [has the meaning given in the Access Undertaking.](#)

Dispute has the meaning given in **clause 28.1**.

Dispute Notice has the meaning given in **clause 28.1**.

Emergency Possession has the meaning given in the Access Undertaking.

Environment has the meaning given in the *Environmental Protection Act 1994* (Qld).

Environmental Law has the meaning given in the Access Undertaking.

Environmental Management Plan means the environmental management plan developed, implemented and maintained by an Operator under a Train Operations Deed.

Environmental Regulator means, in respect of an Environmental Law, the Authority administering that Environmental Law.

Evaluation Period [has the meaning given in the Access Undertaking.](#)

Existing Capacity [has the meaning given in the Access Undertaking.](#)

Expansion has the meaning given in the Access Undertaking.

Expert has the meaning given in **clause 28.3**.

Expiry Date means the latest Train Service Expiry Date under this Agreement.

Financial Obligation means any obligation of the Access Holder to:

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

FM Access Rights means the Access Rights for each Train Service Type which cannot be made available by Aurizon Network for an Operator to operate Train Services for the Access Holder due to damage to, or the destruction of, a part of the Nominated Network referred to in **clause 29.5** (assuming that part of the Nominated Network will not be repaired or replaced).

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

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

and, provided that the requirements in **paragraphs (a)** and **(b)** of this definition are satisfied, includes:

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

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

GST has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Incident means any Network Incident involving the activities of an Operator.

Incident Commander means a member of Aurizon Network's Staff who has been delegated responsibility for the direction and coordination of Aurizon Network's, each relevant Operator's and the Access Holder's resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with Authorities.

Incorporated Provisions means each of the following provisions:

- (a) Interface Risk Provisions;
- (b) Transfer Provisions;
- (c) Relinquishment Provisions;

- (d) Reduction Factor Provisions;
- (e) Resumption Provisions;
- (f) Conditional Access Provisions; and
- (g) Reference Tariff Provisions.

Incremental Costs has the meaning given in the Access Undertaking.

Indicative Tonnage for a Train Service Type means the tonnage as specified as such in the Train Description for that Train Service Type.

Infrastructure has the meaning given to the term “Rail Infrastructure” in the Access Undertaking.

Infrastructure Enhancement has the meaning given in the Access Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

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

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or
- (f) any similar event occurs in respect of the Party under the laws of any jurisdiction other than Australia.

Interface Risk Assessment has the meaning given in the Access Undertaking.

Interface Risk Management Plan or **IRMP** has the meaning given in the Access Undertaking.

Interface Risk Provisions means:

- (a) the provisions of the Access Undertaking which include the details of:
 - (i) the Interface Risks, the Interface Risk Assessment and the IRMP (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and

- (ii) the Environmental Management Plan (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the Interface Risks, the Interface Risk Assessment, the IRMP and the Environmental Management Plan.

Interface Risk has the meaning given in the Access Undertaking.

Intermediate Train Plan or **ITP** has the meaning given in the Access Undertaking.

Investigation means the investigation conducted in accordance with the Investigation Procedures.

Investigation Procedures means the procedures in relation to investigations which are:

- (a) specified in Aurizon Network's document entitled *Incident Report and Investigations* which is published on the Website (as amended and replaced from time to time); and
- (b) as far as practicable, applied consistently for all Access Holders and Train Operators in the same Coal System.

Joint Venture means the unincorporated joint venture (if any) between the JV Participants specified in **item 6** of **Schedule 1**.

JV Participants means the entities (if any) specified in **item 7** of **Schedule 1**.

Landowner has the meaning given in **clause 38.17**.

Law has the meaning given in the Access Undertaking.

Loading Facility for a Train Service Type means the loading facility located at the ultimate origin for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Maintenance Work has the meaning given in the Access Undertaking.

Major Periodic Maintenance has the meaning given in the Access Undertaking.

Material Change means a:

- (a) Change in Relevant Taxes;
- (b) Change in Law;
- (c) Change in Access Undertaking; or
- (d) matter deemed to be a Material Change under **clause 38.17(d)**.

Maximum Other Dwell Times for a Train Service Type means the maximum Other Dwell Times for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Payload for a Train Service Type means the maximum Payload for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Sectional Running Time for a Section for a Train Service Type means the maximum Sectional Running Times for Train Services for that Train Service Type operating on that Section as specified as such in the Train Description for that Train Service Type.

Maximum Time at Depot for a Train Service Type means the maximum Time at Depot for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Loading Facility for a Train Service Type means the maximum Time at Loading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Unloading Facility for a Train Service Type means the maximum Time at Unloading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Month means calendar month.

Net Financial Effect on a Party of an event or circumstance means the net effect in financial terms of the occurrence of the event or circumstance on the Party in relation to performing its obligations and exercising its rights under this Agreement and/or a Train Operations Deed including any increases in costs (whether capital or operating, fixed or variable) and other detriments incurred, or to be incurred, by the Party but deducting the amount of any savings or other benefits or advantages received, or to be received, by the Party, and on the basis that the Party uses reasonable endeavours to mitigate the net effect of the event or circumstance.

Network Customer means any person (including the Access Holder) that has been granted rights of access to operate Network Train Services on all or part of the Infrastructure.

Network Incident has the meaning given in the Access Undertaking.

Network Interface Point means a location at which the Infrastructure meets an Adjoining Network.

Network Management Principles has the meaning given in the Access Undertaking.

Network Train Service means the running of a Train between specified origins and destinations by a Railway Operator (including any Stowage) on the Infrastructure.

New Incorporated Provisions has the meaning given in **clause 3.2(b)(i)**.

New Train Service Type has the meaning given in **clause 11.2(a)(i)**.

Nominal Payload for a Train Service Type means the nominal Payload for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Nominated Access Rights has the meaning given in the Access Undertaking.

Nominated Monthly Train Services for a Train Service Type means the number of Train Services for that Train Service Type that the Access Holder is entitled to have operated during any Month:

- (a) in the case of a Month that is 30 days, as specified in the Train Description for that Train Service Type; and
- (b) in the case of a Month that is longer or shorter than 30 days, a pro rata portion of the number of Train Services referred to in **paragraph (a)** of this definition (rounded to the nearest even number of whole Train Services provided that where the pro rata portion of the number of Train Services is a whole odd number, the number of Train Services will be rounded up to the nearest even number) to reflect the longer or shorter period,

as varied in accordance with this Agreement.

Nominated Network means that part of the Infrastructure described in **item 1 of Schedule 3**.

Nominated Network FM Reduction Notice means a notice given under **clause 29.5(d)**.

Non-Defaulting Operator has the meaning given in **clause 11.2(a)**.

Notice has the meaning given in **clause 37.1**.

Notice of Enquiry has the meaning given in **clause 10.1(a)**.

Obstruction means any circumstance relating to the whole or any part of the Infrastructure, including Rollingstock, debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation of Train Services or Train Movements, and includes any Network Incident but does not include an Operational Constraint imposed by Aurizon Network.

Operational Constraint has the meaning given in the Access Undertaking.

Operator means each Accredited Railway Operator that is nominated by the Access Holder in accordance with **clause 4.3(b)** who is contracted by the Access Holder to operate Train Services for the Access Holder in accordance with the relevant nomination – but only to the extent of the relevant nomination.

Operator's Staff means, in respect of an Operator, the employees, contractors, volunteers and agents of that Operator and any other person under the control or supervision of that Operator who is involved in any activity associated with the Train Services but does not include the employees, contractors, volunteers or agents of another Operator.

Origin for a Train Service Type means the origin specified as such in the Train Description for that Train Service Type.

Original Train Service Type has the meaning given in **clause 11.2(a)(ii)**.

Other Dwell Times means, for any other permitted activity, the time period commencing when a Train Service arrives at the specified point for that activity and ending when it is ready to depart from that point and the relevant Train Controller has been advised accordingly.

Over-Allocation has the meaning given in **clause 4.7(b)**.

Overload Detector means a weighing mechanism other than a Weighbridge and specified in **item 5.2 of Schedule 3**.

Party means a party to this Agreement, and **Parties** means the parties to this Agreement. For the avoidance of doubt, an Operator is not a party to this Agreement.

Passenger Priority Obligations has the meaning given in the Access Undertaking.

Payload of a Train Service means the weight of product loaded onto any Train used in operating that Train Service.

Performance Levels has the meaning given in the relevant Train Operations Deed.

Planned Dwell Times means each of Time at Loading Facility, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule.

Planned Possession has the meaning given in the Access Undertaking.

Possession has the meaning given in the Access Undertaking.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Private Facilities means sidings, loading and unloading facilities and any other facilities of any kind:

- (a) which either:
 - (i) are required to be accessed or used by an Operator to operate any Train Services for the Access Holder in the manner contemplated by this Agreement; or
 - (ii) if no Operator has been nominated in respect of the relevant Train Services, would have been required to be accessed or used by an Operator, had one been nominated; and
- (b) which do not form part of the Nominated Network.

Private Infrastructure [has the meaning given in the Access Undertaking.](#)

Proposed Maximum Payload has the meaning given in **clause 10.1(b)(i)**.

Queensland Competition Authority or **QCA** means the authority established under the *Queensland Competition Authority Act 1997* (Qld).

Rail Safety Act means the *Transport (Rail Safety) Act 2010* (Qld).

Rail Safety Regulator means the chief executive of the department administering the Rail Safety Act.

Railway Manager has the meaning given in the Transport Infrastructure Act.

Railway Operator has the meaning given in the Access Undertaking.

Recipient means a Party that receives Confidential Information from the Discloser.

Reduction Factor has the meaning given in the Access Undertaking.

Reduction Factor Provisions means:

- (a) the provisions of the Access Undertaking which include the Reduction Factor and the details of the calculation and application of the Reduction Factor (which, as at the Commencement Date, is clause 7.4.4 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the application or calculation of the Reduction Factor.

Reduction Notice has the meaning given in **clause 11.1**.

Reference Tariff has the meaning given in the Access Undertaking.

Reference Tariff Provisions means:

- (a) the schedule of the Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service (which, as at the Commencement Date, is Schedule F of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the application or calculation of Reference Tariffs or access charges (including any TOP Charge).

Reference Train Service has the meaning given in the Access Undertaking.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Collateral means Collateral which is the subject of a Security Interest granted under this Agreement.

Relevant Rollingstock Configuration for a Train Service Type means ~~an~~ Authorised Rollingstock Configuration utilised in the operation of Train Services for that Train Service Type which has a maximum Payload which exceeds the Maximum Payload for that Train Service Type.

Relevant Tax means any tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on Aurizon Network by, or payable by Aurizon Network to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes.

Relinquishment Fee has the meaning given in the Access Undertaking.

Relinquishment Provisions means:

- (a) the provisions of the Access Undertaking which relate to the relinquishment of Access Rights (which, as at the Commencement Date, are clauses 7.4.3 and 7.4.4 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the relinquishment of Access Rights.

Response Notice has the meaning given in **clause 10.2(b)**.

Resumption Notice has the meaning given in the Access Undertaking.

Resumption Provisions means:

- (a) the provisions of the Access Undertaking which relate to capacity resumption (which, as at the Commencement Date, is clause 7.6 of the Access Undertaking); and

- (b) any other provisions of the Access Undertaking which affect or relate to capacity resumption.

Revised Indicative Tonnage for a Train Service Type means the amount calculated [for the Train Service Type](#) in accordance with **clause 13.4**.

Revised Nominal Payload for a Train Service Type means the amount calculated for that Train Service Type in accordance with **clause 13.1**.

Revised Nominated Monthly Train Services for a Train Service Type means the amount calculated for that Train Service Type in accordance with **clause 1.1**.

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

Rollingstock Configuration has the meaning given in the Access Undertaking.

[Rollingstock Interface Standards](#) has the meaning given in the Access Undertaking.

Safeworking Procedures means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure specified in Aurizon Network's document entitled *Safeworking Procedures* as:

- (a) notified by Aurizon Network to the Access Holder; or
(b) published on the Website,

(as amended and replaced from time to time).

[SAR Relinquishment Fee for the Surplus Access Rights for a Train Service Type](#) means the amount calculated in accordance with **clause 13.5** for the [Surplus Access Rights for the Train Service Type](#).

Scheduled Time means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as set out in the Train Schedule or as amended by Aurizon Network from time to time on the day of operation in accordance with the Network Management Principles.

Section means a section of Track between two locations on the Nominated Network as shown in the diagram(s) in **Schedule 3**.

Sectional Running Times means the time period measured from the time a Train Service passes the signal controlling entry into a Section until the time the Train Service arrives at the signal controlling entry into the next adjoining Section or the Adjoining Network (as applicable), and does not include an allowance for Planned Dwell Times.

Security means:

- (a) a parent company guarantee in a form reasonably acceptable to Aurizon Network and from an Australian incorporated holding company (as defined in the Corporations Act) of the Access Holder that has an Acceptable Credit Rating;

- (b) an unconditional and irrevocable bank guarantee in favour of Aurizon Network which:
- (i) is issued by a trading bank holding a current Australian banking licence that has an Acceptable Credit Rating;
 - (ii) requires the issuing bank to pay on demand by Aurizon Network, without recourse to the Access Holder or any other person, an amount or amounts up to the amount specified in the bank guarantee;
 - (iii) has no expiry date (or, if it is not possible for the Access Holder to obtain a bank guarantee with no expiry date, has an expiry date no earlier than 12 Months after the date of issue of the bank guarantee);
 - (iv) states that it is assignable by Aurizon Network to an assignee from Aurizon Network under this Agreement (subject to the relevant bank and the Access Holder being given notice of the identity of the assignee); and
 - (v) is otherwise in a form and upon terms reasonably acceptable to Aurizon Network; or
- (c) any other form of security reasonably acceptable to Aurizon Network, in a form and upon terms reasonably acceptable to Aurizon Network,

as security for the due and proper performance by the Access Holder of its obligations under this Agreement.

Security Amount at a time means the amount determined in accordance with **item 4 of Schedule 1** at that time.

Security Interest has the meaning given in **clause 38.20(a)**.

Segment of an Expansion means each segment of the Expansion specified as such in the Train Description for the Conditional Access Rights which are conditional upon the completion and commissioning of the Expansion.

Split Train Service Type has the meaning given in **clause 11.2(a)**.

Staff means Aurizon Network's Staff or the Access Holder's Staff (as applicable).

State means the State of Queensland.

Stowage has the meaning given in the Access Undertaking.

Supply Chain Rights has the meaning given in the Access Undertaking.

Surplus Access Rights for a Train Service Type means the amount calculated in accordance with **clause 13.3: [for the Train Service Type](#)**.

Suspension Event means any event or circumstance specified as such in **Schedule 6**.

Suspension Notice has the meaning given under **clause 30.1**.

Term means the term of this Agreement in accordance with **clause 2.1**.

Termination Event means any event or circumstance specified as such in **Schedule 6**.

Third Party means a person other than the Access Holder or Aurizon Network.

Third Party Land has the meaning given in **clause 38.17(a)**.

Through-Running Train Service Type means a Train Service Type that has a Destination and/or Origin that is a Network Interface Point and is specified as such in the Train Description for that Train Service Type.

Time at Depot means the time period commencing when a Train Service arrives at the entry signal for a Depot and ending when it is ready to depart the Depot and the relevant Train Controller has been advised accordingly.

Time at Loading Facility means the time period commencing when a Train Service arrives at the entry signal for a Loading Facility and ending when it presents at the exit signal for the Loading Facility, is ready to depart the Loading Facility and the relevant Train Controller has been advised accordingly.

Time at Unloading Facility means the time period commencing when a Train Service arrives at the entry signal for an Unloading Facility and ending when it presents at the exit signal for the Unloading Facility, is ready to depart the Unloading Facility and the relevant Train Controller has been advised accordingly.

TOP Charge has the meaning given in **Schedule 4**.

Track has the meaning given in the Access Undertaking.

Train has the meaning given in the Access Undertaking.

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

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

Train Control Direction means any instruction or direction (whether given orally or in writing or by means of signal or other similar device) issued by or on behalf of Aurizon Network acting reasonably relating to Train Movements.

Train Controller means the person nominated by Aurizon Network from time to time as the supervisor of Train Movements on the relevant part of the Nominated Network.

Train Description for a Train Service Type means the description of, specifications for, and constraints on, the Access Rights for that Train Service Type specified in **Schedule 2**.

Train Movement has the meaning given in the Access Undertaking.

Train Operations Deed means a deed between Aurizon Network and an Operator in substantially the form of the Standard Train Operations Deed (as that term is defined in the Access Undertaking) (or such other form as agreed between the Operator and Aurizon Network) under which Aurizon Network agrees that the Operator may utilise Access Rights allocated to the Operator by the Access Holder, in accordance with this Agreement.

Train Schedule means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by Aurizon Network before the day of operation in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure.

Train Service for a Train Service Type means the running, by an Operator for the Access Holder, of a Train in one direction from the Origin to the Destination, or from the Destination to the Origin, for that Train Service Type (including any Stowage) in accordance with the Train Description for that Train Service Type.

Train Service Commitment Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Compliance Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Expiry Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Type means each type of train service specified as such in **Schedule 2**.

Transfer means the transfer of all or part of the Access Rights to a Third Party.

Transfer Fee has the meaning given in the Access Undertaking.

Transfer Provisions means:

- (a) the clauses of the Access Undertaking which relate to the transfer of Access Rights (which, as at the Commencement Date, are clauses 7.4.2 and 7.4.4 of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the transfer of Access Rights.

Transport Infrastructure Act means the *Transport Infrastructure Act 1994* (Qld).

Ultimate Holding Company has the meaning given in the Corporations Act.

Unloading Facility for a Train Service Type means the unloading facility located at the ultimate destination for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Urgent Possession has the meaning given in the Access Undertaking.

Variation Request Notice has the meaning given in **clause 10.2(c)**.

Variation Effective Date has the meaning given in **clause 10.4(a)**.

Wagon means any rollingstock (including a wagon bogie) designed to carry any load other than passengers.

Website has the meaning given in the Access Undertaking.

Weighbridge means a weighbridge or weightometer verified under the *National Measurement Act 1960* (Cth), as specified in **item 5.1** of **Schedule 3**.

Year means each year commencing on 1 July and ending on 30 June during the Term and, if applicable, includes:

- (a) the shorter period commencing on the first day of the Month in which the Commitment Date occurs and ending on the next 30 June; and
- (b) the shorter period commencing on the 1 July occurring prior to the date of expiration or termination of this Agreement and ending on the date of expiration or termination of this Agreement.

1.2 Interpretation

In this Agreement, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and
- (e) a reference to:
 - (i) a person includes a partnership, unincorporated association, corporation or other entity, government or statutory body;
 - (ii) a person includes its legal personal representative, successors and assigns;
 - (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
 - (iv) conduct includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
 - (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
 - (viii) time is to local time in Brisbane, Queensland;
 - (ix) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;

- (x) this or any other document or agreement includes the document or agreement as novated, amended or replaced from time to time and despite any changes in the identity of the parties;
- (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (xii) under a clause includes in accordance with that clause;
- (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Agreement;
- (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (xv) any code, guideline, recommendation or policy, or any provision of any code, guideline, recommendation or policy, includes any modification of it, or the substitution of it or any of its provisions for others, unless otherwise specified or directed by Aurizon Network;
- (xvi) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body;
- (xvii) access or access rights does not include rights granted by Aurizon Network to an Operator under a Train Operations Deed; and
- (xviii) the Access Holder, if the Access Holder is comprised of more than one entity (for example, if the Access Holder is comprised of the participants in an unincorporated joint venture), is a reference to each entity comprising the Access Holder.

1.3 References to Access Rights

For the avoidance of doubt, Access Rights that are entitled to be utilised for the Access Holder includes Access Rights that could have been utilised had the Access Holder, in accordance with this Agreement, nominated an Operator to use those Access Rights.

1.4 Material published on the Website

For the avoidance of doubt, material published on the Website includes material which is available to the Access Holder via secured, password-protected online access to the Website.

1.5 Headings

Headings do not affect the interpretation of this Agreement.

1.6 Words and expressions defined in Access Undertaking

- (a) Subject to **clause 1.6(b)**, if a word or expression is defined in this Agreement to have the meaning given in the Access Undertaking, then it

has the meaning given in the Access Undertaking in force as at the date of this Agreement.

- (b) If a word or expression used in any Incorporated Provisions which form part of this Agreement under **clause 3** is defined in the Access Undertaking, then it has the meaning given in the Access Undertaking in force on the date the relevant Incorporated Provisions is incorporated into this Agreement under **clause 3.1** or **3.2** (as applicable).

1.7 Inconsistency

- (a) If there is any inconsistency between the substantive terms of this Agreement (comprising **clauses 1 to 40**) and the schedules of this Agreement, the substantive terms of this Agreement prevail to the extent of the inconsistency.
- (b) Subject to **clause 9.1(b)**, if there is any inconsistency between matters contained in the Access Undertaking (as amended by any Change in Access Undertaking) and this Agreement, the provisions of this Agreement prevail to the extent of the inconsistency unless expressly provided to the contrary.

2 Term

2.1 Term

This Agreement commences on the Commencement Date and, unless earlier terminated in accordance with its terms, continues until the Expiry Date.

2.2 Right to renewal

The Parties acknowledge and agree that any right which the Access Holder may have to renew this Agreement will be as provided in the Access Undertaking (as amended by any Change in Access Undertaking).

3 Access Undertaking

3.1 Incorporation

- (a) The parties agree that, for the purposes of the Access Undertaking, the Access Holder is considered an Access Seeker or an 'Access Holder' (as the term is defined under the Access Undertaking) (as applicable).
- (b) Subject to **clause 3.2**, the following provisions of the Access Undertaking (as in force as at the Commencement Date) form part of this Agreement as if they were set out in full under this Agreement:
 - (i) Interface Risk Provisions;
 - (ii) Transfer Provisions;
 - (iii) Relinquishment Provisions;
 - (iv) Reduction Factor Provisions;
 - (v) Resumption Provisions; and
 - (vi) Conditional Access Provisions.

- (c) The Reference Tariff Provisions of the Access Undertaking (as changed by a Change in Access Undertaking from time to time) form part of this Agreement as if they were set out in full in this Agreement.
- (d) For the avoidance of doubt, despite any other provision in the Access Undertaking:
 - (i) **clause 25** applies to any Claim in respect of a breach of any Incorporated Provisions which form part of this Agreement under this **clause 3**; and
 - (ii) **clause 28** applies in respect of any Dispute between the Parties in respect of any right or obligation (or in respect of the enforcement) of any Incorporated Provisions which form part of this Agreement under this **clause 3**.

3.2 Changes in Access Undertaking

- (a) If there is a Change in Access Undertaking at any time which changes any of the Incorporated Provisions set out in **clause 3.1(b)**, then this **clause 3.2** applies.
- (b) A Party (**Notifying Party**) may, within 20 Business Days from the date of the Change in the Access Undertaking (or such longer period as the Parties may agree), notify (**Amendment Notice**) the other Party (**Receiving Party**):
 - (i) that it elects to amend this Agreement to replace the Incorporated Provisions which form part of this Agreement under **clause 3.1(b)** or this **clause 3.2 (Former Incorporated Provisions)** with the corresponding Incorporated Provisions as changed by the Change in Access Undertaking (**New Incorporated Provisions**); and
 - (ii) of any other changes to the other terms of this Agreement (if any) which the Notifying Party requires as a consequence of, or to give full effect to the replacement of the Former Incorporated Provisions with the New Incorporated Provisions under this **clause 3.2**; and
 - (iii) of the date from which the changes become effective (and if any changes become effective from different dates, the dates applicable to each change), which must be on or after the date on which the Change in Access Undertaking became effective (**Change Date(s)**).
- (c) An Amendment Notice must include an amended version of this Agreement, with the changes referred to in **clause 3.2(b)(i)** clearly identified.
- (d) Promptly following receipt of an Amendment Notice, the Receiving Party must notify the Notifying Party the extent to which the Receiving Party accepts or does not accept the drafting of the amendments to the terms of this Agreement proposed in the Amendment Notice in accordance with **clause 3.2(b)(ii)**.
- (e) If the Receiving Party does not accept the drafting of the amendments to the terms of this Agreement, then the Parties must promptly meet to negotiate and attempt to agree the changes to the terms of this Agreement (if any) which are necessary as a consequence of, or to give

full effect to, the replacement of the Former Incorporated Provisions with the New Incorporated Provisions under this **clause 3.2**.

- (f) If the Parties do not agree the amendments in respect of the matters outstanding under **clause 3.2(e)** by the Change Date(s), the matter must be referred to the QCA for determination in accordance with the provisions of the Access Undertaking which provide for determination of disputes by the QCA.
- (g) On and from the Change Date(s) (or such other time as the QCA may determine):
 - (i) the New Incorporated Provisions will form part of this Agreement as if set out in full in this Agreement;
 - (ii) the Former Incorporated Provisions will cease to form part of this Agreement; and
 - (iii) amendments to the terms of this Agreement:
 - (A) accepted under **clause 3.2(d)**;
 - (B) agreed under **clause 3.2(e)**; or
 - (C) determined by the QCA under **clause 3.2(f)**,become effective.
- (h) Within 10 Business Days from the date that amendments to the terms of this Agreement are accepted, agreed and/or determined (as applicable) under this **clause 3.2**, Aurizon Network must prepare and send to the Access Holder a copy of this Agreement as modified.

4 Access Rights

4.1 Grant of Access Rights

In consideration of the Access Holder paying the Access Charges, on and from each Train Service Commitment Date for each Train Service Type until the Train Service Expiry Date for that Train Service Type, Aurizon Network grants, and will provide, to the Access Holder the Access Rights for that Train Service Type in accordance with the Train Description for that Train Service.

4.2 Nature and scope of Access Rights

- (a) The Access Rights granted under **clause 4.1** are non-exclusive contractual rights and do not give the Access Holder any right, title or interest of any proprietary nature in the Nominated Network.
- (b) Aurizon Network must provide the Access Holder with certain benefits, rights and services in accordance with the Access Undertaking and, to the extent relevant to the Access Holder's Access Rights, it is intended that the terms on which these requirements are provided are detailed in this Agreement.

4.3 Exercise of Access Rights and Operator nomination

- (a) The Parties acknowledge and agree that:
 - (i) the grant of the Access Rights to the Access Holder does not entitle the Access Holder to itself operate Train Services on the Nominated

- Network (unless it is also an Accredited Railway Operator and is nominated as an Operator in accordance with this Agreement);
- (ii) the Access Holder can only utilise the Access Rights by nominating an Operator from time to time, in accordance with this Agreement; and
 - (iii) the Access Holder may nominate more than one Operator.
- (b) Subject to **clause 4.6(a)**, the Access Holder may, from time to time, provided that it is not in material breach of any of its obligations under this Agreement, nominate an Operator to utilise all or part of the Access Rights upon giving at least 20 Business Days prior written notice to Aurizon Network. The notice must:
- (i) specify:
 - (A) the name, ABN, address and contact details of the Operator;
 - (B) the Access Rights which the Access Holder wishes to allocate to the Operator for the Operator to use in providing Train Services for the Access Holder;
 - (C) the first day and the last day of the period for which the Access Rights are to be allocated to the Operator; and
 - (ii) be accompanied by either:
 - (A) two copies of a Train Operations Deed, executed by the Operator, which:
 - (1) reflects, in schedule 2 of that Train Operations Deed, the Access Rights which the Access Holder wishes to allocate to the Operator; and
 - (2) satisfies the Compliant Nomination Requirements; or
 - (B) a statement and evidence identifying the Operator's existing Train Operations Deed in respect of utilisation of the Access Rights under this Agreement and evidence that:
 - (1) the Operator agrees to the relevant nomination; and
 - (2) the Compliant Nomination Requirements are satisfied.
- (c) Access Rights allocated by the Access Holder to be used by any one or more Operators may not exceed, in aggregate, the Access Holder's Access Rights under this Agreement.
- (d) Despite any other provision in this Agreement and without limiting any of Aurizon Network's obligations under **clauses 4.3(e)** and **4.5(b)**, Aurizon Network must accept, or act on:
- (i) any nomination of an Operator by the Access Holder under **clause 4.3(b)**; or
 - (ii) any variation which increases the allocation of Access Rights (including an increase to the period for which the Access Rights are to be allocated) to an Operator under **clause 4.5**,
- except where Aurizon Network (acting reasonably) determines either:

- (iii) in respect of a nominated Train Service Type the Access Holder does not hold, or have the benefit of, Supply Chain Rights for those Train Services; or
- (iv) the Operator:
 - (A) is in material breach of any of its obligations under an existing Train Operations Deed with Aurizon Network (or Access Agreement if the Operator is also a Network Customer); or
 - (B) is not Accredited.
- (e) Aurizon Network must:
 - (i) within 10 Business Days of receiving the nomination under **clause 4.3(b)**, notify the Access Holder and the relevant Operator whether it accepts or rejects (providing its reasons) the nomination;
 - (ii) if it rejects the nomination, facilitate the resolution of any matter the subject of its reasons for the rejection; and
 - (iii) if it accepts the nomination, promptly do all things reasonably required (including compliance with **clause 4.6(a)** where applicable and amending the relevant Train Operations Deed to the extent required) to ensure that any delay to Train Services is minimised to the extent practicable including:
 - (A) if the notice under **clause 4.3(b)** is accompanied by two copies of a Train Operations Deed under **clause 4.3(b)(ii)(A)**, execute both copies of the Train Operations Deed and return one copy to the Operator; or
 - (B) if the notice under **clause 4.3(b)** is accompanied by a statement and evidence under **clause 4.3(b)(ii)(B)**, vary the relevant Train Operations Deed to include the right to operate Train Services utilising the Access Rights in respect of which the Operator was nominated, and provide notice of that variation to the Operator.
- (f) If Aurizon Network accepts the nomination of an Operator:
 - (i) the Access Holder must promptly provide a copy of this Agreement to the Operator; and
 - (ii) Aurizon Network must provide a copy of the IRMP to the Access Holder promptly after it has been agreed between the Parties and the Operator in accordance with the Interface Risk Provisions or determined under the Train Operations Deed.

4.4 Access Interface Deed

- (a) If the Access Holder is also a Railway Operator and the Access Rights are to be used for the purposes of a rail haulage agreement between the Access Holder (in its capacity as 'Operator') and a Customer (as that term is defined in the Access Undertaking), prior to or on the date it exercises its rights under **clause 4.3(b)**, the Access Holder must procure the Customer executes and delivers the Access Interface Deed to Aurizon Network on or before the Commitment Date.

- (b) As soon as practicable after receiving the Access Interface Deed duly executed by the Customer, Aurizon Network must:
 - (i) execute the Access Interface Deed;
 - (ii) provide a copy of the fully executed Access Interface Deed to the Customer; and
 - (iii) notify the Access Holder that the Access Interface Deed has been executed by the Customer and Aurizon Network.

4.5 Changes to Operator nominations

- (a) The Access Holder may, from time to time, upon giving at least 2 Business Days prior written notice to Aurizon Network and each affected Operator:
 - (i) vary any nomination previously given by the Access Holder under this Agreement so as to vary either or both of the following:
 - (A) the Access Rights which the Access Holder has allocated to an Operator; or
 - (B) the period for which the Access Rights are to be allocated to an Operator (provided that the period does not extend beyond the Train Service Expiry Date for the relevant Train Service Type); or
 - (ii) withdraw any nomination previously given by the Access Holder under **clause 4.3(b)** or this **clause 4.5(a)**; and
 - (iii) if the variation or withdrawal of a nomination results from the operation of clause 10.2(d) or 10.3(c)(iv)(A)(2) under a Train Operations Deed, the Access Holder may nominate, in accordance with **clause 4.3**, an alternative Operator to utilise the “Category 1 Reduced Operational Rights” (as defined in the Train Operations Deed) and/or the “Category 2 Reduced Operational Rights” (as defined in the Train Operations Deed) (as applicable).
- (b) Aurizon Network must notify the Access Holder and the Operator if it accepts or rejects (providing its reasons) in accordance with **clauses 4.3(d)(ii) to 4.3(d)(iv)(B)** the variation within the lesser of 10 Business Days or the period remaining prior to the relevant Intermediate Train Plan being finalised.
- (c) Where an Operator receives an increased allocation of Access Rights following a varied nomination in accordance with this **clause 4.5**, and the date on which that variation commences is during the period covered by the then current Intermediate Train Plan, then Aurizon Network will schedule any additional Train Services ordered by the Operator to the extent permitted in accordance with the Network Management Principles.
- (d) If Aurizon Network rejects the nomination, it must facilitate the resolution of any matter the subject of its reasons for the rejection.
- (e) If Aurizon Network accepts the nomination, it must promptly do all things reasonably required to ensure that any delay to Train Services is minimised to the extent practicable including vary the relevant Train Operations Deed to include the right to operate Train Services utilising the

Access Rights (or the “Category 1 Reduced Operational Rights” (as defined in the Train Operations Deed) and/or the “Category 2 Operational Rights” (as defined in the Train Operations Deed), as applicable) in respect of which the Operator was nominated.

4.6 Nominations with different Train Descriptions

- (a) If at any time:
- (i) the Access Holder intends to:
 - (A) nominate an Operator to utilise all or part of the Access Rights; or
 - (B) vary a nomination previously given by the Access Holder; and the Train Services of the relevant Operator will have a Train Description different from that contemplated in **Schedule 2**; or
 - (ii) the Access Holder otherwise wishes to vary the Train Services from the Train Description nominated in **Schedule 2**,
- then:
- (iii) prior to nominating the Operator or varying the nomination, Aurizon Network and the Access Holder must negotiate and endeavour to agree any amendments to this Agreement (including any amendments to the Access Rights and, subject to **clause 4.6(b)**, the Access Charge Rates) that may be necessary to reflect the Train Description of the Train Services to be operated by the relevant Operator for that part of the Access Rights to be allocated to that Operator; and
 - (iv) no amendment to the Access Rights that results in the Access Holder being granted increased rights to access the Nominated Network has any effect unless and until the Access Holder and Aurizon Network have complied with Aurizon Network’s Access Undertaking (as amended by any Change in Access Undertaking) (including with respect to the allocation of those increased Access Rights).
- (b) Any variation to the Access Charge Rates under **clause 4.6(a)(iii)**:
- (i) must be in accordance with the pricing principles set out in Part 6 of the Access Undertaking, in particular clause 6.2; and
 - (ii) must be reasonably justified (including calculations) by Aurizon Network to the Access Holder.

4.7 Reduction of rights resulting in an Over-Allocation

If at any time:

- (a) either:
- (i) the Access Rights of the Access Holder are reduced, relinquished or transferred under this Agreement; or
 - (ii) the Nominated Monthly Train Services in respect of a Train Service Type are reduced or varied under this Agreement ; and

- (b) as a result of such reduction, relinquishment or transfer of Access Rights or reduction or variation of Nominated Monthly Train Services in respect of a Train Service Type, the Access Rights allocated by the Access Holder to any one or more Operators under **clause 4.3** or **4.4** for a Train Service Type exceed, in aggregate, the Access Holder's Access Rights under this Agreement for that Train Service Type following the reduction, relinquishment or transfer (such excess being the **Over-Allocation**),

then, unless the Access Holder varies the nominations in accordance with **clause 4.5(a)** within 2 Business Days of such reduction, relinquishment, transfer or variation to eliminate the Over-Allocation, the Access Holder will be deemed to have varied the nominations in accordance with **clause 4.5(a)** as follows:

- (c) if the Access Holder has nominated only one Operator for that Train Service Type, reducing the Access Rights for that Train Service Type which the Access Holder has allocated to the Operator under its Train Operations Deed by the Over-Allocation; or
- (d) if the Access Holder has nominated multiple Operators in respect of an affected Train Service Type, reducing the Access Rights for that Train Service Type which the Access Holder has allocated to each Operator under this Agreement and each Operator's respective Train Operations Deed by a share of the Over-Allocation that is as closely as possible proportionate to the Train Services allocated to the Operator for the affected Train Service Type as a share of the total Train Services allocated to all Operators for that Train Service Type,

and such reduction will take effect on the date the reduction, variation, relinquishment or transfer takes effect, with Aurizon Network providing written notice of the reduction to each affected Operator as soon as practicable.

4.8 Operation of Ad Hoc Train Service

- (a) If:
 - (i) the Access Holder (or its Operator) notifies Aurizon Network that it wishes to have an Operator (which the Access Holder must identify when notifying Aurizon Network) operate an Ad Hoc Train Service (which the Access Holder (or its Operator) must identify having reference to the definition of Ad Hoc Train Service) for a Train Service Type; and
 - (ii) the relevant Operator has notified Aurizon Network that is able and willing to operate that Ad Hoc Train Service for a Train Service Type under its Train Operations Deed to the extent the Access Holder provided the notice under **clause 4.8(a)(i)**,

then, to the extent permitted by the Network Management Principles, Aurizon Network:

- (iii) must if required in accordance with clause 5.4(c) of Schedule G of the Access Undertaking; or
- (iv) otherwise must use reasonable endeavours to, schedule the Ad Hoc Train Service for the Train Service Type in the Daily Train Plan.

- (b) On and from the time that the Ad Hoc Train Service is scheduled in the Daily Train Plan, the terms and conditions of this Agreement apply to the Ad Hoc Train Service as if the Ad Hoc Train Service is a Train Service for the Train Service Type the relevant Operator is entitled to operate utilising the Access Rights for that Train Service Type.
- (c) Despite **clause 4.8(b)**, if an Ad Hoc Train Service is of a type described in **paragraph (b)** of the definition of Ad Hoc Train Service and has a different Origin and Destination for that Train Service Type, then such Ad Hoc Train Service will not be taken into account for the purposes of the TOP Charge.

4.9 Supply Chain Rights

- (a) The Access Holder must demonstrate to the satisfaction of Aurizon Network (acting reasonably) that the Access Holder holds, or has the benefit of, or is reasonably likely to hold, or have the benefit of, Supply Chain Rights for the commencement of the operation of the first Train Service for each Train Service Type.
- (b) The Access Holder may not nominate an Operator under this Agreement in respect of a Train Service Type for which the Access Holder does not hold, or have the benefit of, Supply Chain Rights for those Train Services.
- (c) The Access Holder must, for each Train Service Type, use all reasonable endeavours to continue to hold, or have the benefit of, those Supply Chain Rights until at least the Train Service Expiry Date for the Train Service Type, provided that if the term of any Supply Chain Rights expires or terminates prior to the Train Service Expiry Date for that Train Service Type, the Access Holder must use reasonable endeavours to secure equivalent Supply Chain Rights for the period until the Train Service Expiry Date for that Train Service Type.
- (d) If, prior to the commencement of the operation of the Train Services for each Train Service Type, Aurizon Network:
 - (i) acting reasonably, considers the Access Holder's circumstances have changed; and
 - (ii) notifies the Access Holder that it requires details of the changed circumstances,
 the Access Holder must, within 10 Business Days after its notice, provide Aurizon Network reasonable details of:
 - (iii) the Supply Chain Rights for the Train Services for a Train Service Type that the Access Holder holds, or has the benefit of at the time; and
 - (iv) if applicable, the steps which the Access Holder has taken, or intends to take to secure any additional, renewed, extended or replacement Supply Chain Rights for the Train Services for the Train Service Type and the status of any such steps.

5 Billing and payments

5.1 Charges

- (a) The Access Holder must pay to Aurizon Network the Access Charges and any other charges (if any) as calculated in accordance with this Agreement.
- (b) Where a Train Service is taken to be cancelled under a Train Operations Deed, despite the Train Service being cancelled and not operated, the Train Service will be taken to be one of the Nominated Monthly Train Services for the Train Service Type for the Month in which the Train Service was originally scheduled in the Daily Train Plan provided that:
 - (i) the reason for the cancellation is not (or is deemed under the relevant Train Operations Deed to not be) an Aurizon Network Cause; and
 - (ii) the relevant Operator notified Aurizon Network that it decided not to, or was unable to, operate that Train Service less than 48 hours (or failed to give any notification) before the time for commencement of the operation of that Train Service as originally scheduled in the Daily Train Plan.

5.2 Invoicing

- (a) As soon as reasonably practicable after the end of each Billing Period, Aurizon Network must give to the Access Holder an invoice for:
 - (i) the Access Charges for that Billing Period; plus
 - (ii) any amounts payable but unpaid by the Access Holder to Aurizon Network under this Agreement, and which have not previously been invoiced, as at the end of the Billing Period.
- (b) If **clause 5.6** applies, Aurizon Network must give the Access Holder an invoice under **clause 5.2(a)** after the end of a Billing Period even if no amount is required to be invoiced under **clause 5.2(a)** for that Billing Period.
- (c) If this Agreement terminates or expires on a date other than 30 June then, as soon as reasonably practicable after the first 30 June to occur after the termination or expiry of this Agreement, Aurizon Network must give to the Access Holder an invoice for the TOP Charge (if any) for the Year during which this Agreement terminated or expired.
- (d) Each invoice given under this **clause 5.2** must be accompanied by reasonable details of Aurizon Network's calculation of the amounts claimed in the invoice including a breakdown of the Access Charges and itemised description of any other amounts (for the amounts deducted under **clause 5.6**, particulars must include the amounts against which the deduction is applied).

5.3 Payment

- (a) Subject to **clause 5.4**, the Access Holder must:
 - (i) pay to Aurizon Network the amount claimed in an invoice given under **clause 5.2** within 10 Business Days after the invoice is given to the Access Holder; and

- (ii) pay all amounts payable to Aurizon Network under this Agreement:
 - (A) in Australian currency; and
 - (B) by:
 - (1) direct deposit into one or more bank accounts notified by Aurizon Network to the Access Holder in the invoice for this purpose (whether or not those bank accounts are in the name of Aurizon Network); or
 - (2) such other payment method as Aurizon Network specifies in the invoice (acting reasonably).
- (b) Any payment by the Access Holder of an amount payable under this Agreement in accordance with this **clause 5.3** is taken to be a payment of such amount to Aurizon Network for the purpose of this Agreement (whether or not such amount is paid into a bank account in the name of Aurizon Network).

5.4 Disputes

- (a) Any Disputes in connection with an amount claimed in an invoice:
 - (i) must be resolved in accordance with **clause 28**; and
 - (ii) which is not resolved in accordance with **clause 28.2**, may be referred by either Party to an Expert for determination in accordance with **clause 28.3**.
- (b) Despite **clause 5.4(a)**, if an amount claimed in an invoice given by Aurizon Network under **clause 5.2** is Disputed, then unless the total amount of the invoice is nil due to the operation of **clause 5.6**, the Access Holder must pay to Aurizon Network:
 - (i) the portion of the amount claimed in the invoice that is not in Dispute; and
 - (ii) 50% of the portion of the amount claimed in the invoice that is in Dispute,within the time specified in **clause 5.3(a)(i)**.
- (c) Upon resolution of any Dispute about an amount claimed in an invoice given by Aurizon Network, if the total amount which Aurizon Network was entitled to claim in the invoice (as resolved) is:
 - (i) more than the amount paid by the Access Holder, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 5.5** (from the date when the amount in Dispute would have been due and payable under **clause 5.3(a)(i)** but for **clause 5.4(b)**, until the date on which the difference, together with any interest, has been paid in full), must be paid by the Access Holder to Aurizon Network within 20 Business Days after the resolution of the Dispute; or
 - (ii) less than the amount paid by the Access Holder, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 5.5** (from the date when the amount in Dispute was paid by the Access Holder until the date on which the

credit is applied or the amount is paid (as applicable) under this **clause 5.4(c)(ii)**, must be:

- (A) applied by Aurizon Network as credit in favour of the Access Holder against the amount claimed in the next invoice to be issued by Aurizon Network to the Access Holder under **clause 5.2** after the resolution of the Dispute (and, if necessary, to subsequent invoices issued by Aurizon Network under **clause 5.2** until the amount of the difference (including any interest) has been fully credited in favour of the Access Holder against amounts payable under invoices issued by Aurizon Network to the Access Holder under **clause 5.2**); or
- (B) if there will be no further invoices issued by Aurizon Network to the Access Holder under **clause 5.2** after the resolution of the Dispute or the last credit referred to in **clause 5.4(c)(ii)(A)**, paid by Aurizon Network to the Access Holder within 20 Business Days after resolution of the Dispute or the last credit referred to in **clause 5.4(c)(ii)(A)** (as applicable).

5.5 Interest on overdue payments and Disputed amounts

- (a) Without prejudice to the rights, powers and remedies of a Party under this Agreement or otherwise at Law, 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, then that Party must pay interest on the outstanding amount calculated in accordance with this **clause 5.5**.
- (b) Interest accrues on outstanding amounts from the due date for payment until that amount, together with the interest on that amount, has been paid in full.
- (c) Interest under **clauses 5.4(c)(i), 5.4(c)(ii) and 5.5(b)** is calculated at the Default Rate. Any interest accrued but unpaid at the end of each Month is capitalised and, once capitalised, will itself bear interest.

5.6 Right of set-off

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

5.7 Consequences of failure to comply with Performance Levels

- (a) If an Operator nominated by the Access Holder under this Agreement does not comply with the Performance Levels imposed on it under a Train Operations Deed, then, subject to **clause 5.4**, the Access Holder must pay to Aurizon Network the amount (if any) determined in accordance with the relevant Train Operations Deed as a result of that failure, as part of the invoice issued by Aurizon Network for Access Charges and other charges for the Billing Period immediately following Aurizon Network becoming entitled to that amount provided that, if there is no next Billing Period, the Access Holder must pay such amount to Aurizon Network within 10 Business Days after receipt of an invoice from Aurizon Network.
- (b) If Aurizon Network does not comply with the Performance Levels imposed on it under a Train Operations Deed, then Aurizon Network will credit to

the Access Holder the amount (if any) determined in accordance with the relevant Train Operations Deed as a result of that failure by way of a deduction from the invoice issued by Aurizon Network for Access Charges and other charges for the Billing Period immediately following the Access Holder becoming entitled to that amount in accordance with **clause 5.7(c)**.

- (c) If the total amount which Aurizon Network must credit to the Access Holder under **clause 5.7(b)** is more than the amount under the invoice issued by Aurizon Network for Access Charges and other charges (after application of any other set-off or other credit owed to the Access Holder) for the Billing Period immediately following the Access Holder becoming entitled to that amount, then:
 - (i) the amount of the difference must be applied by Aurizon Network as credit in favour of the Access Holder against the amount claimed in the next invoice to be issued by Aurizon Network under **clause 5.2** and to subsequent invoices issued by Aurizon Network under **clause 5.2** until the amount of the difference has been fully credited in favour of the Access Holder against amounts payable under invoices issued by Aurizon Network under **clause 5.2**); or
 - (ii) if there is no next Billing Period, then Aurizon Network must pay such amount to the Access Holder within 10 Business Days after receipt of an invoice from the Access Holder.

6 Security

6.1 Requirement to provide Security after Commencement Date

- (a) This **clause 6.1** only applies if **item 3** of **Schedule 1** states that it applies.
- (b) On or before the date 10 Business Days prior to the Commitment Date, the Access Holder must deliver Security to Aurizon Network which satisfies the requirements of this **clause 6** for an amount of not less than the Security Amount.

6.2 Requirement to provide Security on certain events occurring

- (a) If at any time during the Term when the Access Holder is not required to provide Security to Aurizon Network under this **clause 6**:
 - (i) the Access Holder does not pay any amount (together with any interest) payable under this Agreement and which is not the subject of a Dispute by the due date for payment or, where there is no due date for payment, within five Business Days after Aurizon Network gives written notice to the Access Holder requiring payment; or
 - (ii) Aurizon Network considers (acting reasonably) that the Access Holder may:
 - (A) no longer be financially sound;
 - (B) no longer be able to meet its debts as and when they fall due; or
 - (C) not otherwise be capable of performing its obligations under this Agreement,

then the Access Holder must, within 10 Business Days after being required to do so by Aurizon Network, deliver Security to Aurizon Network which satisfies the requirements of this **clause 6** for an amount of not less than the Security Amount.

- (b) In considering whether to require the Access Holder to provide Security under **clause 6.2(a)(ii)**, Aurizon Network may take into consideration:
 - (i) expected future payment obligations under this Agreement and the financial performance of the Access Holder; and
 - (ii) the Access Holder ceasing to have an Acceptable Credit Rating.

6.3 Requirement to provide Security for the Security Amount

- (a) If the Access Holder is required to provide Security under this **clause 6**, the Security must be provided and maintained for an amount of not less than the Security Amount.
- (b) If at any time during the Term:
 - (i) the Access Holder is required to provide Security under this **clause 6**; and
 - (ii) the Security provided by the Access Holder to Aurizon Network under this **clause 6** is for an amount which is less than the Security Amount (including due to Aurizon Network having recourse to the Security under **clause 6.6**),

then the Access Holder must promptly (and in any event within 10 Business Days after being required to do so by Aurizon Network) deliver to Aurizon Network:

- (iii) additional Security; or
- (iv) replacement Security,

which satisfies the requirements of this **clause 6** so that Security is provided and maintained for an aggregate amount of not less than the Security Amount.

6.4 Requirement to provide Security for additional Train Service Type

Without limiting **clause 6.3**, if:

- (a) at any time during the Term:
 - (i) **Schedule 2** is varied to include an additional Train Service Type; or
 - (ii) the Train Description for an existing Train Service Type is varied;
- (b) at the time of the variation referred to in **clause 6.4(a)** the Access Holder is required to provide Security under this **clause 6**; and
- (c) at the time of the variation referred to in **clause 6.4(a)** the Security provided by the Access Holder to Aurizon Network under this **clause 6** is for an amount which is less than the amount which will be the Security Amount on and from, as applicable:
 - (i) the Train Service Commitment Date for that additional Train Service Type; or

- (ii) the date the variation to the Train Description for that existing Train Service Type takes effect,

having regard to the additional Access Charges payable, in the future, for that Train Service Type, then the Access Holder must promptly (and in any event within 10 Business Days before the applicable date specified in **clause 6.4(c)(i)** or **6.4(c)(ii)**) deliver to Aurizon Network:

- (iii) additional Security; or
- (iv) replacement Security,

which satisfies the requirements of this **clause 6** so that Security is provided and maintained for an aggregate amount of not less than the amount which will be the Security Amount on and from the applicable date specified in **clause 6.4(c)(i)** or **6.4(c)(ii)** (having regard to the additional Access Charges payable, in the future, for that Train Service Type).

6.5 Replacement of Security

- (a) The Access Holder may, with Aurizon Network's consent, replace any Security provided by the Access Holder under this **clause 6** with replacement Security which satisfies the requirements of this **clause 6**.
- (b) If the Security provided by an Access Holder under this **clause 6** is a bank guarantee that has an expiry date, then:
 - (i) the Access Holder must, at least 20 Business Days prior to the expiry of the bank guarantee, deliver to Aurizon Network replacement Security which satisfies the requirements of this **clause 6**; and
 - (ii) if the Access Holder does not deliver to Aurizon Network replacement Security in accordance with **clause 6.5(b)(i)**:
 - (A) Aurizon Network may, in its absolute discretion, draw on the existing bank guarantee;
 - (B) any such amount drawn by Aurizon Network (**Cash Deposit**) will be treated as a deposit of cash delivered by or on behalf of the Access Holder as Security under this Agreement in place of the relevant bank guarantee;
 - (C) this **clause 6** will apply (with any necessary changes) in respect of the Cash Deposit; and
 - (D) if requested by the Access Holder at any time, Aurizon Network must return the Cash Deposit to the Access Holder in exchange for the Access Holder delivering to Aurizon Network replacement Security which satisfies the requirements of this **clause 6**.

6.6 Recourse to Security

Aurizon Network may have recourse to the Security in respect of any amount which the Access Holder fails to pay under or in connection with this Agreement:

- (a) if the Access Holder fails to pay the amount by the due date for payment under this Agreement, Aurizon Network notifies the Access Holder of the payment default and the Access Holder fails to remedy the payment

default within 10 Business Days after the date the notice is given, following the expiry of such period;

- (b) if the amount is not payable by a specified date and the Access Holder fails to make payment within 10 Business Days after Aurizon Network has requested payment of such amount, following the expiry of such period; or
- (c) if the amount is the subject of a Dispute, in accordance with **clause 5.4(c)(i)**.

6.7 Review of requirement to provide Security

If at any time during the Term, the Access Holder:

- (a) is required to provide Security under this **clause 6**; and
- (b) considers that its financial circumstances have changed such that it should no longer be required to provide Security,

then the Access Holder may request (provided that the Access Holder must not request more than once in any Year) that Aurizon Network review the creditworthiness of the Access Holder and Aurizon Network will undertake such a review when requested.

6.8 Return of Security

Aurizon Network must return to the Access Holder (and, where appropriate, give the Access Holder any necessary releases in relation to) any Security provided by the Access Holder under this **clause 6**:

- (a) subject to Aurizon Network's rights of recourse to the Security under **clause 6.6**, promptly and in any event within 10 Business Days after the date of termination or expiry of this Agreement;
- (b) on the Access Holder delivering to Aurizon Network any replacement Security under **clause 6.3(b)(iv)**, **6.4(c)(iv)** or **6.5** which satisfies the requirements of this **clause 6**; or
- (c) if, after a review pursuant to **clause 6.7**, Aurizon Network considers, acting reasonably, that it is no longer necessary for the Access Holder to provide Aurizon Network with Security under this **clause 6**.

7 Accreditation

- (a) Aurizon Network must have and maintain Accreditation to the extent required to perform its obligations and exercise its rights under this Agreement and, if requested to do so in writing by the Access Holder, provide to the Access Holder copies of documentation evidencing currency, renewal or amendment of its Accreditation within five Business Days of such request.
- (b) Aurizon Network must notify the Access Holder as soon as possible of any notice from an Authority affecting, or likely to affect, its Accreditation, and must provide a copy of that notice to the Access Holder on request.

8 Resumption of Access Rights

- (a) Unless otherwise specified in this Agreement, Aurizon Network may resume some or all of the Access Rights in accordance with the Resumption Provisions which form part of this Agreement under **clause 3**.
- (b) Within the later of two Business Days after:
 - (i) a Resumption Notice is given to the Access Holder; and
 - (ii) the resolution of the Dispute if:
 - (A) there is a Dispute in connection with a decision by Aurizon Network to resume the Access Holder's Access Rights; and
 - (B) the outcome of the Dispute is that the Access Rights may be resumed,

the Access Holder may give notice to Aurizon Network and each affected Operator in accordance with **clause 4.5(a)** to vary the Access Rights which the Access Holder has allocated to an Operator to take into account any resumption of Access Rights determined or agreed under the Resumption Provisions which form part of this Agreement under **clause 3** or as determined under the relevant dispute resolution process.

- (c) Except to the extent that the Access Holder has given a notice as contemplated in **clause 8(b)**, the resumption of Access Rights for each Train Service Type:
 - (i) firstly, are deemed to reduce the Access Rights for that Train Service Type for which the Access Holder has not nominated an Operator; and
 - (ii) if, after the operation of **clause 8(c)(i)**, there is an Over-Allocation for the relevant Train Service Type, **clause 4.7** applies in respect of that Over-Allocation.

9 Reduction of Conditional Access Rights due to Capacity Shortfall

9.1 Application

- (a) This **clause 9** only applies in respect of a Train Service Type if the Train Description for that Train Service Type specifies that this **clause 9** applies in respect of that Train Service Type.
- (b) If this **clause 9** applies in respect of a Train Service Type, this **clause 9** only applies to the extent that it:
 - (i) is not inconsistent with the Access Undertaking (as amended by any Change in Access Undertaking); and
 - (ii) does not oblige Aurizon Network to do or not do anything that would cause Aurizon Network to breach the Access Undertaking (as amended by any Change in Access Undertaking).

9.2 Conditional Access Rights

If this **clause 9** applies in respect of a Train Service Type:

- (a) the Access Rights for that Train Service Type under this Agreement (**Conditional Access Rights**) are conditional upon the completion and commissioning of the Expansion specified in the Train Description for that Train Service Type;
- (b) despite the Train Service Commitment Date specified in the Train Description for the Conditional Access Rights, the Train Service Commitment Date for the Conditional Access Rights will be taken to be the later of:
 - (i) the Train Service Commitment Date for the Conditional Access Rights specified in the Train Description for the Conditional Access Rights; and
 - (ii) the date upon which all Segments of the Expansion are completed and commissioned.

9.3 Effect on Operator nominations

- (a) Within the later of:
 - (i) two Business Days after the Capacity Assessment Notice is given to the Access Holder in accordance with the Conditional Access Provisions which form part of this Agreement under **clause 3**; and
 - (ii) if the Access Holder disputes the Capacity Assessment Notice, two Business Days after the resolution of the Dispute,

the Access Holder may notify Aurizon Network and each affected Operator in accordance with **clause 4.5(a)** to vary the Access Rights which the Access Holder has allocated to an Operator to take into account the variation to the Conditional Access Rights under the Conditional Access Provisions which form part of this Agreement under **clause 3**.
- (b) Except to the extent that the Access Holder has given a notice as contemplated in **clause 9.3(a)** in respect of the variation to the Conditional Access Rights under the Conditional Access Provisions which form part of this Agreement under **clause 3** for each affected Train Service Type, the variation to the Conditional Access Rights for each affected Train Service Type:
 - (i) are deemed to reduce the Access Rights for that Train Service Type for which the Access Holder has not nominated an Operator; and
 - (ii) if, after the operation of **clause 9.3(b)(i)**, there remains an Over-Allocation for the relevant Train Service Type, **clause 4.7** applies in respect of that Over-Allocation.

9.4 Future capacity developments

If any Conditional Access Rights are varied under this **clause 9**, the Access Holder acknowledges and agrees that Aurizon Network will only be obliged to develop additional Capacity, and to grant the Access Holder Access Rights in respect of any such additional Capacity, if, and to the extent that, it is obliged to do so under the Access Undertaking (as amended by any Change in Access Undertaking).

[QRC Note: As discussed in the QRC's covering submission, these payload

~~provisions should be moved to the Undertaking]~~

10 Access Holder initiated increase to Maximum Payload

10.1 Request for increased Maximum Payload

- (a) At any time during the Term, the Access Holder may, with the consent of each relevant Customer of the Access Holder (if any) or the consent of each relevant Operator where the Access Holder is not also the Operator, give Aurizon Network a notice requesting that Aurizon Network consider increasing the Maximum Payload for a Train Service Type (**Notice of Enquiry**).
- (b) A Notice of Enquiry must ~~specify~~:
- (i) specify the proposed increased Maximum Payload for the relevant Train Service Type (**Proposed Maximum Payload**); ~~and~~
 - (ii) specify the date on which the Access Holder proposes that the Proposed Maximum Payload for that Train Service Type takes effect.;
 - ~~(e)(iii) If specify whether the Proposed Maximum Payload exceeds Access Holder elects to relinquish or maintain the maximum Payload of the Authorised Rollingstock Configuration Surplus Access Rights for the Train Service Type which has the greatest maximum Payload, the Notice of Enquiry must.;~~
 - ~~(f)(iv) specify the details of the proposed Rollingstock Configuration for the Train Service Type (including the maximum Payload of the proposed Rollingstock Configuration which must not be less than the Proposed Maximum Payload); and~~
 - ~~(ii)(v) be accompanied by an 'Authorisation Request Notice Notice' (as defined in an the relevant Operator's Train Operations Deed) in respect of the proposed Rollingstock Configuration from each Operator which operates Train Services in respect of that Train Service Type.;~~
 - (A) which operates Train Services in respect of that Train Service Type; and
 - (B) in respect of which it is proposed to increase the Maximum Payload for that Train Service Type; and
 - (vi) include the written consent of:
 - (A) each relevant Customer of the Access Holder (if any); or
 - (B) each relevant Operator where the Access Holder is not also the Operator.

10.2 Response Notice and Variation Request Notice

- (a) Aurizon Network will consider (acting reasonably) whether or not the Proposed Maximum Payload for the Train Service Type specified in the Notice of Enquiry can be accommodated ~~in accordance with the following principles~~ (having regard to whether the Access Holder elected in the

Notice of Enquiry to relinquish or maintain the Surplus Access Rights for the Train Service Type), which will be taken to be the case if:

- ~~(i) whether the Proposed Maximum Payload would have a material adverse effect on an Access Seeker or another Access Holder;~~
- ~~(ii) whether the Infrastructure is capable of handling the Proposed Maximum Payload;~~
- ~~(iii) whether the Proposed Maximum Payload can be accomplished without requiring additional Capacity;~~
- ~~(iv) the outcomes of consultation with Customers, including in respect of any impacts under the commercial arrangements of those Customers (for example, an agreement regarding access conditions); and~~

~~(v) insert. [QRC Note: for further discussion.]~~

- (i) the Access Holder demonstrates to the satisfaction of Aurizon Network (acting reasonably) that it holds, or has the benefit of, or is reasonably likely to hold, or have the benefit of, Supply Chain Rights for Train Services operated using the proposed Rollingstock Configuration for the Train Service Type specified in the Notice of Enquiry on and from the Variation Effective Date; and
- (ii) Aurizon Network determines (acting reasonably), through a capacity assessment, that the increase to the Proposed Maximum Payload, and the operation of Train Services utilising the proposed Rollingstock Configuration, for the Train Service Type:
 - (A) will not utilise more Capacity than the Existing Capacity allocated to the Train Service Type under this Agreement; or
 - (B) will utilise more Capacity than the Existing Capacity allocated to the Train Service Type under this Agreement but there is sufficient Available Capacity to accommodate the additional Capacity that will be utilised; and
- (iii) Aurizon Network determines (acting reasonably) that the operation of Train Services utilising the proposed Rollingstock Configuration specified in the Notice of Enquiry or the utilisation of additional Capacity (if **clause 10.2(a)(ii)(B)** applies) will not be likely to cause Aurizon Network to be unable to comply with its obligations under any other access agreement or train operations deed or with applicable Rollingstock Interface Standards.

(b) Within 20 Business Days after the Access Holder gives Aurizon Network a Notice of Enquiry in respect of a Train Service Type, Aurizon Network must give the Access Holder a notice (**Response Notice**) specifying:

- (i) whether or not the Proposed Maximum Payload for the Train Service Type specified in the Notice of Enquiry can be accommodated in ~~consideration of the principles outlined in accordance with~~ **clause 10.2(a)** ~~10.2(a)~~ (including its reasons for that decision); and
- (ii) if so:

- (A) the Revised Nominal Payload [for the Train Service Type](#) (calculated in accordance with **clause 13.1**);
- (B) [if the Access Holder elected in the Notice of Enquiry to relinquish the Surplus Access Rights for the Train Service Type](#):
 - ~~(B)~~(1) the Revised Nominated Monthly Train Services [for the Train Service Type](#) (calculated in accordance with **clause 13.21.1**); **and**
 - (2) [the SAR Relinquishment Fee for the Surplus Access Rights for the Train Service Type](#) (calculated in accordance with **clause 13.313.5**);
- (C) [the Surplus Access Rights for the Train Service Type \(calculated in accordance with clause 13.3\)](#);
- (D) [if the Access Holder elected in the Notice of Enquiry to maintain the Surplus Access Rights for the Train Service Type](#), the Revised Indicative Tonnage (calculated in accordance with **clause 13.413.4**); **and**

~~(E)~~ [Aurizon the \[Relinquishment Fee\]](#) that would be payable under ~~[insert]~~ in respect of the relinquishment of the Surplus Access Rights by the Access Holder; **and**

~~[Drafting note: Aurizon Network and the QRC are working through a mechanism to avoid socialisation of costs among other system users. In its initial form, this mechanism contemplates that where Train Paths are relinquished under these provisions, the Access Holder will pay a fee equal to the AT2 component of access charges that would have been payable in relation to the Train Paths that have been relinquished. Once the mechanism has been fully worked through, Aurizon Network will provide drafting in relation to the appropriate fee that will be payable.]~~

~~(F)~~(E) [Network's estimate \(acting reasonably\) of](#) the earliest date on which the increase in the Maximum Payload for the Train Service Type could take effect.

- (c) Within 20 Business Days after Aurizon Network gives the Access Holder a Response Notice that specifies that the Proposed Maximum Payload for a Train Service Type specified in the [relevant](#) Notice of Enquiry can be accommodated, the Access Holder may give Aurizon Network a notice (**Variation Request Notice**) which:
 - (i) requests that Aurizon Network increase the Maximum Payload for the Train Service Type to the Proposed Maximum Payload specified in the [relevant](#) Notice of Enquiry with effect on [and from](#) a date specified in ~~that notice~~ [the Variation Request Notice](#) (which date must not be earlier, or more than ~~six~~[three](#) months later, than the date specified in the relevant Response Notice in accordance with **clause 1.1(a)(i)(A)**); **and**

~~(ii) elects to either:~~

~~(A) relinquish the Surplus Access Rights; or~~

~~(B) maintain the Surplus Access Rights; and~~

~~(iii)~~ (ii) sets out the details of any changes to the nominations previously given under **clause 4.3** or **clause 4.5** to take ~~into account~~ effect from the ~~relinquishment or maintenance of the Surplus Access Rights~~ Variation Effective Date.

10.3 Dispute

- (a) An Access Holder may, within 20 Business Days after Aurizon Network gives the Response Notice to the Access Holder, give Aurizon Network a Dispute Notice which Disputes any of the ~~Response Notice~~ following in accordance with **clause 28.2**:
- (i) Aurizon Network's determination in accordance with **clause 10.2(a)** whether or not the Proposed Maximum Payload for the Train Service Type specified in the Notice of Enquiry can be accommodated; or
- (ii) the Revised Nominal Payload, the Revised Nominated Monthly Train Services (if applicable), the Surplus Access Rights, the Revised Indicative Tonnage (if applicable) or the SAR Relinquishment Fee for the Surplus Access Rights (if applicable), for the Train Service Type specified in the Response Notice.
- (b) If a Dispute referred to in **clause 10.3(a)** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine the Dispute in accordance with **clause 28.3**.
- (c) If the Access Holder does not give Aurizon Network a Dispute Notice within the time referred to in **clause 10.3(a)**, then:
- (i) the Access Holder must not give Aurizon Network a Dispute Notice Disputing the ~~relevant Response Notice~~; matters referred to in **clause 10.3(a)**;
- (ii) any such Dispute Notice which is given by the Access Holder will be taken to be of no effect; and
- (iii) the Access Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

10.4 Consequences of a Variation Request Notice

- (a) The effective date of a Variation Request Notice is the latest of:
- (i) the date specified in the Variation Request Notice; in accordance with **clause 10.2(c)(i)**;
- (ii) ~~if clause 10.1(c) applies,~~ the date the proposed Rollingstock Configuration for the Train Service Type specified in the 'Authorisation Request ~~Notice~~ Notice' (as defined in the relevant Operator's Train Operations Deed) becomes an 'Authorised Rollingstock ~~Configuration~~ Configuration' (as defined in the relevant Operator's Train Operations Deed) for the Train Service Type; and
- (iii) if the Access Holder ~~elects~~ selected in the relevant Notice of Enquiry

to relinquish the Surplus Access Rights for the Train Service Type, the date the Access Holder pays Aurizon Network the ~~[SAR Relinquishment Fee]~~ in respect of that relinquishment, for the Surplus Access Rights for the Train Service Type.

(Variation Effective Date).

~~(b)~~ If the Access Holder gives Aurizon Network a Variation Request Notice in respect of a Train Service Type ~~for which it elects~~ and the Access Holder elected in the relevant Notice of Enquiry to relinquish the Surplus Access Rights for the Train Service Type, then:

~~(i)~~ ~~the Access Holder will be taken, at the same time, to have given Aurizon Network a Notice of Intention to Relinquish under the Relinquishment Provisions which form part of this Agreement under clause 13.5 in respect of which:~~

~~(A)~~ ~~the Nominated Access Rights under those Relinquishment Provisions will be taken to be the Surplus Access Rights for the Train Service Type specified in the relevant Response Notice; and~~

~~(B)~~ ~~the Relinquishment Date under those Relinquishment Provisions will be taken to be the date specified in the Variation Request Notice; and~~

~~(ii)~~ (b) with effect on the Variation Effective Date:

~~(A)~~ (i) the Maximum Payload for the Train Service Type will be taken to be varied to be the Proposed Maximum Payload for the Train Service Type (as specified in the relevant Notice of Enquiry);

~~(B)~~ (ii) the Nominal Payload for the Train Service Type will be taken to be varied to be the Revised Nominal Payload for the Train Service Type (as specified in the relevant Response Notice); or, if clause 10.3(a) applies, as agreed or determined through the Dispute resolution process under clause 28;

~~(C)~~ (iii) the Nominated Monthly Train Services for the Train Service Type will be taken to be varied to be the Revised Nominated Monthly Train Services for the Train Service Type (as specified in the relevant Response Notice); and or, if clause 10.3(a) applies, as agreed or determined through the Dispute resolution process under clause 28;

~~(D)~~ (iv) the Indicative Tonnage for the Train Service Type will remain unchanged; and

~~[QRC Note: Changes to relinquishment provisions will be required to tie in with the relinquishment fee under this clause.]~~

(v) the Surplus Access Rights for the Train Service Type (as specified in the relevant Response Notice or, if clause 10.3(a) applies, as agreed or determined through the Dispute resolution process under clause 28) will be relinquished and will cease to form part of the Access Rights.

- (c) If the Access Holder gives Aurizon Network a Variation Request Notice in respect of a Train Service Type ~~for which it elects~~ and the Access Holder elected in the relevant Notice of Enquiry to maintain the Surplus Access Rights for the Train Service Type, then ~~this Agreement will be varied~~ with effect on the Variation Effective Date ~~so that:~~
- (i) the Maximum Payload for the Train Service Type will be taken to be the Proposed Maximum Payload for the Train Service Type (as specified in the relevant Notice of Enquiry);
 - (ii) the Nominal Payload for the Train Service Type will be taken to be the Revised Nominal Payload for the Train Service Type (as specified in the relevant Response Notice); or, if clause 10.3(a) applies, as agreed or determined through the Dispute resolution process under clause 28;
 - (iii) the Indicative Tonnage for the Train Service Type will be taken to be the Revised Indicative Tonnage for the Train Service Type (as specified in the relevant Response Notice); and or, if clause 10.3(a) applies, as agreed or determined through the Dispute resolution process under clause 28;
 - (iv) the Nominated Monthly Train Services for the Train Service Type will remain unchanged; and
 - (v) the Surplus Access Rights for the Train Service Type will continue to form part of the Access Rights.

11 Reduction of Nominated Monthly Train Services if Maximum Payload exceeded

11.1 Notification of non-compliance with Maximum Payload

- (a) If, at a point in time (**Assessment Date**), the Average Annual Payload for a Train Service Type operated by a particular Operator (**Defaulting Operator**) exceeds the Maximum Payload for that Train Service Type, then Aurizon Network may, within 20 Business Days after the Assessment Date, give the Access Holder ~~and~~, the Defaulting Operator and the relevant Customer (if any) a notice requiring the Access Holder ~~to elect~~ (with the written consent of the Customer) to either:
- (i) notify Aurizon Network that it elects to maintain ~~its~~ the existing Maximum Payload for the Train Service Type and ensure the Defaulting Operator rectifies its ~~behaviour to comply~~ non-compliance with ~~that~~ the Maximum Payload for the Train Service Type; or
 - (ii) ~~require~~ give a Notice of Enquiry requesting an increase to ~~its~~ the Maximum Payload by giving a Notice of Enquiry for the Train Service Type in accordance with **clause 1**,
- (Reduction Notice).**
- (b) The Reduction Notice must specify the Average Annual Payload for the Affected Train Service Type as at the Assessment Date, including reasonable details of the calculation of that amount.
- (c) Subject to **clause 11.3, 11.1(d)**, if:

~~(e)~~ — an Access Holder ~~elects~~~~fails~~ to ~~give~~~~provide~~ a ~~Notice of Enquiry~~~~notice~~ under ~~clause 11.1(a)(i) or clause 11.1(a)(ii)~~ the relevant Train Service Type is taken to be the Affected Train Service Type.

~~(i)~~ ~~If an Access Holder fails to provide a Notice of Enquiry~~ within 20 Business Days ~~of~~~~after~~ receiving a Reduction Notice under ~~clause 11.1(a)~~~~11.1(a)~~ (~~and~~~~or~~, if the Access Holder has ~~not~~ ~~disputed~~~~Disputed~~ that Reduction Notice in accordance with ~~clause 11.3~~~~11.3~~, ~~within 20 Business Days after the date of the resolution of that Dispute~~; or

~~(ii)~~ ~~an Access Holder fails to provide a Variation Request Notice under clause 10.2(c) within the time required by that clause where:~~

~~(A)~~ ~~the Access Holder will be deemed to have provided a previously gave a Notice of Enquiry in accordance with clause 11.1(a)(ii); and~~

~~(B)~~ ~~Aurizon Network gave a Response Notice of Enquiry which~~~~that~~ specifies ~~that~~ the Proposed Maximum Payload: ~~for the Affected Train Service Type specified in that Notice of Enquiry can be accommodated,~~

~~{~~~~Aurizon Network may give the Access Holder, the Defaulting Operator and the relevant Customer (if any) notice that, with effect on the date that is three months after the date of that notice:~~

~~(iii)~~ ~~the Maximum Payload for the Affected Train Service Type will be taken to be varied to:~~

~~(A)~~ ~~if clause 1.1(a)(i) applies:~~

~~(i)~~ ~~(1)~~ the amount which is the maximum Payload of the Train Services operated by the Defaulting Operator of the Relevant Rollingstock Configuration for the ~~Affected~~ Train Service Type (rounded to the nearest whole tonne) which was the Relevant Rollingstock Configuration for the ~~Affected~~ Train Service Type which was most used in the operation of Train Services for the Affected Train Service Type by the Defaulting Operator during the 12 month period ending on the Assessment Date; ~~or~~ ~~[QRC Note: This is the benchmark/formula proposed by Aurizon Network. To consider whether this is appropriate. It may be too inflexible to require the new proposed maximum to be a certain figure.]; or~~

~~(ii)~~ ~~(2)~~ if disputed by the Access Holder under ~~clause 11.3~~, the amount agreed or determined through the Dispute resolution process under ~~clause 28~~;

~~(B)~~ ~~if clause 11.1(c)(ii) applies, the Proposed Maximum Payload specified in the Notice of Enquiry;~~

~~(iv)~~ ~~the Nominal Payload for the Affected Train Service Type will be taken to be varied to the Revised Nominal Payload for the Train Service Type (calculated in accordance with clause 13.1 or if~~

disputed by the Access Holder under **clause 11.3**, the amount agreed or determined through the Dispute resolution process under **clause 28**);

- (v) the Indicative Tonnage for the Affected Train Service Type will remain unchanged;
- (vi) the Nominated Monthly Train Services for the Affected Train Service Type will be taken to be varied to the Revised Nominated Monthly Train Services for the Train Service Type (calculated in accordance with **clause 1.1** or if disputed by the Access Holder under **clause 11.3**, the amount agreed or determined through the Dispute resolution process under **clause 28**);
- (vii) the Surplus Access Rights for the Train Service Type (calculated in accordance with **clause 13.3** or if disputed by the Access Holder under **clause 11.3**, the amount agreed or determined through the Dispute resolution process under **clause 28**) will be relinquished and cease to form part of the Access Rights; and
- (viii) the Access Holder must pay the SAR Relinquishment Fee for the Surplus Access Rights for the Affected Train Service Type (calculated in accordance with **clause 13.5** or if disputed by the Access Holder under **clause 11.3**, the amount agreed or determined through the Dispute resolution process under **clause 28**).

(d) **Clause 11.1(c)** does not apply where:

- (i) Aurizon Network withdraws a Reduction Notice; or
- (ii) a Reduction Notice is Disputed in accordance with **clause 11.3** and the resolution of that Dispute determines that the Reduction Notice should not have been given (including if **clause 11.3(c)** applies).

(e) If the Access Holder gives a Notice of Enquiry for an Affected Train Service Type under this **clause 11.1**, Aurizon Network may give a Response Notice that specifies that the Proposed Maximum Payload for the Affected Train Service Type specified in that Notice of Enquiry can be accommodated even if the Access Holder has not demonstrated the matters specified in **clause 1.1(a)(i)**.

11.2 Determining the Affected Train Service Type

- (a) **If Aurizon Network gives the Access Holder a Reduction Notice and** the relevant Train Service Type (**Split Train Service Type**) operated by the Defaulting Operator which has exceeded the Maximum Payload is also operated by another Operator (**Non-Defaulting Operator**):
 - (i) the Train Service Type operated by the Defaulting Operator (**New Train Service Type**); and
 - (ii) the Train Service Type operated by the Non-Defaulting Operator (**Original Train Service Type**),

are deemed to be two different Train Service Types on the basis that:

- (iii) the "Nominated Monthly Train Services (for a 30 day Month)" for the New Train Service Type is deemed to be the "Nominated Monthly

Train Services (for a 30 day Month)” allocated to the Defaulting Operator in respect of the Split Train Service Type as at the Assessment Date;

- (iv) the “Nominated Monthly Train Services (for a 30 day Month)” for the Original Train Service Type is deemed to be the “Nominated Monthly Train Services (for a 30 day Month)” which was not allocated to the Defaulting Operator in respect of the Split Train Service Type as at the Assessment Date; and
- (v) subject to **clauses 11.2(a)(iii)** and **11.2(a)(iv)**, the Train Description for:
 - (A) the New Train Service Type; and
 - (B) the Original Train Service Type,is otherwise the same as for the Split Train Service Type.

- (b) The **Affected Train Service Type** is:
 - (i) if **clause 11.2(a)** applies, the New Train Service Type operated by the Defaulting Operator; and
 - (ii) in any other case, the Train Service Type operated by the Defaulting Operator which has exceeded the Maximum Payload.

11.3 Dispute in relation to Reduction Notice

- (a) An Access Holder may, within 20 Business Days after Aurizon Network gives:
 - (i) the Reduction Notice to the Access Holder, give Aurizon Network a Dispute Notice which Disputes any of the ~~Reduction Notice~~ following in accordance with **clause 28**:
 - (A) the Average Annual Payload for the Affected Train Service Type specified in that notice;
 - (B) whether the Average Annual Payload for the Affected Train Service Type exceeds the Maximum Payload for the Affected Train Service Type; or
 - (C) Aurizon Network’s determination of the Affected Train Service Type in accordance with **clause 11.2**; or
 - (ii) a notice to the Access Holder under **clause 11.1(c)**, give Aurizon Network a Dispute Notice which Disputes any of the following in accordance with **clause 28**:
 - (A) the amount which will be the Proposed Maximum Payload for the Affected Train Service Type in accordance with **clause 11.1(c)(iii)(A)(1)**; or
 - (B) the Revised Nominal Payload, the Revised Nominated Monthly Train Services, the Surplus Access Rights or the SAR Relinquishment Fee for the Surplus Access Rights, for the Train Service Type specified in the notice.

(b) If a Dispute referred to in **clause 11.3(a)** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine the Dispute in accordance with **clause 28.3**.

(c) If it is agreed or determined through the Dispute resolution process that the Average Annual Payload for a Affected Train Service Type does not exceed the Maximum Payload for the Affected Train Service Type, then Aurizon Network will be taken not to have given the Reduction Notice.

~~(e)~~(d) If the Access Holder does not give Aurizon Network a Dispute Notice within the time referred to in **clause 11.3(a)**, then:

- (i) the Access Holder must not give Aurizon Network a Dispute Notice Disputing the ~~relevant Reduction Notice;~~ matters referred to in **clause 11.3(a)**;
- (ii) any such Dispute Notice which is given by the Access Holder will be taken to be of no effect; and
- (iii) the Access Holder will not have, and must not make, any Claim against Aurizon Network in respect of that Dispute.

11.4 No prejudice to other rights

Subject to ~~clause 13.5~~**13.6**, this **clause 11** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Access Holder, Defaulting Operator or any other Operator with the Train Description for a Train Service Type.

~~12 Increase of Nominal Payload~~

12 [not used]

~~(a) Aurizon Network may notify the QCA that it is considering increasing the Nominal Payload for a Train Service Type of one or more Access Holders (**Affected Access Holders**) if:~~

- ~~(i) the increase to the Nominal Payload for the Train Service Type is required as part of an Expansion process; or~~
- ~~(ii) there is demand for additional Capacity on the relevant part of the Network on which the Train Services for those Train Service Type(s) are operated and:
 - ~~(A) that demand cannot currently be met;~~
 - ~~(B) the most prudent and efficient way of meeting that demand is to require an increase to the Nominal Payloads; and~~
 - ~~(C) Aurizon Network has first consulted with all relevant Access Holders and relevant Railway Operators about other options for increasing the Capacity of the relevant part of the Network.~~~~

~~(b) The QCA will consider a notice from Aurizon Network under clause 12(a) and either approve or reject the increase in Nominal Payload having regard to:~~

- ~~(i) — consultation with the Affected Access Holders and relevant Customers and Operators of those Affected Access Holders (Affected Parties);~~
 - ~~(ii) — whether the increased Nominal Payload is capable of being accommodated without having a material adverse effect on the Affected Parties or other Access Holders;~~
 - ~~(iii) — whether there is a more prudent way of addressing the demand for additional Capacity; and~~
 - ~~(iv) — whether any compensation should be payable to any of the Affected Parties, including:

 - ~~(A) — compensation for the reasonable costs of increasing the Access Holders' facilities (such as a train load out facility and rail loop); and~~
 - ~~(B) — compensation for increased rail haulage charges.~~~~
- (e) Aurizon Network can only require an Access Holder to change its Nominal Payload where approved by the QCA and subject to any conditions which the QCA may require.**

13 Calculations for changes to payload

13.1 Calculation of Revised Nominal Payload

The Revised Nominal Payload for a Train Service Type is the amount (expressed as tonnes) calculated in accordance with the following formula:

$$\text{RNP} = \text{PMP} \times \text{LEF}$$

where:

~~PMP~~RNP = the ~~Proposed Maximum~~Revised Nominal Payload for the Train Service Type (rounded down to the nearest whole tonne)

~~RNP~~PMP = the ~~Revised Nominal~~Proposed Maximum Payload for the Train Service Type or, if applicable, the amount determined in accordance with clause 11.1(c)(iii)(A) for the Train Service Type (rounded to the nearest whole tonne)

LEF = Loading Efficiency Factor (as defined in the definition of "Gross Tonnes" in item 1.1 of schedule 4) for a Train Service for the Train Service Type.

13.2 Calculation of Revised Nominated Monthly Train Services

The Revised Nominated Monthly Train Services for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

$$\text{RNMTS} = 2 \times \text{Loaded Train Services}$$

where:

RNMTS	=	the Revised Nominated Monthly Train Services for the Train Service Type
Loaded Train Services	=	IT/RNP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)
IT	=	the Indicative Tonnage for the Train Service Type
RNP	=	the Revised Nominal Payload for (if the Train Service Type calculation is being undertaken under clause 10.2(b)(ii)(B) or clause 11.1(c)(vi))

13.3 Calculation of Surplus Access Rights

The Surplus Access Rights [for a Train Service Type](#) is the difference between the Nominated Monthly Train Services for the Train Service Type and the Revised Nominated Monthly Train Services for the Train Service Type.

13.4 Calculation of Revised Indicative Tonnage

The Revised Indicative Tonnage [for a Train Service Type](#) is the number of Train Services calculated in accordance with the following formula:

$$\text{Revised Indicative Tonnage} = \frac{\text{RNMTS}}{\text{NMTS}} \times \text{RNP}$$

where:

RNMTS	=	the Revised Nominated Monthly Train Services for the Train Service Type
RNP	=	the Revised Nominal Payload for the Train Service Type

13.5 Calculation of SAR Relinquishment Fee

[The SAR Relinquishment Fee for the Surplus Access Rights for a Train Service Type is the amount equivalent to the present value, calculated at the Discount Rate, of the payment of the aggregate AT2 Component of the TOP Charges for the Surplus Access Rights that would have been payable for the remainder of the Term assuming:](#)

- [\(a\) that the Surplus Access Rights were not relinquished; and](#)
- [\(b\) the Surplus Access Rights were not operated for the Access Holder for a reason other than Aurizon Network Cause and TOP Charges are payable for the remainder of the Term.](#)

~~13.5~~ 13.6 **No resumption during process to change payload**

Where ~~clause 1~~, [or clause 11](#) ~~or clause 12~~ has been triggered by an Access Holder or Aurizon Network, Aurizon Network must not take steps to resume any Access Rights in accordance with **clause 8**.

14 Relinquishment of Access Rights

The Access Holder may relinquish some or all of the Access Rights in accordance with the Relinquishment Provisions which form part of this Agreement under **clause 3**.

15 Transfer of Access Rights by Access Holder

The Access Holder may Transfer all or part of the Access Rights to itself or a Third Party in accordance with the Transfer Provisions which form part of this Agreement under **clause 3**.

16 Reduction Factor

16.1 Determination of the Reduction Factor

If Nominated Access Rights are intended to be relinquished or transferred under the Relinquishment Provisions or the Transfer Provisions which form part of this Agreement under **clause 3**, the Reduction Factor must be calculated in accordance with the Reduction Factor Provisions which form part of this Agreement under **clause 3**.

16.2 Replacement Access Agreement

If Aurizon Network identifies an opportunity for it to enter into an Access Agreement with an existing or prospective Network Customer that would result in a lessening of the Relinquishment Fee or Transfer Fee (as applicable) that would otherwise be payable to Aurizon Network under the Relinquishment Provisions or the Transfer Provisions which form part of this Agreement under **clause 3** (as applicable), Aurizon Network will not unreasonably delay the process for negotiating and executing an Access Agreement with that existing or prospective Network Customer.

17 Resumptions, reductions, relinquishments and transfers - General

17.1 Termination where no Access Rights remain

- (a) Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this Agreement (including under the Resumption Provisions, the Conditional Access Provisions, the Relinquishment Provisions and the Transfer Provisions which form part of this Agreement under **clause 3** and **clauses 8, 9, 14, 15** and **29.6**) to the extent that there is no longer any Access Rights remaining the subject of this Agreement, then Aurizon Network may terminate this Agreement by notice to the Access Holder (without prejudice to those provisions which are stated to survive this Agreement).
- (b) Any termination under this **clause 17.1** is without prejudice to any rights of any Party which accrued on or before termination.

17.2 Effect on entitlement to operate and Access Charge Rates

Where Access Rights have been resumed, reduced, relinquished or transferred in accordance with this Agreement (including under the Resumption Provisions, the Conditional Access Provisions, the Relinquishment Provisions and the

Transfer Provisions which form part of this Agreement under **clause 3** and **clauses 8, 9, 11, 14, 15** and **29.6**), then for the avoidance of doubt:

- (a) the Access Holder's entitlement to have an Operator operate Train Services is also reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights;
- (b) the Access Holder's Nominated Monthly Train Services for each applicable Train Service Type will be taken to be varied to be reduced in accordance with that resumption, reduction, relinquishment or transfer of Access Rights; and
- (c) the Access Holder will no longer be obliged to pay Access Charges in respect of the resumed, reduced, relinquished or transferred Access Rights (except for any such Access Charges that accrued prior to the resumption, reduction, relinquishment or transfer, including any TOP Charge payable in respect of the part of the Year prior to the resumption, reduction, relinquishment or transfer).

17.3 No compensation or liability

- (a) Except for any payment specifically provided in this Agreement or liability for any breach by Aurizon Network of this Agreement, Aurizon Network is not liable for any loss or damage, however caused (including in contract, tort (including negligence) or otherwise) suffered or incurred by the Access Holder in connection with any resumption, reduction, relinquishment or transfer of Access Rights in accordance with the Resumption Provisions, the Conditional Access Provisions, the Relinquishment Provisions and the Transfer Provisions which form part of this Agreement under **clause 3** and **clauses 8, 9, 10, 15** and **29.6**.
- (b) The Access Holder releases Aurizon Network from any Claim for loss or damage referred to in **clause 17.3(a)** that the Access Holder may otherwise have.

18 Consequences of a failure of an Operator to satisfy conditions

18.1 Reduction of allocation of Access Rights

If:

- (a) an Operator (**Defaulting Operator**) fails to satisfy the conditions for:
 - (i) the commencement of Train Services under clause 10.2 of its Train Operations Deed; or
 - (ii) the commencement of Train Services for a Train Service Type under clause 10.3 of its Train Operations Deed; and
- (b) Aurizon Network has given a notice to the Access Holder and the Defaulting Operator in accordance with clause 10.2(c) or clause 10.3(c)(iv)(A)(1) (as applicable) of the Defaulting Operator's Train Operations Deed,

then, on such notice being given by Aurizon Network:

- (c) the Access Holder is deemed to have withdrawn its allocation of Access Rights to the Defaulting Operator in respect of:
 - (i) in the case of a notice under clause 10.2(c) of the Defaulting Operator's Train Operations Deed, all of the Access Rights for which the Defaulting Operator has been nominated; and
 - (ii) in the case of a notice under clause 10.3(c)(iii) of the Defaulting Operator's Train Operations Deed, that part of the Access Rights for which the Defaulting Operator has been nominated but in respect of which the Defaulting Operator has failed to satisfy the relevant conditions in clause 10.3 of its Train Operations Deed; and
- (d) without limiting the Access Holder's rights under **clauses 4.3** and **4.5**, the Access Holder will have the right under **clauses 4.3(b)** and **4.5** to nominate a new Operator to use, or vary the previous nomination of another Operator to include, the Access Rights which were previously allocated to the Defaulting Operator.

18.2 Reversing changes to Train Descriptions

- (a) If:
 - (i) a Defaulting Operator fails to satisfy the conditions for the commencement of Train Services for a Train Service Type (**relevant Train Service Type**) under clause 10.3 of its Train Operations Deed; and
 - (ii) Aurizon Network has given a notice to the Access Holder and the Defaulting Operator in accordance with clause 10.3(c)(iv)(B)(1) of the Defaulting Operator's Train Operations Deed,

the Access Holder may elect to allocate the varied Train Service Type to another Operator (either through a new nomination or variation of an existing nomination).
- (b) If the Access Holder fails to notify Aurizon Network of its election within 10 Business Days then the Train Description for the relevant Train Service Type will be taken not to have been varied (even if the relevant variation has taken effect) and the Train Description for the relevant Train Service Type will be taken to be the Train Description for the relevant Train Service Type in force immediately before the variation took effect.

19 Compliance

19.1 General requirements – Parties

To the extent relevant to the performance of its obligations under this Agreement, each Party must observe and comply with:

- (a) all applicable Laws;
- (b) the lawful requirements of relevant Authorities; and
- (c) to the extent applicable to that Party:
 - (i) the terms of the Access Undertaking (as amended by any Change in Access Undertaking); and
 - (ii) the IRMP (subject to, in the Access Holder's case, receipt of the

IRMP from Aurizon Network in accordance with **clause 4.3(f)(ii)**.

19.2 General Requirements – Aurizon Network

To the extent relevant to the performance of its obligations under this Agreement, Aurizon Network must observe and comply with:

- (a) the conditions of its Accreditation;
- (b) all licences and permits affecting its operations;
- (c) the Network Management Principles; and
- (d) any Environmental Authority it holds from time to time.

19.3 Non-compliance by Operator with Train Description

- (a) If:
 - (i) Train Services for a Train Service Type operated by an Operator (**Defaulting Operator**) do not comply, in any material respect, with the Train Description for the Train Service Type, except where such non-compliance is attributable to another Railway Operator or Aurizon Network;
 - (ii) the Defaulting Operator fails to demonstrate to the reasonable satisfaction of Aurizon Network, within 20 Business Days of being requested to do so, that those Train Services operated by the Defaulting Operator will consistently comply with the applicable Train Description for the remainder of the Term; and
 - (iii) Aurizon Network provided a copy of the request to the Defaulting Operator to the Access Holder on or about the same time as providing it to the Defaulting Operator,

then, without limiting any right Aurizon Network has to suspend or terminate the Train Services for a Train Service Type under a Train Operations Deed, Aurizon Network must promptly:

- (iv) notify the Access Holder of any such non-compliance and the failure to demonstrate future consistent compliance with the relevant Train Description (**Notice of Defaulting Operator**); and
 - (v) commence consultation with the Access Holder and the Defaulting Operator in respect of the non-compliance.
- (b) Without limiting any right Aurizon Network has to suspend or terminate the Train Services for a Train Service Type under the Train Operations Deed, before taking any steps under **clause 19.3(c)**, Aurizon Network must provide the Access Holder with at least 20 Business Days from the date of the Notice of Defaulting Operator to:
 - (i) unless the Train Services for a Train Service Type have been terminated under a Train Operations Deed, procure the Defaulting Operator to rectify the non-compliance notified under **clause 18.3(a)**; or
 - (ii) nominate an alternative Operator to provide the relevant Train Services in accordance with its rights to do so under this Agreement, and

unless the Train Services for a Train Service Type have been terminated

under a Train Operations Deed, provide the Access Holder prior notice of any action Aurizon Network intends to take under **clause 19.3(c)**.

- (c) If, following the provision of the Notice of Defaulting Operator under **clause 18.3(a)** and taking of the steps in **clause 19.3(b)**, the Access Holder has not nominated an alternative Operator to provide the relevant Train Services within 20 Business Days from the provision of the Notice of Defaulting Operator or Aurizon Network continues to not be reasonably satisfied that the Defaulting Operator will consistently comply with the Train Description under the Train Operations Deed for the remainder of the term of that Train Operations Deed, Aurizon Network may:
 - (i) vary the Train Description for the applicable Train Service Type to a level it reasonably expects to be achievable by the Defaulting Operator for the remainder of the Term, having regard to the extent of previous compliance with the applicable Train Description (but not taking into account, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator or to Aurizon Network); and
 - (ii) reasonably vary this Agreement in accordance with **clauses 36.3(f), 36.3(g) and 36.3(h)** to reflect the impact of the change in the applicable Train Description.
- (d) If Aurizon Network varies the Train Description for a Affected Train Service Type under **clause 19.3(c)(i)**, it must issue a notice to the Access Holder setting out the changes to the “Nominated Monthly Train Services (for a 30 day Month)” set out in **Schedule 2** of this Agreement.
- (e) The Access Holder is entitled to dispute any variation proposed by Aurizon Network pursuant to this **clause 19.3** in accordance with the process set out in **clause 36.3(h)**.

20 Weighbridges and Overload Detectors

20.1 Verification

- (a) If a Weighbridge or Overload Detector is located en route between an Origin and Destination for a Train Service Type, the Party responsible for that Weighbridge or Overload Detector (as specified in item 5 of Schedule 3) must use reasonable endeavours to ensure that such Weighbridge or Overload Detector is operational, calibrated and available to weigh Trains operated over such Weighbridge or Overload Detector.
- (b) Aurizon Network may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Access Holder.
- (c) If a party to the Train Operations Deed gives a notice under clause 17.5 of the Train Operations Deed, then:
 - (i) subject to **clause 20.1(c)(ii)**, unless otherwise determined by calibration testing under clause 17.5 of the Train Operations Deed, the relevant Weighbridge or Overload Detector (as applicable) is deemed to have malfunctioned from the date the notice is given

under clause 17.5(a) of the Train Operations Deed until the testing referred to in clause 17.5(b) of the Train Operations Deed has been carried out and, if required, the Weighbridge or Overload Detector has been recalibrated. Until such testing has been carried out and the Weighbridge or Overload Detector has been recalibrated, the mass of the relevant Train or Wagon which would otherwise have been measured by that Weighbridge or Overload Detector will be the Maximum Desirable Gross Tonnage (as the term is defined in the Train Operations Deed) for the Train or Wagon, as applicable; and

- (ii) where the person conducting the test in accordance with clause 17.5(b) of the Train Operations Deed determines that the Weighbridge or Overload Detector (as applicable) is measuring within the tolerances specified in item 5 of Schedule 3 of the Train Operations Deed, the Weighbridge or Overload Detector will be treated as having been measuring accurately from the date on which the relevant notice was given under clause 17.5(a) of the Train Operations Deed.
- (iii) If **clause 20.1(c)(ii)** applies in respect of a Weighbridge, the invoice for Access Charges for the Billing Period immediately following the Billing Period in which the determination in **clause 20.1(c)(ii)** is made will be adjusted to appropriately account for the difference in payment of Access Charges arising from the Weighbridge having been treated as malfunctioning under **clause 20.1(c)(i)**.

21 Infrastructure management

21.1 Notifications

- (a) As soon as is reasonably practicable after it becomes aware, the Access Holder must notify Aurizon Network of any damage to or disrepair or failure in operation or function of any part of the Nominated Network.
- (b) The Access Holder:
 - (i) unless permitted under this Agreement or authorised by Aurizon Network, must not cause any Obstruction or permit to continue any Obstruction caused by the Access Holder; and
 - (ii) must notify Aurizon Network as soon as reasonably practicable after the Access Holder's Staff or Access Holder's directors discover or become aware of:
 - (A) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures; or
 - (B) anything which the Access Holder, the Access Holder's Staff or Access Holder's directors, observe which may reasonably be considered to cause or contribute to the occurrence of an Incident or Obstruction; or
 - (C) any harm to the Environment caused or contributed to by the Access Holder's use of its Access Rights within the area of the Nominated Network, which the Access Holder knows

would result in a breach by Aurizon Network of the terms of any environmental authority it holds in connection with the Nominated Network.

21.2 Investigations

- (a) If an Incident occurs, an Investigation into the Incident must be:
 - (i) commenced as soon as practicable unless otherwise agreed between the Parties; and
 - (ii) conducted in accordance with the Investigation Procedures.
- (b) Each Party must cooperate, and ensure that Aurizon Network's Staff or the Access Holder's Staff (as applicable) cooperate, fully with any Investigation.
- (c) The Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the Investigation Procedures.

22 Interface management

22.1 Compliance with Interface Risk Management Plan

Each Party must advise the other Party of any failure to comply with the IRMP as soon as reasonably practicable after the Party becomes aware of such non-compliance, including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

22.2 Interface representative

- (a) Prior to the commencement of any Train Services, each Party must nominate one or more appropriately qualified representatives (by identifying the name, title, experience (including length of experience) and qualifications of each representative) (**Interface Representative**) who is or are (as applicable) to be responsible for:
 - (i) making decisions in relation to interface issues that arise in connection with this Agreement;
 - (ii) liaising and cooperating with representatives of the other Party on those interface issues; and
 - (iii) meeting with representatives of the other Party at locations, times and by means (including in person) specified by Aurizon Network from time to time.
- (b) Each Party must ensure that any representative it nominates under this **clause 22.2** is available to efficiently and effectively perform the responsibilities of the Interface Representative specified in **clause 22.2(a)** and that it has nominated an Interface Representative under this **clause 22.2** at all times during the Term.

23 Insurance by Access Holder

23.1 Maintain insurance policies

Before the commencement of Train Services, the Access Holder must, at its expense, take out and subsequently maintain current at all times during the Term insurance with a corporation (as defined in the Corporations Act) licensed

to conduct insurance business in Australia (or otherwise reasonably acceptable to Aurizon Network) those policies of insurance required by this Agreement.

23.2 Required insurance policies

The Access Holder must effect and maintain insurance for the risks and on the terms specified in **Schedule 5**.

23.3 Disclosure of insurance policies

The Access Holder must provide to Aurizon Network evidence of the insurance policies effected and maintained pursuant to this **clause 23** (including evidence that the cover provided under those insurance policies complies with this **clause 23** and of the currency of those insurance policies) to Aurizon Network's reasonable satisfaction:

- (a) at least 10 Business Days before the commencement of Train Services;
- (b) within 10 Business Days after renewal of each insurance policy during the Term; and
- (c) within 10 Business Days after being requested to do so in writing by Aurizon Network.

23.4 Failure to disclose insurance policies

Without prejudice to Aurizon Network's other rights and remedies in respect of such default, if the Access Holder, whenever required to do so under this Agreement, fails to produce to Aurizon Network evidence to the reasonable satisfaction of Aurizon Network of insurances that have been effected or maintained by it and does not remedy that default within 10 Business Days after Aurizon Network gives notice to the Access Holder requiring that default to be remedied, Aurizon Network may effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Access Holder to Aurizon Network.

23.5 Minimum terms of policies

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

- (a) note the interests of the Access Holder, any contractor of the Access Holder engaged by the Access Holder in relation to the performance of the Access Holder's obligations under this Agreement and Aurizon Network;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of Aurizon Network (not to be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **Schedule 5**.

23.6 Access Holder not to render policy void

The Access Holder must not render any of the insurances effected in accordance with this **clause 23** void or voidable or liable to refusal of any claim.

23.7 Compliance

The Access Holder must at all times comply with the terms and conditions of all insurance policies effected pursuant to this **clause 23**.

23.8 Notice of potential claims

In addition to any other obligation on the Access Holder under this Agreement, the Access Holder must:

- (a) notify Aurizon Network as soon as practicable after the making of any Claim under any insurance policy required by this Agreement;
- (b) notify Aurizon Network of the Claim in reasonable detail; and
- (c) keep Aurizon Network informed of subsequent developments concerning any Claim,

to the extent that such Claim is in connection with this Agreement.

23.9 Access Holder to pay all excess/deductibles

- (a) The Access Holder must, in respect of any Claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected in accordance with this **clause 23**.
- (b) If the Access Holder fails to pay any excess/deductible provided for in any insurances effected in accordance with this **clause 23**, Aurizon Network may pay the relevant excess/deductible and any amount so paid will be a debt due from the Access Holder to Aurizon Network.

23.10 Settlement of claims

If:

- (a) Aurizon Network makes a Claim against the Access Holder for damage to the Infrastructure;
- (b) the Claim is in respect of the same matter as the Access Holder claims under a policy required by this Agreement for damage to Infrastructure; and
- (c) the Access Holder has not disputed Aurizon Network's Claim,

then upon settlement of the Access Holder's Claim, under such policy, the portion of monies owed by the Access Holder to Aurizon Network must be paid to Aurizon Network from the monies received by the Access Holder under the policy against which the Access Holder made a Claim.

24 Indemnities

24.1 Indemnity for personal injury and property damage

Subject to **clause 24.2** and **clause 25**, each Party is solely liable for, and releases, indemnifies and will keep indemnified the other Party, its directors and Staff against, all Claims of any nature suffered or incurred by, or made or brought against, the other Party, its directors or Staff in respect of:

- (a) any loss of, damage to or destruction of property (including property of the other Party); or
- (b) personal injury to or death of any person,
in each case caused by or contributed to (to the extent of the contribution) by:
- (c) any breach of this Agreement by the Party; or

- (d) any negligent act or omission of, the Party or the Party's Staff in connection with this Agreement.

24.2 Indemnity by Access Holder for certain liabilities to Third Parties

Despite **clause 24.1** but subject to **clause 25**, the Access Holder is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network, Aurizon Network's directors and Aurizon Network's Staff against, all Claims of any nature made or brought by a Third Party against, Aurizon Network, Aurizon Network's directors or Aurizon Network's Staff in respect of:

- (a) any loss of, damage to or destruction of property; or
- (b) personal injury to or death of any person,

in each case caused by or contributed to (to the extent of the contribution) by:

- (c) any breach of this Agreement by the Access Holder; or
- (d) any negligent act or omission of the Access Holder or the Access Holder's Staff.

24.3 Duty to mitigate

Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Agreement applies.

24.4 General provisions regarding indemnities

- (a) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties and survives the expiry or termination of this Agreement.
- (b) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Agreement.

25 Limitations and exclusions of liability

25.1 Exclusion of Consequential Loss

Except as expressly provided otherwise in **clause 31** or the IRMP Provisions which form part of this Agreement under **clause 3**, neither Party is liable to the other under or in connection with this Agreement (including under an indemnity) for any Consequential Loss however caused (including any breach of this Agreement or negligent act or omission of a Party).

25.2 Time limit and minimum threshold on Claims

Neither Party (**first Party**) is liable for, and the other Party must not make any Claim against the first Party under or in connection with this Agreement unless:

- (a) notice of the Claim has been given to the first Party within 12 Months after the other Party becomes aware of the occurrence of the event or circumstance giving rise to the Claim; and
- (b) the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action, provided that if this condition is satisfied then the other Party may proceed for the full amount of the Claim and not only the amount in excess of \$100,000.

25.3 Claims and exclusions in respect of Infrastructure standard

Despite any other provision of this Agreement, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Access Holder for any Claim, and the Access Holder must not make any Claim against Aurizon Network, Aurizon Network's directors and/or Aurizon Network's Staff, in respect of any:

- (a) loss of or damage to real or personal property, including property of the Access Holder;
- (b) personal injury to or death of any person; or
- (c) any other damage, expense, injury, cost or loss whatsoever,

arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure, except to the extent that such loss, damage, injury or death, cost or expense results directly from the failure of Aurizon Network to perform its obligations under clause 19.2(a) of a Train Operations Deed or Aurizon Network's negligence in performing those obligations.

25.4 Claims and exclusions in respect of non-provision of access

- (a) Subject to **clause 25.4(b)**, only and despite any other provision of this Agreement, Aurizon Network, Aurizon Network's directors and Aurizon Network's Staff are not liable to the Access Holder for any Claim, and the Access Holder must not make any Claim against Aurizon Network, Aurizon Network's directors and/or Aurizon Network's Staff, in respect of any failure by Aurizon Network to make the Infrastructure available for an Operator to operate a Train Service for the Access Holder at the Scheduled Time in the Train Schedule.
- (b) Aurizon Network is liable to the Access Holder in respect of any failure by Aurizon Network to make the Infrastructure available to enable an Operator to operate a Train Service for the Access Holder at the Scheduled Time in the Train Schedule if (and then only to the extent that):
 - (i) Aurizon Network did not reschedule the relevant Train Service if required to do so under a Train Operations Deed; and
 - (ii) the failure by Aurizon Network to make the Infrastructure available was caused by or was the result of an Operational Constraint, that Operational Constraint resulted from a breach of this Agreement by Aurizon Network or the negligence of Aurizon Network; and
 - (iii) the failure by Aurizon Network to make the Infrastructure available was not permitted under this Agreement or the relevant Train Operations Deed or was attributable to a breach of this Agreement by, or negligent act or omission of, Aurizon Network; and
 - (iv) the failure by Aurizon Network to make the Infrastructure available was not attributable to:
 - (A) the Access Holder or the Access Holder's Staff;
 - (B) an Operator or an Operator's Staff;
 - (C) another Railway Operator (other than Aurizon Network) or any employees, contractors, volunteers or agents of another Railway Operator (other than Aurizon Network);

- (D) a Force Majeure Event;
- (E) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles;
- (F) if:
 - (1) the Access Rights for the relevant Train Service are Conditional Access Rights;
 - (2) there is a Capacity Shortfall in respect of any Segment of the applicable Expansion; and
 - (3) the Conditional Access Rights have not been varied under the Conditional Access Provisions which form part of this Agreement under **clause 3**,

the unavailability in the Infrastructure is attributable to the Capacity Shortfall in relevant Infrastructure;
- (G) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
- (H) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (v) either:
 - (A) the Parties and the relevant Operator have not agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed and the total number of Train Services (expressed as a percentage) cancelled in a Billing Period as a result of a failure by Aurizon Network to make the Infrastructure available (other than any failure by Aurizon Network to make the Infrastructure available which is attributable to an event or circumstance specified in **clauses 25.4(b)(iv)(A) to 25.4(b)(iv)(H)**) exceeds five percent of the total number of Train Services scheduled in the Daily Train Plan for that Billing Period; or
 - (B) the Parties and the relevant Operator have agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed, but the failure to make the Infrastructure available is of a magnitude which is beyond the scope of that performance and adjustment regime.

25.5 Claims and exclusions in respect of delays to Train Movements

Despite any other provision of this Agreement, a Party (**Defaulting Party**) is not liable to the other Party (**Affected Party**) for any Claim, and the Affected Party must not make any Claim against the Defaulting Party, in respect of delays to Train Movements unless (and then only to the extent that):

- (a) the delay was a result of a breach of this Agreement by the Defaulting Party, or a negligent act or omission on the part of the Defaulting Party; and

- (b) if the delay was caused by or the result of an Operational Constraint:
 - (i) where Aurizon Network is the Affected Party, the Operational Constraint resulted from a breach of this Agreement by the Access Holder; or
 - (ii) where the Access Holder is the Affected Party, the Operational Constraint was not permitted under this Agreement or the relevant Train Operations Deed or resulted from a breach of this Agreement by, or negligent act or omission of, Aurizon Network; and
- (c) the delay is not attributable to:
 - (i) the Affected Party or where the Affected Party is:
 - (A) Aurizon Network - Aurizon Network's Staff; or
 - (B) the Access Holder - the Access Holder's Staff, an Operator or an Operator's Staff;
 - (ii) another Railway Operator (other than the Defaulting Party) or any employees, contractors, volunteers or agents of another Railway Operator (other than the Defaulting Party);
 - (iii) a Force Majeure Event;
 - (iv) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles; or
 - (v) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
 - (vi) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
 - (i) the Parties and the relevant Operator have not agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed; or
 - (ii) the Parties and the relevant Operator have agreed upon and implemented a performance and adjustment regime for the purposes of the relevant Train Operations Deed, but the delays are of a magnitude which is beyond the scope of that performance and adjustment regime.

25.6 Defence of Claims by Third Parties

- (a) Each Party must provide such reasonable assistance as requested by the other Party in the defence of any Claim made against the other Party by a Third Party arising out of any Incident or other event giving rise to the Claim.
- (b) The Party that requested assistance under **clause 25.6(a)** must, within five Business Days after a demand is made, pay to the other Party any costs and expenses reasonably incurred by the other Party in providing the assistance requested under **clause 25.6(a)**.

25.7 Exclusion of Claims in certain other circumstances

- (a) Except to the extent that an Operational Constraint results from a breach by, or negligent act or omission of, Aurizon Network of this Agreement or a Train Operations Deed, any delays or cancellations of Train Services caused by or resulting from Operational Constraints will not constitute a default by Aurizon Network of its obligations under this Agreement and Aurizon Network will not be liable for any Claims suffered or incurred by or made or brought by or against the Access Holder as a result of or arising from the imposition of such an Operational Constraint.
- (b) Except as otherwise provided in this Agreement, Aurizon Network will not be liable for any delays or cancellations of Train Services or Claims suffered or incurred by or made or brought by or against the Access Holder and the Access Holder must not make any Claim against Aurizon Network, its director and/or Aurizon Network's Staff as a result of an Operator complying with a request by Aurizon Network in accordance with clause 20.4(i) of a Train Operations Deed.
- (c) If Aurizon Network takes action in accordance with clause 20.4(e) of a Train Operations Deed, then Aurizon Network has no liability for any damage to or loss of freight caused by such actions.
- (d) Aurizon Network will not be liable for any delays or cancellations of Train Services or Claims suffered or incurred by or made or brought by or against the Access Holder as a result of the exercise by Aurizon Network of its rights under clause 23 of a Train Operations Deed, provided that Aurizon Network complies with the relevant provisions under the IRMP regarding conduct of an audit or inspection.

26 Determination of liability and loss adjustment

26.1 Determination of liability

In the event of an Incident involving the Access Holder or any other event which results or could result in a Claim by or against the Access Holder or Aurizon Network, liability as between the Access Holder and Aurizon Network is determined, for the purposes of **clauses 24** and **25.3**:

- (a) as agreed between the Parties;
- (b) subject to **clause 26.1(c)**, failing such agreement within one Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed under **clause 26.2**; or
- (c) where the amount of the Claim exceeds \$200,000 and either Party is dissatisfied with the report of the loss adjuster, by a court of competent jurisdiction.

26.2 Loss Adjuster

Subject to **clause 36**, where a matter is to be referred to a loss adjuster in accordance with **clause 26.1**:

- (a) the loss adjuster:
 - (i) must be appointed by the Parties; or
 - (ii) in default of such appointment within 10 Business Days after the

need to appoint a loss adjuster, is to be nominated at either Party's request by the President of The Australasian Institute of Chartered Loss Adjusters;

- (b) if the loss adjuster is to be nominated under **clause 26.2(a)(ii)** and the President of The Australasian Institute of Chartered Loss Adjusters declines to nominate a person as the loss adjuster but provides a list of people that could be appointed as the loss adjuster, then:
 - (i) the first person specified in that list will be taken to be nominated as the loss adjuster;
 - (ii) if the first person specified in that list does not accept the appointment as the loss adjuster, 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 loss adjuster; and
 - (iii) the process specified in **clause 26.2(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 loss adjuster accepts the appointment as the loss adjuster;
- (c) the Parties must comply with, and do all things necessary to satisfy and give effect to, the reasonable requirements of an agreed or nominated loss adjuster (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 the President of The Australasian Institute of Chartered Loss Adjusters agreeing to nominate a loss adjuster;
- (d) the loss adjuster must:
 - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
 - (ii) have no interest or duty which conflicts or may conflict with the loss adjuster's function as a loss adjuster (the loss adjuster being required to fully disclose any such interest or duty before their appointment); and
 - (iii) not be, or have been in the last five years, an employee of an Operator, the Access Holder or Aurizon Network or of a Related Body Corporate of any of them;
- (e) the loss adjuster appointed under this **clause 26.2**:
 - (i) is not permitted to act until the loss adjuster has given written notice of the acceptance of the appointment to both Parties;
 - (ii) is required to undertake to keep confidential all matters coming to the loss adjuster's knowledge by reason of their appointment and the performance of their duties; and
 - (iii) is deemed to be and act as an expert and not an arbitrator, and the Law relating to arbitration, including the *Commercial Arbitration Act 2013* (Qld), does not apply to the loss adjuster or their determination or the procedures by which they may reach a determination.

26.3 Parties to assist loss adjuster

- (a) Each Party must ensure to the best of its ability that the loss adjuster appointed under **clause 26.2** is given the opportunity to interview any employee, agent or contractor involved in, or with knowledge of, the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (b) Each Party must make available to the loss adjuster appointed under **clause 26.2** any files, documents, data, recordings or other information in the possession or control of the Party that may be of use to, or is requested by, the loss adjuster for the purposes of their investigation.

26.4 Decision of the loss adjuster

- (a) The loss adjuster appointed under **clause 26.2** will determine the quantum of the relevant Claim and the liability of the Access Holder and/or Aurizon Network in respect of such Claim and must provide a copy of their report on such matters to each of the Parties within a reasonable time after their appointment.
- (b) In the absence of manifest error, the decision of the loss adjuster is final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than \$200,000.

26.5 Costs of the loss adjuster

The costs of the loss adjuster must be borne by the Parties in such proportions as liability is determined by the loss adjuster, or where the liability is ultimately determined by a court of competent jurisdiction, in such proportions as liability is determined by the court.

27 Material Change

27.1 Adjustment for a Material Change

- (a) If there is no Reference Tariff applicable to the Train Services for a Train Service Type under this Agreement, then:
 - (i) if at any time after the Commencement Date a Material Change occurs which affects the financial position of Aurizon Network or the cost to Aurizon Network of performing its obligations or exercising its rights under this Agreement and/or a Train Operations Deed, then Aurizon Network must notify the Access Holder giving details of the Net Financial Effect on Aurizon Network of the Material Change;
 - (ii) within 10 Business Days after receipt of a notice under **clause 27.1(a)(i)**, the Parties must meet and negotiate in good faith any appropriate adjustments to the amounts payable under this Agreement to remove as far as practicable the Net Financial Effect on Aurizon Network of the Material Change and return Aurizon Network to the position it would have been in had it not been for the Material Change; and
 - (iii) if the Parties have not agreed on the relevant adjustments within 15 Business Days after Aurizon Network's notice, then either Party may

refer the matter to an Expert for determination in accordance with **clause 28.3**.

- (b) If there is a Reference Tariff applicable to the Train Services for a Train Service Type under this Agreement, then the relevant Reference Tariff Provisions which form part of this Agreement under **clause 3** will provide for the consequences of Material Change.

27.2 Parties' obligations continue

The Parties' obligations under this Agreement continue despite the existence of a Material Change.

28 Disputes

28.1 Method

If any claim, dispute or question (**Dispute**) arises under this Agreement, then unless otherwise expressly provided to the contrary in this Agreement, such Dispute must be resolved in accordance with this **clause 28** and either Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with in accordance with this **clause 28**.

28.2 Authorised representative resolution

- (a) Except as otherwise provided in this Agreement, within five Business Days after a Dispute Notice is given, the Dispute must be referred for resolution to an authorised representative of each of the Parties with authority to settle the Dispute on behalf of the relevant Party.
- (b) Within 10 Business Days after a Dispute Notice is given, the officers referred to in **clause 28.2(a)** must meet to resolve the Dispute.
- (c) Meetings referred to in **clause 28.2(b)** may be held in person or by telephone, video conference or other means of instantaneous communication.
- (d) If the Dispute is not resolved within 10 Business Days (**Resolution Period**) after:
 - (i) the date that the authorised representatives first meet to resolve the Dispute in accordance with **clause 28.2(b)**; or
 - (ii) if the authorised representatives do not meet within the time required under **clause 28.2(b)**, the date the Dispute Notice is given,then the relevant Dispute may, by agreement between the Parties within 10 Business Days of expiration of the Resolution Period, be referred for determination by an Expert in accordance with **clause 28.3** or by arbitration in accordance with **clause 28.4**.
- (e) If the Parties fail to agree, within 10 Business Days of expiration of the Resolution Period, whether to refer the Dispute to an Expert or to arbitration, either Party may refer the Dispute to the courts of the State in accordance with **clause 28.6**.

28.3 Expert

Subject to **clause 36.1**, where any matter may be referred to an expert (**Expert**) pursuant to **clause 28.2(d)**, or is expressly required by this Agreement to be referred to an Expert, then except as otherwise provided for in this Agreement:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within 10 Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) if the Parties agree the Dispute is purely of:
 - (A) a financial or accounting nature; or
 - (B) a technical nature,the President (for the time being) of the Resolution Institute in Australia; or
 - (ii) in any other case, the President (for the time being) of the Queensland Law Society Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 28.3(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, then:
 - (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, then the next person specified in that list will be taken to be nominated as the Expert; and
 - (iii) the process specified in **clause 28.3(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 28.3(b)**, if the Expert is to be nominated by a person referred to in **clause 28.3(a)** and the person nominated as the Expert does not accept 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 28.3(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 28.3(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, the Expert 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 an Operator, the Access Holder, or Aurizon Network or of a Related Body Corporate of any of them;
 - (iv) not be permitted to act until the Expert has given notice to the Parties that the Expert 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 either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter provided to the Expert by the Parties;
 - (vi) provide both Parties with a copy of the Expert's 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; and
 - (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);
- (g) the Expert is deemed to be and must act as an expert and not an arbitrator and the Law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)) will not apply to the Expert or the determination or the procedures by which the Expert may reach a determination;
- (h) in the absence of manifest error, the decision of the Expert is final and binding upon the Parties;
- (i) the costs of the Expert (and the costs of any advisers to the Expert) must be borne severally (and not jointly and severally) by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties);
- (j) the expert determination will be conducted in accordance with the expert determination rules adopted by the Resolution Institute from time to time, except that to the extent of any inconsistency between those rules and this Agreement, the terms of this Agreement prevail;
- (k) any determination made by an Expert must be consistent with the provisions of this Agreement; and
- (l) the Parties must:
 - (i) procure the Expert to use reasonable endeavours to make its determination or finding in respect of the Dispute within 2 Months from the date the initial statement regarding the Dispute is

submitted by the claimant to the Expert; and

- (ii) do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including providing or making available to the Expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the Expert and attending any hearing convened by the Expert.

28.4 Arbitration

- (a) Subject to **clause 36.1**, the Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Parties and, failing agreement upon such arbitrator within 10 Business Days after the date of notice from one Party to the other requiring the appointment of an arbitrator, by an arbitrator appointed by the President of the Resolution Institute. Every such reference will be an arbitration within the meaning of the *Commercial Arbitration Act 2013 (Qld)*, and subject to the provisions relating to arbitration contained in that Act.
- (b) If the Resolution Institute declines to nominate a person as the arbitrator but provides a list of people that could be appointed as the arbitrator, then:
 - (i) the first person specified in that list will be taken to be nominated as the arbitrator;
 - (ii) if the first person specified in that list does not accept the appointment as the arbitrator, then the next person specified in that list will be taken to be nominated as the arbitrator; and
 - (iii) the process specified in **clause 28.4(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 arbitrator accepts the appointment as the arbitrator;
- (c) subject to **clause 28.4(b)**, if the person nominated as the arbitrator under **clause 28.4(a)** does not accept appointment, then either Party may request that the Resolution Institute appoints an alternative person as the arbitrator.

28.5 Queensland Competition Authority (QCA)

Subject to **clause 36.1**, the Parties may agree to refer, and where required by this Agreement must refer, any Dispute to the QCA.

28.6 Determination by Court

If any Dispute is not:

- (a) resolved in accordance with **clause 28.2**;
- (b) referred to an Expert in accordance with **clause 28.3**; nor
- (c) referred to the QCA in accordance with **clause 28.5**,

then either Party may refer the Dispute to the courts of the State.

29 Force Majeure

29.1 Notice of Force Majeure

- (a) If, by reason of a Force Majeure Event affecting Aurizon Network, Aurizon Network is prevented or hindered (or likely to be prevented or hindered) from carrying out, whether wholly or in part, its obligations under this Agreement (other than an obligation to pay money), then Aurizon Network must, as soon as reasonably practicable after it becomes aware of the Force Majeure Event, give the Access Holder prompt (and, in any event, within 5 Business Days after it becomes aware of the event or circumstance causing the Force Majeure Event) notice (which may be provided in electronic form) of the Force Majeure Event including:
 - (i) details of the Force Majeure Event and (if applicable) that part of the Nominated Network affected or likely to be affected; and
 - (ii) the details of the obligations affected or likely to be affected.
- (b) Aurizon Network must provide the Access Holder with a further notice as soon as reasonably practicable and in any event within 2 Business Days of the notice provided under **clause 29.1(a)** if the notice provided in **clause 29.1(a)** either is in electronic form or does not include the following information:
 - (i) the information in **clause 29.1(a)**; and
 - (ii) full particulars of all relevant matters including:
 - (A) details of the action Aurizon Network has taken to remedy the situation and details of the action that Aurizon Network proposes to take to remedy the situation (to the extent that they are known); and
 - (B) a reasonable estimate of the time during which Aurizon Network will be (or is likely to be) prevented or hindered from carrying out, whether wholly or in part, its obligations under this Agreement due to the Force Majeure Event.
- (c) Without prejudice to its rights under this **clause 29.1**, Aurizon Network may issue further notices in respect of the Force Majeure Event as it considers reasonably necessary to update the Access Holder as to each of the matters set out above.
- (d) Aurizon Network must:
 - (i) include the Access Holder (and its Customer, if any) and its Train Operator, if any, in any meeting which Aurizon Network may have in respect of the Force Majeure Event; and
 - (ii) provide a copy of any notice given to the Access Holder to that Access Holder's Customer, if any, and Train Operator, if any.

29.2 Suspension of obligations

- (a) Subject to compliance with the requirements of **clause 29.1**, Aurizon Network's obligations under this Agreement are suspended during the

time and to the extent that Aurizon Network's performance of its obligations is prevented or hindered by the Force Majeure Event.

- (b) If the notice is not provided in accordance with **clause 29.1(a)** or **29.1(b)**, then the obligations of Aurizon Network under this Agreement will be suspended on and from the later of the time the notice requirements of **clause 29.1(a)** and **29.1(b)** are satisfied.

29.3 Duty to mitigate

- (a) Subject to **clause 29.3(b)**, Aurizon Network must use all reasonable endeavours to remedy or overcome the effect of the Force Majeure Event affecting its obligations under this Agreement as soon as possible and must attempt to:
 - (i) mitigate the effect of the Force Majeure Event; and
 - (ii) identify alternative viable means of performing its obligations, including the provision of the Access Rights affected (if applicable).
- (b) Aurizon Network is not obliged to settle any strike, lockout or other labour dispute other than on terms acceptable to it.

29.4 End of period of Force Majeure Event

The suspension of the obligations of Aurizon Network due to a Force Majeure Event ends when, but only to the extent that, Aurizon Network is no longer prevented or hindered from performing, whether wholly or in part, its obligations under this Agreement by reason of the relevant Force Majeure Event, at which time Aurizon Network must as soon as reasonably practicable:

- (a) issue a notice to the Access Holder advising the extent to which it is recommencing the performance of its obligations; and
- (b) recommence the performance of its obligations to the extent outlined in the notice.

29.5 Reduction of Access Rights due to loss or damage to Nominated Network

- (a) If:
 - (i) any part of the Nominated Network specified in **item 2 of Schedule 3** is damaged or destroyed by a Force Majeure Event; and
 - (ii) in Aurizon Network's reasonable opinion the cost of repairing such damage or destruction or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network,

then Aurizon Network may, by notice, advise the Access Holder (and its Customer, if applicable), other affected Access Holders (as defined in the Access Undertaking), each affected Railway Operator and the QCA of:

- (iii) the estimated cost of effecting the necessary repairs or replacement;
- (iv) the level of insurance available to effect the necessary repairs and replacement;
- (v) a detailed explanation as to why the cost of repairing or replacing is not economic; and

- (vi) Aurizon Network's intention to not repair or replace the relevant part of the Nominated Network unless the Access Holder and other Access Holders (or their Customers or Railway Operators, as applicable) using that part of the Nominated Network pay the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.
- (b) If the Access Holder (or its Customer or Operator, as applicable) notifies Aurizon Network that:
- (i) it agrees to bear the whole incremental cost of necessary repairs or replacement (after the amount of insurance available has been applied); or
 - (ii) it agrees to bear that part requested by Aurizon Network of the incremental cost of necessary repairs or replacement (and subject to Aurizon Network being satisfied that all other relevant Access Holders (or their Customers or Railway Operators, as applicable) have also agreed to bear their respective part of such costs) (after the amount of insurance available has been applied),
- then Aurizon Network will proceed with the repairs or replacement within a reasonable time after:
- (iii) if clause **29.5(b)(i)** applies, receipt by Aurizon Network from the Access Holder (or its Customer or Operator) of payment of the relevant amount; and
 - (iv) if clause **29.5(b)(ii)** applies, receipt by Aurizon Network from the Access Holder (or its Customer or Operator) of the last payment of the relevant amount.
- (c) If an Access Holder (or its Customer or Operator, as applicable) pays to Aurizon Network any of the costs under **clause 29.5(b)**, on completion of the necessary repairs or replacement:
- (i) Aurizon Network must, within a reasonable time, refund to the party who made such payment any amount by which the amount paid that party exceeds the actual cost; or
 - (ii) the Access Holder (or its Customer or Operator, if applicable) must, within a reasonable time, pay to Aurizon Network the amount by which the actual cost exceeds proportionately the amount agreed to be paid by that party,
- (as applicable).
- (d) If, within 40 Business Days after receipt of a notice from Aurizon Network under **clause 29.5(a)**, the Access Holder (or its Customer or Operator, as applicable) has not given notice to Aurizon Network under **clause 29.5(b)**, then Aurizon Network may, by giving not less than 20 Business Days' notice in writing to the Access Holder (**Nominated Network FM Reduction Notice**), reduce the Access Rights by the FM Access Rights, in which case, the FM Access Rights will cease to form part of the Access Rights of the Access Holder on and from the date specified in the Nominated Network FM Reduction Notice (which must be at least 20

Business Days from the date of the Nominated Network FM Reduction Notice).

29.6 Effect of Nominated Network FM Reduction Notice on Operator nominations

- (a) Within 10 Business Days after the Nominated Network FM Reduction Notice is given to the Access Holder, the Access Holder may give written notice to Aurizon Network and each affected Operator in accordance with **clause 4.5(a)** to vary the Access Rights which the Access Holder has allocated to an Operator to take into account the reduction to the Access Rights by the FM Access Rights.
- (b) Except to the extent that the Access Holder has given a notice as contemplated in **clause 29.6(a)** in respect of the reduction to the Access Rights by the FM Access Rights, the FM Access Rights for each Train Service Type:
 - (i) firstly, are deemed to reduce the Access Rights for that Train Service Type for which the Access Holder has not nominated an Operator; and
 - (ii) if, after the operation of **clause 29.6(b)(i)**, there remains an Over-Allocation for the relevant Train Service Type, **clause 4.7** applies in respect of that Over-Allocation.
- (c) As soon as practicable after the expiry of the period referred to in **clause 29.6(a)**, Aurizon Network must issue a notice to the Access Holder and each affected Operator summarising, in respect of each Train Service Type affected by the FM Access Rights, the changes to:
 - (i) the “Nominated Monthly Train Services (for a 30 day Month)” set out in **Schedule 2** of this Agreement; and
 - (ii) the “Nominated Monthly Operational Rights (for a 30 day Month)” in schedule 2 of each affected Operator’s Train Operations Deed.

29.7 Termination after extended Force Majeure Event

If, by reason of a Force Majeure Event, Aurizon Network is wholly prevented or hindered from carrying out its obligations under this Agreement (other than an obligation to pay money) for a period of more than three consecutive Months, then:

- (a) the Parties must meet to endeavour to identify any alternative viable means to perform the suspended obligations; and
- (b) failing any alternative means being agreed within one Month after the end of the three Month period, the Access Holder may terminate this Agreement by 20 Business Days’ notice to Aurizon Network and **clauses 29.4** and **29.5** apply without prejudice to any of the rights of the Parties which accrued before the date of such termination.

30 Suspension

30.1 Suspension of Access Rights

If a Suspension Event specified in **Schedule 6** occurs, Aurizon Network may, by notice in writing to the Access Holder and the relevant Operator (**Suspension Notice**), suspend the Access Rights of the Access Holder.

30.2 Details of suspension

A Suspension Notice given by Aurizon Network to the Access Holder and the relevant Operator under **clause 30.1** must set out:

- (a) the rights of the Access Holder which are affected by the suspension;
- (b) the reason for the suspension; and
- (c) the actions the Access Holder must take to have the suspension lifted.

30.3 Effect of suspension

The suspension of any rights under this **clause 30** does not affect or suspend any other obligation of the Access Holder, including the obligation to pay Access Charges under this Agreement, and is without prejudice to Aurizon Network's other rights and remedies in respect of that or any other default.

30.4 Duration of suspension

The suspension of any rights under **clause 30.1** continues until such time as the Access Holder has remedied the relevant default or non-compliance notified in the Suspension Notice.

30.5 Suspension of an Operator's rights under a Train Operations Deed

- (a) The Access Holder acknowledges that, under a Train Operations Deed, Aurizon Network has a right to suspend the right of a particular Operator to operate some or all of the Operator's Train Services for a Train Service Type or Train Services generally upon the occurrence of any one or more of a number of specified events or circumstances in respect of that Operator.
- (b) Aurizon Network will notify the Access Holder if it suspends the right of a particular Operator to operate some or all of the Operator's Train Services for a Train Service Type or Train Services generally under a Train Operations Deed and the Access Holder will have the right to nominate an alternate Operator to operate the affected services in accordance with **clause 4.3** or **4.4**.
- (c) The suspension of any of an Operator's rights under a Train Operations Deed does not affect or suspend any obligation of the Access Holder, including the obligation to pay Access Charges under this Agreement.

31 Liability for wrongful suspension

Where Aurizon Network suspends some or all of the Access Holder's Access Rights or an Operator's rights under a Train Operations Deed, Aurizon Network will be liable to the Access Holder in respect of loss or damage (including damages for Consequential Loss arising from the suspension) if, and only if:

- (a) no reasonable person in Aurizon Network's position could have formed the view that the stated grounds for the suspension existed (Aurizon Network must bear the burden of establishing that a reasonable person in Aurizon Network's position could have formed that view);
- (b) where the suspension is of an Operator's rights under a Train Operations Deed, the Access Holder's loss or damage is not, and has not been, included in a claim by the Operator in respect of that suspension; and
- (c) the Access Holder has used all reasonable endeavours to mitigate the loss or damage arising from the suspension.

32 Termination

32.1 Termination of Agreement

- (a) Subject to **clause 32.1(b)** and without limiting any rights of termination contained elsewhere in this Agreement, Aurizon Network may, by notice in writing to the Access Holder, terminate this Agreement if a Termination Event specified in **Schedule 6** occurs.
- (b) If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 32.1(a)**, then Aurizon Network may only exercise its rights under **clause 32.1(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 30**.

32.2 Termination by the Access Holder

Without limiting any rights of termination contained elsewhere in this Agreement, the Access Holder may, by notice in writing to Aurizon Network, terminate this Agreement if any of the following occurs:

- (a) an Insolvency Event in relation to Aurizon Network occurs and continues for a period of 40 Business Days;
- (b) Aurizon Network's Accreditation is cancelled or amended such that it cannot perform its obligations generally under this Agreement, and such default continues for at least 20 Business Days after the Access Holder gives Aurizon Network notice of the default;
- (c) Aurizon Network fails to pay when due any amount payable under this Agreement, and such default continues for at least 20 Business Days after the Access Holder gives Aurizon Network notice of the default; or
- (d) Aurizon Network is in default of the due performance of any other obligation under this Agreement, and such default continues for at least 40 Business Days after the Access Holder gives Aurizon Network notice of the default.

32.3 Grounds for termination to be specified

A notice given under **clause 32.1** or **32.2** must set out the grounds for the termination.

32.4 Obligations and other rights upon termination or expiry

- (a) Neither termination of this Agreement by a Party under this **clause 32** nor expiry of this Agreement prejudices:

- (i) a Party's right to make a Claim, recover damages or avail itself of other remedies under this Agreement or at law; or
 - (ii) either Party's rights to recover money due to it under this Agreement.
- (b) On termination of this Agreement, Aurizon Network and the Access Holder are released from all further obligations or liabilities under this Agreement, except for:
- (i) rights which accrued on or before termination, including for any breach of this Agreement which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this Agreement; or
 - (ii) any provisions which are expressed as surviving the expiry or termination of this Agreement.

33 Assignment

33.1 Assignment by Aurizon Network

- (a) Aurizon Network may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the Access Holder, provided that:
- (i) the Assignee is Accredited; and
 - (ii) Aurizon Network procures that the Assignee covenants with the Access Holder by deed to be bound by and to perform the obligations of Aurizon Network under this Agreement to the extent of the rights and obligations Assigned to the Assignee.
- (b) On the Assignee entering into the deed referred to in **clause 33.1(a)**, Aurizon Network is released and discharged from further liability under this Agreement in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

33.2 Assignment by the Access Holder

- (a) The Access Holder may not Assign its rights or obligations under this Agreement other than in accordance with this **clause 33.2**.
- (b) The Access Holder may, provided it is not in default in the performance or observance of any of its obligations under this Agreement, Assign the whole or any part of its rights and obligations under this Agreement to:
- (i) a Related Body Corporate of the Access Holder which is capable of performing the obligations of the Access Holder under this Agreement, provided that:
 - (A) the Access Holder remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee; and
 - (B) the performance by the Assignee will (to the extent of such performance) discharge the Access Holder's liability for the performance of the duties, responsibilities and obligations Assigned; or

- (ii) a person other than a Related Body Corporate of the Access Holder with the prior written consent of Aurizon Network, provided that such consent will not be unreasonably withheld if Aurizon Network is satisfied that such person is:
 - (A) financially sound; and
 - (B) otherwise capable of performing the obligations of the Access Holder under this Agreement.
- (c) Any Assignment by the Access Holder of its rights and obligations under this Agreement is conditional on and will not take effect until:
 - (i) the Assignee covenants with Aurizon Network by deed, in such terms as Aurizon Network may reasonably require, to be bound by and to perform the obligations of the Access Holder under this Agreement; and
 - (ii) if required by Aurizon Network, the Assignee delivers Security to Aurizon Network which satisfies the requirements of **clause 6** for an amount of not less than the Security Amount.
- (d) Subject to **clause 33.2(e)**, if a Change in Control of the Access Holder occurs without Aurizon Network's prior written consent, the occurrence of the Change in Control will be taken to be an Assignment of the Access Holder's rights and obligations under this Agreement which is not permitted under this **clause 33.2**.
- (e) **Clause 33.2(d)** does not apply to a Change in Control where:
 - (i) the Access Holder or its Ultimate Holding Company is listed on a recognised stock exchange;
 - (ii) the Change in Control is a result of a Change in Control of that listed entity; and
 - (iii) that listed entity remains listed on that recognised stock exchange both before and after that Change in Control.
- (f) This **clause 33.2** does not limit the Access Holder's right to Transfer Access Rights in accordance with the Transfer Provisions which form part of this Agreement under **clause 3**.

33.3 Charging

A Party (**Chargor**) may create a Charge over all of its rights under this Agreement in favour of a recognised financial institution (**Chargee**) to secure financial accommodation provided to the Chargor in relation to its obligations under this Agreement, provided that the Chargee must first covenant in writing in favour of the other Party (**Non-Charging Party**), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee will comply with the provisions of this **clause 33** as if it were originally a party to this Agreement, and will not exercise any power of sale of the rights and/or obligations of the Chargor under this Agreement except in accordance with this **clause 33**.

34 GST

34.1 Construction

In this **clause 34**:

- (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*; 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.

34.2 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.

34.3 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.

34.4 Timing of GST payment

The recipient will pay the amount referred to in **clause 34.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Agreement.

34.5 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 34.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

34.6 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 34.3** 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.

34.7 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.

35 Confidentiality

35.1 Confidentiality

Subject to **clause 35.2**, the Recipient must:

- (a) keep confidential, and must not disclose to any Third Party, any Confidential Information disclosed to the Recipient by the Discloser; and
- (b) not use the Confidential Information for any purpose other than for the purposes of this Agreement or, if Aurizon Network is the Recipient, for the purposes of:
 - (i) capacity assessment and capacity modelling;
 - (ii) investigation and planning of Maintenance Work;
 - (iii) planning Infrastructure Enhancements; and
 - (iv) complying with its obligations under the Access Undertaking.

35.2 Permitted disclosures

The Recipient may disclose Confidential Information disclosed to it by the Discloser to a Third Party where:

- (a) the Recipient has obtained the prior written approval of the Discloser to such disclosure. The Discloser must not unreasonably withhold such approval if the Recipient has procured a confidentiality undertaking in respect of the information from such Third Party in favour of both Parties on terms and conditions satisfactory to both Parties, acting reasonably; or
- (b) disclosure is:
 - (i) required or compelled by any order of a court of competent jurisdiction;
 - (ii) required or compelled by any Law;
 - (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings, including any dispute resolution process under this Agreement;
 - (v) reasonably required for the performance of Train Control functions;
 - (vi) required under any stock exchange listing requirement or rule;
 - (vii) required by the Rail Safety Regulator or an Environmental Regulator;
 - (viii) to an Operator provided that:
 - (A) the Disclosure is:
 - (1) required by the terms of this Agreement;
 - (2) reasonably necessary for the performance of obligations or the exercise of rights under this Agreement or the Operator's Train Operations Deed; or
 - (3) reasonably necessary in connection with the safe operation of the Nominated Network; and
 - (B) the Discloser must ensure that the Operator keeps the

Confidential Information confidential on terms no less onerous than this **clause 35**;

- (ix) to the Recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (x) to an expert for the purposes of a dispute resolution process, or an auditor for the purposes of an audit, under a "User Funding Agreement" (as defined in the Access Undertaking), if such expert or auditor has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (xi) to legal practitioners and accountants of the Recipient or a Related Body Corporate of it:
 - (A) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (B) who are under a duty of confidentiality to the Recipient; and
 - (C) who have been advised of the confidential nature of the Confidential Information; or
- (xii) otherwise permitted or required in accordance with this Agreement or the Access Undertaking (as amended by any Change in Access Undertaking).

35.3 Discloser may give certain directions

On expiry or termination of this Agreement, the Discloser may direct the Recipient to do any combination of the following in respect of some or all of the Confidential Information disclosed by the Discloser to the Recipient:

- (a) subject to the lawful requirements of the Recipient to retain copies of Confidential Information for business records and document control registers, to immediately deliver to the Discloser the Confidential Information specified by the Discloser;
- (b) to immediately destroy the Confidential Information specified by the Discloser; and
- (c) where the Recipient has disclosed the Confidential Information to any Third Party, to procure the compliance by that Third Party with the requirements of this **clause 35.3** as if that Third Party were the Recipient.

35.4 PPS Act

In addition to the obligations imposed under this **clause 35**, each Party agrees to not disclose any information of the kind described in section 275(1) of the PPS Act, including:

- (a) information about this Agreement including a copy of it;
- (b) information about the amount or the obligation secured by any Security Interest created by or under this Agreement and the terms of such payment or performance at any time; or
- (c) information about Relevant Collateral at any time.

35.5 Survival

Without limiting **clause 38.1**, this **clause 35** survives the destruction or return of Confidential Information in accordance with this Agreement.

35.6 Injunctive relief

The Recipient acknowledges and agrees that a breach of this **clause 35** would be harmful to the business interests of the Discloser and that, as a result, the Discloser may seek urgent injunctive relief, specific performance or a similar remedy to prevent the occurrence or continuance of any breach or suspected breach of this **clause 35** in addition to any other remedies available at law or in equity under or independently of this Agreement.

36 Relationship with Train Operations Deed

36.1 Disputes

- (a) Prior to any referral of a matter to a loss adjuster, expert, arbitrator or the QCA (**Adjudicator**) in accordance with **clause 26.1** or **28**, either Party may notify the other Party that an Operator should be a party to that referral and, if such a notice is given, then the Party which has given the notice must:
 - (i) notify the relevant Operator of the matter to be referred to the Adjudicator; and
 - (ii) provide the relevant Operator with a copy of the provisions of this Agreement governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, the Adjudicator.
- (b) If an Operator is given a notice under **clause 36.1(a)**, then:
 - (i) where the Adjudicator is to be a loss adjuster, expert or arbitrator, the Parties are deemed not to have agreed the appointment of the loss adjuster, expert or arbitrator unless the Operator has also agreed to the appointment of that loss adjuster, expert or arbitrator;
 - (ii) the Parties must comply with **clause 26.1** or **28**, as applicable, in respect of the Operator as though the Operator was a Party to this Agreement for the purposes of the matter referred to the Adjudicator; and
 - (iii) the Adjudicator, in addition to determining the matter between the Parties, must also determine any claim, dispute, question or liability involving the Operator and the relevant Train Operations Deed arising in connection with any of the events or facts the subject of the matter referred to the Adjudicator (unless that claim, dispute, question or liability has already been agreed by Aurizon Network and the Operator or otherwise determined).
- (c) If the Access Holder is notified of a matter to be referred to an Adjudicator in accordance with a Train Operations Deed, then the Access Holder:
 - (i) must comply with the provisions of that agreement governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, an Adjudicator;
 - (ii) must provide the Adjudicator with a copy of this Agreement;

- (iii) agrees that **clauses 26.1** and **28** do not apply to any claim, dispute, question or liability involving the Access Holder and this Agreement in connection with the matter referred to the Adjudicator; and
- (iv) agrees that, for the avoidance of doubt, the decision of that Adjudicator, in the absence of manifest error, will be final and binding upon the Access Holder.

36.2 Performance Levels

- (a) If a notice is given under the Train Operations Deed that a party considers that the Performance Levels are no longer appropriate:
 - (i) Aurizon Network must promptly provide a copy of the notice to the Access Holder; and
 - (ii) the Parties and the Operator must use reasonable endeavours to agree on varied Performance Levels.
- (b) If the Parties and the Operator are unable to agree to such variations then the existing Performance Levels will continue to apply unless varied by Aurizon Network in accordance with clause 12.2(a)(iv) of the Train Operations Deed.

36.3 Amendments due to changes to Train Operations Deed

If:

- (a) modified or additional Rollingstock or Rollingstock Configurations are authorised under a Train Operations Deed;
- (b) the Performance Levels specified in a Train Operations Deed are varied;
- (c) an Interface Risk Management Plan or Environmental Management Plan is prepared, reviewed, amended or audited, in accordance with a Train Operations Deed;
- (d) the Train Description under a Train Operations Deed is varied; or
- (e) a Train Operations Deed is otherwise amended as a result of or in connection with any of the matters in paragraphs (a) to (d),

then:

- (f) the Parties must amend this Agreement (including, but not limited to, by Aurizon Network varying the Access Charge Rates or Train Description) as reasonably necessary to reflect the change or variation to the Train Operations Deed and otherwise comply with this Agreement (including, for example, the Access Holder varying its nomination of the Operator (if necessary)), provided that any such amendment ceases to apply to the extent the relevant Operator ceases to be nominated as the Operator of the relevant Train Services;
- (g) Aurizon Network must advise the Access Holder of any variations to the Access Charge Rates payable by the Access Holder as a result of that change or variation; and
- (h) where the Parties cannot agree on the amendments to this Agreement, to the extent that those amendments:
 - (i) are not variations to the Access Charge Rates, the matter will be referred to an expert in accordance with **clause 28.3**; and

- (ii) are variations to the Access Charge Rates (and any other amendments have been agreed by the Parties or otherwise determined), either Party may refer the matter to the QCA for determination in accordance with **clause 28.5**,

provided that any such amendment or variation will not result in any increase to the total capacity allocated to the Access Holder under this Agreement.

36.4 Notice to Access Holder

- (a) If any of the matters referred to in **clauses 36.3(a) to 36.3(e)** is proposed by Aurizon Network or the Operator and the proposal, if agreed, would require amendments to this Agreement or otherwise adversely affect the Access Rights or utilisation of the Access Rights, then Aurizon Network must provide:
 - (i) written notice to the Access Holder of the proposal as soon as practicable; and
 - (ii) the Access Holder with a reasonable opportunity to participate in any negotiations or discussions between Aurizon Network and the Operator of such a proposal.
- (b) If the Access Holder disputes the proposed amendments to this Agreement or the effect on the Access Rights or utilisation of the Access Rights (as applicable) arising from a matter referred to in **clauses 36.3(a) to 36.3(e)**, then the Access Holder may refer the dispute to the QCA for determination in accordance with **clause 28.5**.

37 Notices

37.1 Form of Notice

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

37.2 Method of service

A Notice may be given by being:

- (a) personally delivered to a Party;
- (b) left at the Party's current address for service;
- (c) sent to the Party's current address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the Party's current facsimile number for service; or
- (e) if agreed by the Parties, sent by email to the Party's current email address for service.

37.3 Deemed Notice

Subject to **clause 37.5**, a Notice given in accordance with this **clause 37** is deemed to be given if:

- (a) personally delivered, upon delivery;

- (b) posted to an address in Australia, three Business Days after posting;
- (c) posted to an address outside Australia, 10 Business Days after posting;
- (d) sent by facsimile, on the next Business Day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number; or
- (e) sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

37.4 Addresses for notices

- (a) Each Party's address for notices is as set out in **item 2 of Schedule 1**.
- (b) A Party may from time to time change its particulars for service by giving notice of that change to the other Party.

37.5 Train Control Direction or Incident Commander's Direction

- (a) A Train Control Direction is deemed to have been given at the time the direction is given, issued or made.
- (b) A direction from an Incident Commander is deemed to have been given at the time the direction is communicated by the Incident Commander.

38 General

38.1 Survival

This **clause 38** and **clauses 5, 6, 17, 21, 25, 26, 28, 32, 34, 35** and **37** survive the expiration or termination of this Agreement.

38.2 Amendment

- (a) Except as otherwise provided in this Agreement, any variation or amendment to this Agreement must be in writing signed by both Parties.
- (b) The Access Holder must provide each Operator with a copy of any written agreement to variations or amendments to this Agreement.

38.3 Entire agreement

- (a) This Agreement, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect. No Party is liable to any other Party in respect of those matters.
- (c) Neither Party has relied on any representations made by the other Party relating to the subject matter of this Agreement or otherwise.
- (d) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

38.4 Counterparts

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

38.5 Non-merger

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

38.6 Authority to enter into agreement

- (a) Each Party warrants to the other Party that, in respect of itself, it has full power to enter into and perform its obligations under this Agreement, and that this Agreement constitutes valid and binding obligations on it, enforceable in accordance with its terms.
- (b) If this Agreement is executed by an attorney, the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Agreement.

38.7 Consents and approvals

Unless otherwise stated in this Agreement, if a Party has a right to accept, reject, decide, determine, consent or make any decision or exercise any discretion or decide to give any notice under this Agreement, the Party may do so conditionally or unconditionally at its discretion.

38.8 Relationship

The relationship between the Parties is entirely contractual. Nothing in this Agreement creates, or is to be taken to create, any partnership, joint venture or relationship of employer and employee between the Parties or any of them.

38.9 Certificate

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

38.10 Costs

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

38.11 Duty

- (a) The Access Holder is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under or in connection with it.
- (b) If Aurizon Network pays any stamp duty (including any fine or penalty) on or relating to this Agreement, or any document executed under or in connection with it, the Access Holder must, within 10 Business Days after receiving such demand, reimburse Aurizon Network the amount paid.

38.12 Waiver and exercise of rights

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

38.13 Computation of time

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

38.14 Severance of invalid or illegal terms

- (a) If any term of this Agreement, or its application to any Party, person or circumstance, is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever, then:
 - (i) that term, or its application to such Party, person or circumstance, is severed from this Agreement;
 - (ii) the remainder of this Agreement, excluding the severed part, remains in force, and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
 - (iii) to the extent permissible by Law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this **clause 38.14** as to a replacement term.
- (c) If the Parties cannot agree upon a replacement term, this Agreement is continued in accordance with **clauses 38.14(a)(i)** and **38.14(a)(ii)**.

38.15 Rights cumulative

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

38.16 Approvals and consents

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

38.17 Third Party Land

The Access Holder acknowledges that:

- (a) the land specified in **item 4 of Schedule 3 (Third Party Land)** is not owned or controlled by Aurizon Network; and
- (b) entry onto that Third Party Land is not included within the definition of Access,

and agrees that in respect of that Third Party Land:

- (c) the Access Holder will comply with the requirements of the person that owns or controls that Third Party Land (**Landowner**) in relation to that Third Party Land as notified to the Access Holder by Aurizon Network from time to time;
- (d) if, after the Commencement Date, there is a change in the costs incurred by Aurizon Network due to the requirements of the Landowner in respect of that Third Party Land, then that change is deemed to be a Material Change; and
- (e) if Aurizon Network's rights in respect of that Third Party Land are terminated for any reason other than the default of Aurizon Network of any agreement that affects Aurizon Network's use of that Third Party Land or other than by agreement with the Landowner, then Aurizon Network may, by notice to the Access Holder, suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that Third Party Land.

38.18 Implementation of agreement

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

38.19 Governing law and jurisdiction

- (a) This Agreement is governed by, and is to be construed in accordance with, the law in force in the State.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State, and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

38.20 PPS Act

- (a) If a Party (**first party**) reasonably determines that this Agreement contains a "Security Interest" for the purposes of the PPS Act (**Security Interest**), the other Party (**second party**) agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the first party

(after consultation with the second party) reasonably asks and considers necessary for the purposes of:

- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the first party to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the first party; or
 - (iii) enabling the first party to exercise rights in connection with the Security Interest.
- (b) A Party is not required to give any notice under the PPS Act to the other Party or any other person and each Party waives the right to receive any such notice (including a notice of 'Verification Statement' as this term is defined under the PPS Act) unless the notice is required by the PPS Act and that obligation cannot be excluded.
- (c) To the extent that this Agreement gives rise to a Security Interest, the Parties agree that for the purposes of section 115 of the PPS Act, the following sections of the PPS Act will not apply to any Relevant Collateral:
- (i) section 95 (notice by Secured Party of removal of Accession);
 - (ii) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
 - (iii) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
 - (iv) section 130, to the extent that it requires a party to give any notice to the other party (notice by Secured Party of disposal of Collateral);
 - (v) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
 - (vi) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
 - (vii) section 135 (notice by Secured Party of retention of Collateral);
 - (viii) section 142 (redemption of Collateral); and
 - (ix) section 143 (reinstatement of Security Agreement).

39 Most favoured nation status

39.1 Notice of contravention of price differentiation limitations

If the Access Holder (**Claimant Access Holder**) believes on reasonable grounds that:

- (a) Aurizon Network has entered into an Access Agreement with another Network Customer for a Network Train Service that transports the same specified commodity in the same specified geographic area as a Train Service operated using the Access Rights granted under this Agreement (**Like Train Service**); and
- (b) the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in

the Access Undertaking (including the value of the access charge, take or pay terms and terms of payment),

then the Claimant Access Holder may provide written notification to Aurizon Network which must include the reasons why the Claimant Access Holder considers this to be the case.

39.2 Aurizon Network's response

Within 20 Business Days after receipt of such notification, Aurizon Network must advise the Claimant Access Holder:

- (a) whether or not Aurizon Network agrees that the Access Agreement with the other Network Customer is for a Like Train Service and, if not, the reasons why Aurizon Network considers this to be the case;
- (b) if Aurizon Network agrees that the Access Agreement with the other Network Customer is for a Like Train Service, whether or not Aurizon Network agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation set out in the Access Undertaking and, if not, the reasons why Aurizon Network considers that the access charge applicable to the Like Train Service has not been developed in contravention of the limits on price differentiation; and
- (c) if Aurizon Network agrees that the access charge applicable to the Like Train Service has been developed in contravention of the limits on price differentiation, then within 40 Business Days after the advice provided under this **clause 39.2**, Aurizon Network must advise the Claimant Access Holder:
 - (i) whether or not Aurizon Network has been able to vary the access charge applicable to the Like Train Service such that it no longer contravenes the limits on price differentiation set out in the Access Undertaking; or
 - (ii) if Aurizon Network has not been able to vary the access charge applicable to the Like Train Service, that Aurizon Network agrees to the reduction of the Access Charges payable by the Claimant Access Holder, including the amount of the proposed reduced Access Charges.

39.3 Disputes

If the Access Holder does not agree with Aurizon Network's response, the dispute must be referred to an Expert for resolution in accordance with **clause 28.3**.

39.4 Interaction with other Network Customers

If:

- (a) another Network Customer notifies Aurizon Network that it believes that some or all of the Claimant Access Holder's Train Services are a "Like Train Service" as defined in the other Network Customer's Access Agreement to a Network Train Service operated by the other Network Customer, and that the Access Charge has been developed in contravention of the limits on price differentiation set out in the Access Undertaking; and

- (b) Aurizon Network agrees that this Agreement is for a Like Train Service and that any Access Charge under this Agreement has been developed in contravention of the limits on price differentiation set out in the Access Undertaking,

then Aurizon Network has the right by notice to the Claimant Access Holder to vary the Access Charge such that it no longer contravenes the limits on price differentiation set out in the Access Undertaking.

40 JV Participants and liability

40.1 Applicability

This **clause 40** only applies if **item 5** of **Schedule 1** states that it applies.

40.2 Warranty

The Access Holder 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.

40.3 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified by the Access Holder to Aurizon Network from time to time, in accordance with this Agreement.
- (b) As at the Commencement Date, the respective percentage interests of the JV Participants in the Joint Venture are as specified in **item 7** of **Schedule 1**.

40.4 Liability of JV Participants

- (a) The liability of each JV Participant under this Agreement will, subject to **clause 40.4(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) Subject to **clause 40.4(e)**, if a JV Participant is in default of a Financial Obligation, and the Access Holder 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 Access Holder 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 Access Holder under **clause 40.4(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.
- (e) If a Financial Obligation is a payment obligation which does not have a specified due date, then **clause 40.4(c)** comes into effect only if:
 - (i) Aurizon Network notifies the JV Participants of the failure to comply with the Financial Obligation; and
 - (ii) the default is not remedied after a reasonable time (of at least 20 Business Days) from the date the JV Participants receive the notice

under **clause 40.4(e)(i)**.

40.5 Termination and Suspension

For the avoidance of doubt, where a Suspension Event or Termination Event is attributable to or relates to an act or omission of one or more (but not all) of the JV Participants, Aurizon Network will be entitled to suspend or terminate (as applicable) this Agreement under **clauses 30** and **32** (as applicable) despite the Suspension Event or Termination Event (as applicable) not being attributable to or relating to an act or omission of all of the JV Participants.

Execution

Executed as an agreement

Executed by Aurizon Network Pty Ltd)
ABN 78 132 181 116:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Executed by [the Access Holder])
ABN [insert]:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Schedule 1 – Reference schedule

Item	Description	Details	
Access Holder details			
1	Access Holder	Name:	[insert]
		ABN:	[insert]
Particulars for Notices			
2	Address for Notices	Aurizon Network	
		Address:	[insert]
		Facsimile:	[insert]
		Email:	[insert]
		Attention:	[insert]
		Access Holder	
		Address:	[insert]
		Facsimile:	[insert]
		Email:	[insert]
		Attention:	[insert]
Security details			
3	Does clause 6.1 apply?	[yes/no]	
4	Security Amount	<p>The Security Amount (if applicable), at a time, will be an amount estimated by Aurizon Network (acting reasonably) as equivalent to the maximum amount of aggregate TOP Charges for all Train Service Types under this Agreement that could potentially be payable in up to 6 months assuming:</p> <p>(a) all of the Train Services were not operated for the Access Holder during the applicable period; and</p> <p>(b) the reason that the Train Services are not operated is not as a result of an Aurizon Network Cause.</p>	
[Joint Venture]			
5	Does clause 40 apply?	[yes/no]	
6	Name of Joint Venture	[insert name of Joint Venture or "Not Applicable" if no Joint Venture]	
7	JV Participants and percentage interests	Name of JV Participant	Percentage Interest
		[insert name]:	[insert interest]%
		[insert name]:	[insert interest]%

Item	Description	Details
		[insert name]: [insert interest]%

Schedule 2 – Train Descriptions

Part A – Matters applicable to specific Train Service Types

1 Train Service Type #1

1.1 Applicable Reference Tariff

[insert name of applicable type of Reference Tariff]

1.2 Matters relevant to Train Service Type – irrelevant to Reference Tariff

Details of dates	
Train Service Compliance Date	[insert]
Train Service Commitment Date	[insert]
Train Service Expiry Date	[insert]
General details	
Commodity	Coal
Coal System	[insert]
Reference Train Service	[yes /no]
Conditional Access Rights	
Do the Conditional Access Provisions apply?	[yes/no] [if yes, insert description of Expansion]
Operator(s)	
Name:	[insert]
Address:	[insert]
Facsimile:	[insert]
Email:	[insert]
Attention:	[insert]

1.3 Key characteristics of Train Service Type #1 – Reference Tariff sensitive

Details of route and facilities	
Origin	[insert]
Destination	[insert]
Loaded distance from Origin to Destination (km)	[insert]
Empty distance from Destination to	[insert]

Details of route and facilities	
Origin (km)	
Loading Facility	[insert]
Unloading Facility	[insert]
Depot	[insert]
Through-Running Train Service Type	[yes /no]
Details of maximum dwell times	
Maximum Time at Loading Facility (hours)	[insert]
Maximum Time at Unloading Facility (hours)	[insert]
Maximum Time at Depot (hours)	[insert]
Maximum Other Dwell Times (hours)	[insert]
Maximum Sectional Running Times	
Maximum Sectional Running Times	The Maximum Sectional Running Time for a Section for the Train Service Type are set out in appendix A to this Schedule 2 .
Nominated Monthly Train Services	
Nominated Monthly Train Services	The Nominated Monthly Train Services for the Train Service Type is set out in appendix B to this Schedule 2 .
Maximum Payload	
Maximum Payload	The Maximum Payload for the Train Service Type is set out in appendix B to this Schedule 2 .

1.4 Special operating restrictions

Without limiting the special operating restrictions which are specified in **item 1.2** of **Part B** of **Schedule 2** as being applicable to all Train Service Types, in scheduling Train Services for the Train Service Type in accordance with the Network Management Principles, Aurizon Network will comply with the following special operating restrictions (if any):

Item	Special operating restriction
1	[insert]
2	[insert]

1.5 Cycle description

Subject to:

- (a) any Train Control Direction given to the Operator in respect of a Train Service;
- (b) any exceptions which are specified in **part B** of this **Schedule 2** as being applicable to all Train Service Types; and
- (c) any exceptions specified in the table below,

the Operator must operate Train Services for the Train Services Type over the most direct route on the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

Where there is duplicated Track or multiple roads (eg yards), Aurizon Network will have the ability to schedule the Train Service over any of the Tracks or roads.

1.6 Permitted Train Movements on the Nominated Network

Item	Permitted Movements
1	[Insert any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times.]
2	[insert]

Part B – Matters applicable to all Train Service Types

1 Matters applicable to all Train Service Types

1.1 Overview

The matters set out in this **part B** of **Schedule 2** are applicable to all Train Service Types and form part of the Train Description for all Train Service Types.

1.2 Special operating restrictions

Without limiting the special operating restrictions for a Train Service Type which are specified in **item 1.4** of **Part A** of **Schedule 2** (if any), in scheduling Train Services in accordance with the Network Management Principles, Aurizon Network will comply with the following special operating restrictions:

Item	Special operating restriction
1	[insert]
2	[insert]

1.3 Cycle description

Subject to the exceptions set out in the table below, Train Services cycle description is the most direct route over the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

1.4 Stowage

Item	Stowage requirements
1	[Insert short term Stowage requirements additional to that provided in the relevant Reference Tariff Provisions.]
2	[insert]

Appendix A to Schedule 2 - Sectional Running Times

1 Train Services that are Reference Train Services

[Drafting note: This item will set out the Maximum Sectional Running Times for Train Services that are Reference Train Services.]

Maximum Sectional Running Times: Reference Train Services

Location From	Location To	Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Reference Train Services

		Empty (mins)			Loaded (mins)		
Location From	Location To	Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

2 Train Services that are not Reference Train Services

[Drafting note: If a Train Service for a Train Service Type is a not a Reference Train Service, the Maximum Sectional Running Times for Train Services for that Train Service Type for each Section will be specifically set out in this item.]

Maximum Sectional Running Times: Non- Reference Train Services

Location From	Location To	Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Non-Reference Train Services

		Empty (mins)			Loaded (mins)		
Location From	Location To	Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

Appendix B to Schedule 2 – Nominated Monthly Train Services

1 Train Service Type #1

Nominated Monthly Train Services (for a 30 day Month)	[insert]
Maximum Payload	[insert] tonnes
Nominal Payload	[insert] tonnes
Indicative Tonnage (for a 30 day Month)	[insert] tonnes

Note for information purposes only: The Nominated Monthly Train Services (for a 30 day Month) for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

$$\text{NMTS} = 2 \times \text{Loaded Train Services}$$

where:

NMTS = the Nominated Monthly Train Services (for a 30 day Month) for the Train Service Type

Loaded Train Services = IT/AAP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)

IT = the Indicative Tonnage (for a 30 day Month) for the Train Service Type

AAP = the Nominal Payload for the Train Service Type

Appendix C to Schedule 2 – Conditional Access Rights

1 Train Service Type #1

Details of Expansion	
Details of Expansion	[insert]
Details of Segments	
Details of Segment #1	Description: [insert] Initial Available Capacity: [insert]
Details of Segment #2	Description: [insert] Initial Available Capacity: [insert]
Details of Segment # [#]	Description: [insert] Initial Available Capacity: [insert]

Schedule 3 – Nominated Network

1 Nominated Network

The Nominated Network is that part of the Infrastructure described by reference to the diagrams and/or tables set out below, but does not include any freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

[Insert line diagram(s) depicting the Nominated Network]

2 Parts of Nominated Network subject to clause 29.2

For the purpose of **clause 29.2**, the specified parts of the Nominated Network are those parts of the Nominated Network described by reference the diagrams and/or tables set out below:

[Insert line diagram(s) depicting the Nominated Network]

[Drafting note: Aurizon Network may specify parts of the Nominated Network for the purpose of **clause 29.2** which are life expired, obsolete and/or only used by a single user.]

3 Train Control centres and signal cabins

The movement of an Operator's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins at locations to be notified by Aurizon Network from time to time.

4 Third Party Land

[Insert diagram(s)/table(s) (if applicable)]

5 Weighbridges and Overload Detectors

5.1 Weighbridges

Location	Party responsible for Weighbridge	Tolerance
[insert]	[insert]	[The tolerances required to achieve verification under the <i>National Measurement Act 1960</i> (Cth)]

5.2 Overload Detectors

Location	Party responsible for Overload Detector	Tolerance
[insert]	[insert]	+/- [insert] %

Schedule 4 – Access Charges

1 Definitions

1.1 Definitions

In this **Schedule 4**:

Access Charge Rates for a Train Service Type means the rates specified in **item 2** of this **Schedule 4** for that Train Service Type.

Access Charges for the purposes of this **Schedule 4** means:

- (a) for a Billing Period means the amount calculated in accordance with **item 3.1** of this **Schedule 4** for the Billing Period; and
- (b) for a Train Service Type for a Billing Period means the amount calculated in accordance with **item 3.2** of this **Schedule 4** for the Train Service Type and Billing Period.

Adjustment Charge for a Billing Period means the amount calculated and approved as an Adjustment Charge (as defined in the Access Undertaking) in accordance with the Access Undertaking for that Billing Period.

Advice Date in respect of a Change in Reference Tariff Provisions means the date on which the QCA's decision making or approving the Change in Reference Tariff Provisions is first published by the QCA.

Change in Reference Tariff Provisions means any change (including variation, repeal or replacement) of:

- (a) the Reference Tariff Provisions; or
- (b) the Reference Tariffs (including the creation of a new Reference Tariff), made or approved by the QCA from time to time.

Corresponding Train Service for a Train Service Type means a Network Train Service which:

- (a) has an origin and destination which is the same as the Origin and Destination for the Train Service Type;
- (b) has the same End User for the Train Service Type; and
- (c) is subject to the same type of Reference Tariff as the Reference Tariff Type for that Train Service Type,

and operated under an Access Agreement.

egtk means the electric gross tonne kilometres attributed to the relevant Train Service, being:

- (a) the gtk for the Train Service, if that Train Service uses electric traction; and
- (b) zero, if the Train Service does not use electric traction.

End User means in respect of Network Train Services operated in relation to an origin to destination, the person who is either:

- (a) the “Customer” (as defined under the Access Undertaking) for those Network Train Services; or
- (b) if there is no “Customer” (as defined under the Access Undertaking), the Access Holder for those Network Train Services under an Access Agreement.

Expansion Tariff has the meaning given in the Access Undertaking.

Gross Tonnes for a Train Service (whether loaded or empty) operated for a Train Service Type means the amount which is the sum of:

- (a) for each locomotive comprised in the Train Service, the Maximum Gross Mass for that locomotive;
- (b) for each loaded or partly loaded Wagon comprised in the Train Service:
 - (i) if there is a functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the mass of the Wagon as determined at such Weighbridge (provided that if there is more than one functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the mass will be determined by the Weighbridge that is located closest to the Origin for the Train Service Type); and
 - (ii) if there is no functioning Weighbridge located en route between the Origin and Destination for the Train Service Type, the amount (expressed in tonnes rounded to two decimal places) calculated in accordance with the following formula for each loaded or partly loaded Wagon comprising the Train Service:

$$(MGM - TW) \times LEF + TW$$

Where:

MGM = the Maximum Gross Mass for the Wagon

TW = the Tare Weight for the Wagon

LEF = the Loading Efficiency Factor for the Train Service

- (c) for each empty Wagon comprised in the Train Service, the Tare Weight for the Wagon; and
- (d) for all other Rollingstock comprised in the Train Service, the Maximum Gross Mass for the Rollingstock.

gtk for an operated Train Service (whether loaded or empty) for a Train Service Type means the amount which is the Gross Tonnes for the Train Service for the Train Service Type multiplied by:

- (a) if the Train Service was operated from the Origin to Destination for the Train Service Type, the number of kilometres of the loaded distance from Origin to Destination for the Train Service Type as specified in the Train Service Description for that Train Service Type; or
- (b) if the Train Service was operated from the Destination to Origin for the Train Service Type, the number of kilometres of the empty distance from the Destination to Origin for the Train Service Type as specified in the Train Service Description for that Train Service Type.

Gtk Forecast has the meaning given in the Access Undertaking.

Loading Efficiency Factor for a ~~loaded~~-Train Service means:

- (a) if a loading efficiency factor has been agreed in writing between Aurizon Network and the QCA as applicable to this Access Agreement, that loading efficiency factor;
- (b) if paragraph (a) does not apply and a loading efficiency factor (however described) is specified in or can be determined from Aurizon Network's Access Undertaking, that loading efficiency factor (expressed as a percentage); or
- (c) if paragraph (a) or (b) does not apply, 98%.

Maximum Gross Mass for a Wagon or other Rollingstock has the meaning given in the applicable Train Operations Deed.

Net Tonnes or "nt" for a Train Service (whether loaded or empty) operated for a Train Service Type means:

- (a) the Gross Tonnes for the Train Service; less
- (b) the sum of:
 - (i) for each locomotive comprised in the Train Service, the Maximum Gross Mass for the locomotive;
 - (ii) for each Wagon (whether loaded or empty) comprised in the Train Service, the Tare Weight for the Wagon; and

for all other Rollingstock (whether loaded or empty) comprised in the Train Service, the Tare Weight for the Rollingstock.

Nominal Train Payload has the meaning given in the Access Undertaking.

ntk for a Train Service (whether loaded or empty) operated for a Train Service Type means the amount which is the Net Tonnes for the Train Service multiplied by:

- (a) if the Train Service was operated from the Origin to Destination for the Train Service Type, the number of kilometres of the loaded distance from Origin to Destination for the Train Service Type as specified in the Train Service Description for that Train Service Type; or
- (b) if the Train Service was operated from the Destination to Origin for the Train Service Type, the number of kilometres of the empty distance from the Destination to Origin for the Train Service Type as specified in the Train Service Description for that Train Service Type.

Reference Train Path or **RTP** has the meaning given to the term "rtp" in the Access Undertaking.

Review Date in respect of a Change in Reference Tariff Provisions means the first day of the Month during which the Change in Reference Tariff Provisions takes effect.

Schedule 4 Variation Notice has the meaning given in **item 5.2(a)** of this **Schedule 4**.

Tare Weight for a Wagon or other Rollingstock has the meaning given in the applicable Train Operations Deed.

Tariff Gtk has the meaning given in the Access Undertaking.

TOP Charge:

- (a) for a Year means the amount which is the sum of the “TOP Charge” (as defined in **paragraph (b)** of this definition) for each Train Service Type for the Year; and
- (b) for a Train Service Type for a Year means, subject to **item 5.2** of this **Schedule 4**, the amount calculated in accordance with **item 4** of this **Schedule 4** for the Train Service Type and Year.

1.2 Access Charge Rates definitions

In this **Schedule 4**, a reference to any Access Charge Rate for a Train Service Type means the Access Charge Rate as varied from time to time in accordance with this Agreement.

1.3 Final Year of Agreement

For the purposes of this **Schedule 4**, if this Agreement does not end on 30 June of any Year, the final Year of this Agreement will be the twelve (12) Month period commencing on the 1 July occurring before the date of the expiration or termination of this Agreement and ending on the 30 June occurring after the date of the expiration or termination of this Agreement.

2 Access Charge Rates

Description of Access Charge Rate	Definition	Access Charge Rate (ex GST)	
		\$	Unit
Train Service Type # [insert]			
Incremental Maintenance Tariff	AT ₁	[insert]	\$ / '000 gtk
Incremental Capacity Tariff	AT ₂	[insert]	\$ / RTP
Allocated Tariff 1	AT ₃	[insert]	\$ / '000 ntk
Allocated Tariff 2	AT ₄	[insert]	\$ / Net Tonne
Electric Tariff	AT ₅	[insert]	\$ / '000 egtk
Electric Energy Charge	EC	[insert]	\$ / '000 egtk
QCA Levy	QL	[insert]	\$ / Net Tonne
Train Service Type # [insert]			
Incremental Maintenance Tariff	AT ₁	[insert]	\$ / '000 gtk
Incremental Capacity Tariff	AT ₂	[insert]	\$ / RTP
Allocated Tariff 1	AT ₃	[insert]	\$ / '000 ntk
Allocated Tariff 2	AT ₄	[insert]	\$ / Net Tonne
Electric Tariff	AT ₅	[insert]	\$ / '000 egtk
Electric Energy Charge	EC	[insert]	\$ / '000 egtk

Description of Access Charge Rate	Definition	Access Charge Rate (ex GST)	
		\$	Unit
QCA Levy	QL	[insert]	\$ / Net Tonne

[Drafting note: If a Train Service Type has a cross system component to it, this table will be populated in accordance with the cross system pricing rules in Schedule F of the Access Undertaking, and in particular for clarity note that the access charge is based on a cross system reference tariff. Where there is an ‘Expansion Tariff’ (as defined in the Access Undertaking), this table will be populated in accordance with Schedule F of the Access Undertaking for the correct expansion tariff.]

3 Calculations for Access Charge

3.1 Calculation of Access Charges for Billing Period

The Access Charge for a Billing Period is the sum of each of the following for the Billing Period:

- (a) the Access Charge for each Train Service Type operated during the Billing Period calculated in accordance with **item 3.2** of this **Schedule 4**; and
- (b) the Adjustment Charge (if any) applicable to the Billing Period.

3.2 Calculation of Access Charges for Train Service Type

The Access Charge for a Train Service Type is calculated as:

$$\left(AT_1 \times \frac{gtk}{1000} \right) + (AT_2 \times rtp) + \left(AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt) + \left(AT_5 \times \frac{egtk}{1000} \right) + \left(EC \times \frac{egtk}{1000} \right) + (QCA Levy \times nt) + TOP Charge$$

where:

- (a) AT_1 is the incremental maintenance tariff specified as the AT_1 input in the Access Charge Rates for the relevant Train Service Type;
- (b) AT_2 is the incremental capacity tariff specified as the AT_2 input in the Access Charge Rates for the relevant Train Service Type;
- (c) AT_3 is an allocative tariff specified as the AT_3 input in the Access Charge Rates for the relevant Train Service Type;
- (d) AT_4 is an allocative tariff specified as the AT_4 input in the Access Charge Rates for the relevant Train Service Type;
- (e) AT_5 is the electric access tariff specified as the AT_5 input in the Access Charge Rates for the relevant Train Service Type;
- (f) EC is the electric energy charge which is initially (from the Commencing Date) as specified as the EC input in the Access Charge Rates for the relevant Train Service Type), and after the Commencing Date as otherwise published by Aurizon Network on the Website on or about each 31 May during the Term after Aurizon Network seeks and obtains the

QCA's approval for a new electric energy charge (taking into account any over or under recovery in the previous Year);

- (g) QCALevy is the QCA levy charge specified as the QL input in the Access Charge Rates for the relevant Train Service Type;
- (h) TOPCharge is, if the Billing Period is a Billing Period ending on 30 June, the TOP Charge for each Train Service Type for the Year in which that 30 June occurs; and
- (i) each of gtk, rtp, ntk, nt, egtk is the sum of the gtk, rtp, ntk, nt, egtk, as applicable, for all Train Services for the relevant Train Service Type operated during the relevant Billing Period.

3.3 Clarification matters for calculation of Access Charges

- (a) The Access Charge is GST exclusive.
- (b) For clarity, for the purposes of this **Schedule 4**, a Train Service is a one way Train Service, that is, the journey from the Origin to the Destination is one Train Service, and the return journey from the Destination to the Origin is a second Train Service.

4 Calculation of TOP Charge

4.1 System Test

- (a) This **item 4.1** of **Schedule 4** only applies to a Train Service which has a Reference Tariff Type which is a 'System Reference Tariff' (as defined in the Access Undertaking).
- (b) Subject to **items 4.1(a)** and **5.2** of this **Schedule 4**, the TOP Charge for a Train Service for a Year will be zero if:

$$TGtkY > (FGtkY - NGtkY)$$

where:

TGtkY = the Tariff Gtk for that Train Service for the relevant Year

FGtkY = the Gtk Forecast for the relevant Year

NGtkY = the "gtk" (as defined in the Access Undertaking) not achieved due to the non-operation of Network Train Services (that are subject to the same type of Reference Tariff as the Reference Tariff Type for that Train Service) for Aurizon Network Cause for the relevant Year.

4.2 TOP Charge

- (a) If the TOP Charge for a Train Service Type for a Year is not zero as a result of the operation of **item 4.1** of this **Schedule 4**, the TOP Charge for that Train Service Type for the Year, subject to **item 5.2** of this **Schedule 4**, is calculated as follows:
 - (i) first, the maximum potential TOP Charge will be calculated based on **items 4.2(c)** to **4.2(d)** of this **Schedule 4**; and
 - (ii) second, that maximum potential TOP Charge will be adjusted by applying each of:

- (A) **item 4.2(f) (Mine capping)**; and
- (B) **item 4.2(g) to (i) (Tariff capping)**,

as applicable and in that order to determine the actual TOP Charge for that Train Service Type.

- (b) If the TOP Charge for a Train Service Type for a Year is not zero as a result of the operation of **item 4.1** of this **Schedule 4**, the TOP Charge for that Train Service Type for the Year:
 - (i) is determined for each Year;
 - (ii) is invoiced for each Year following completion of that Year; and
 - (iii) must not be less than zero.
- (c) The maximum potential TOP Charge for a Train Service Type will be calculated as the amount which is 100% of the amount calculated as:

$$(AT_2 \times rtp \times NTS) + \left(AT_3 \times \frac{ntk}{1000} \right) + (AT_4 \times nt)$$

where:

- (i) each of AT2, AT3 and AT4 are the incremental capacity tariffs specified as the AT2, AT3 and AT4 inputs in the Access Charge Rates for the relevant Train Service Type;
- (ii) the nt and ntk (as applicable) are calculated by:
 - (A) the aggregate nt and ntk (as applicable) that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Service Type; less
 - (B) the aggregate nt and ntk (as applicable) not railed for the relevant Year due to the non-operation of Train Services for an Aurizon Network Cause; less
 - (C) the aggregate nt and ntk (as applicable) railed for the relevant Year; and
- (iii) NTS is calculated as:
 - (A) the number of Train Services for the relevant Train Service Type that the Access Holder would have operated for the relevant Year had the full contracted entitlement been railed; less
 - (B) the number of those Train Services that either:
 - (1) were not able to be operated solely as a result of an Aurizon Network Cause; or
 - (2) were operated (whether loaded or empty) during that Year.
- (d) To calculate nt and ntk for the purpose of **item 4.2(c)(ii)** of this **Schedule 4**, Aurizon Network must:
 - (i) identify the number of Train Services for the relevant Train Service Type that would have operated under this Agreement had the full

- contracted entitlement been used; and
- (ii) determine the number of Train Services for the relevant Train Service Type that did not operate under that contracted entitlement due to an Aurizon Network Cause, provided that if the Access Holder has more than one Access Agreement for the same origin to destination pair, Aurizon Network will allocate those Train Services as between this Agreement and the other Access Agreements in the order in which those Access Agreements were executed (unless the relevant Access Holder has nominated a different order, in which case that order will be applied), and calculate the nt and ntk by using the Nominal Train Payload applicable for the relevant Reference Tariff.
- (e) For the purpose of calculating TOP Charges, the Access Holder's entitlement to operate Train Services is, without limitation, determined by reference to the Train Services that could have been operated in accordance with this Agreement including even if:
- (i) where the Access Holder is not a Train Operator:
 - (A) the Access Holder has not nominated a Train Operator to utilise Access Rights relevant to all or any of the Train Services;
 - (B) either:
 - (1) the Access Holder must ensure a Train Operator does not operate; or
 - (2) Aurizon Network suspends the right of the Access Holder to have a Train Operator operate, all or any of the Train Services; or
 - (C) under the relevant Train Operations Deed, either:
 - (1) the relevant Train Operator must not operate; or
 - (2) Aurizon Network suspends the right of the relevant Train Operator to operate, all or any of the Train Services; or
 - (ii) where the Access Holder is a Train Operator, the Access Holder must not operate, or Aurizon Network suspends the right of the Access Holder to operate, all or any of the Train Services,
- except to the extent of any express exceptions specified in this Agreement for the purpose of calculating the TOP Charge where the Access Holder is taken to not have an entitlement to operate the relevant Train Service Type.

Mine capping

- (f) If:
 - (i) Train Services operated in relation to a Train Service Type in respect of an End User under this Agreement, has not exceeded the Train Service Entitlement in this Agreement; and

- (ii) there is another Access Agreement (excluding Access Agreements executed or renewed prior to 1 October 2010) (**Other Agreement**) with Corresponding Train Services that have been exceeded,

then the TOP Charge under this Agreement will be reduced by the amount of the additional revenue from Access Charges for AT2-4 from those excess Train Services under the Other Agreement but only to the extent that:

- (iii) both that Take or Pay liability and those Access Charges are set by reference to the same Reference Tariff;
- (iv) the additional revenue under the Other Agreement has not been utilised to reduce the Take or Pay liability under another Access Agreement (other than this Agreement or the Other Agreement); and
- (v) the additional revenue from the Other Agreement can only be used for a reduction of TOP Charge under this **item 4.2(f)** of this **Schedule 4**, in respect of the Year in which that additional revenue arose and cannot be accrued, rolled over or otherwise used to reduce a TOP Charge for any other Year.

Tariff capping

- (g) **Item 4.2(h)** of this **Schedule 4**, must only be applied after **item 4.2(f)** of this **Schedule 4**, (if applicable) has been applied.
- (h) Subject to **items 4.2(i)**, and to **item 4.2(f)** of this **Schedule 4**, (if applicable) having first been applied, if the Total Actual Revenue (as defined in the Access Undertaking) for AT₂₋₄ in relation to access charges for all Access Agreements set by reference to the relevant Reference Tariff less the aggregate amount of Tariff Take or Pay (as defined in the Access Undertaking) that Aurizon Network is entitled to earn from all Access Agreements executed or renewed on or after 30 June 2006 (other than any new or varied Access Agreement to the extent entered or varied as part of transferring Access Rights from existing Access Agreements in place on the day immediately prior to 30 June 2006 under a provision of the Access Agreement which permits the transfer of Access Rights) (**Total Revenue**) is:
 - (i) greater than or equal to the Allowable Revenue (as defined in the Access Undertaking) for AT₂₋₄ in relation to the relevant Reference Tariff, the TOP Charge is not payable for that Year under this Agreement; or
 - (ii) less than the Allowable Revenue (as defined in the Access Undertaking) for AT₂₋₄ in relation to the Reference Tariff:
 - (A) Aurizon Network must calculate the aggregate amount of Tariff Take or Pay (as defined in the Access Undertaking) that Aurizon Network is entitled to earn from all Full Take or Pay Agreements (as defined in the Access Undertaking) (**Total Actual Take or Pay**); and
 - (B) if the Total Actual Take or Pay exceeds the amount by

which the Allowable Revenue for AT_{2-4} in relation to the relevant Reference Tariff exceeds the Total Revenue from Access Charges set by reference to the relevant Reference Tariff (**Maximum Take or Pay Amount**), then:

- (1) Aurizon Network will calculate for each relevant Access Holder, the proportion that the Access Holder's Tariff Take or Pay amount bears to the Total Actual Take or Pay (**Proportion**); and
 - (2) the TOP Charge will be reduced by an amount equal to the Access Holder's Proportion of the Maximum Take or Pay Amount.
- (i) In determining what Aurizon Network would be entitled to earn for the purposes of **item 4.2(h) of Schedule 4**, Aurizon Network is deemed to have contracted on the terms of the relevant Standard Access Agreement (as defined under the Applicable Undertaking) that applied on the date of execution or renewal of an Access Agreement, except for:
- (i) those Access Agreements which have been altered by agreement from that form in a manner consistent with the terms of any Approved Undertaking or approval of the QCA, in which case Aurizon Network's entitlement will be calculated in accordance with the terms of such Access Agreements; and
 - (ii) a New Access Agreement to the extent entered into as part of transferring Access Rights from an Old Access Agreement executed under the 2001 Undertaking, under a provision of the Access Agreement which permits the transfer of Access Rights, in which case Aurizon Network's entitlement to Tariff Take or Pay amounts will be calculated on the basis that Aurizon Network has contracted on the terms of the relevant Standard Access Agreement (as defined under the 2001 Undertaking) that applied on the date of execution of that Old Access Agreement.

The capitalised terms used in this **item 4.2(h) of Schedule 4** have the meaning given them in the Access Undertaking.

4.3 TOP Charge on Expansion Tariff

- (a) This item 4.3 of **Schedule 4** applies if the Access Charge Rates include a rate set by reference to an Expansion Tariff.
- (b) The TOP Charge for each Train Service Type will be calculated in accordance with:
 - (i) the formulae in **item 4.2(c) of Schedule 4**; plus
 - (ii) $AT_5 \times egtk / 1000$;where:

AT₅ is the electric access tariff specified as the AT₅ input in the Access Charge Rates for the relevant Train Service Type; and
egtk is calculated by:

- (A) the aggregate egtk that would have been achieved for the relevant Year had the full contracted entitlement been railed for the relevant Train Service Type; less
 - (B) the aggregate egtk not railed for the relevant Year due to the non-operation of that Train Service Type for an Aurizon Network Cause; less
 - (C) the aggregate egtk railed for the relevant Year;
- provided always that the amount of TOP Charge for the Year must not be less than zero.
- (c) In order to calculate egtk for the purposes of **item 4.3(b)** of **Schedule 4**, Aurizon Network must:
 - (i) identify the number of Train Services that would have operated had the full contracted entitlement been used;
 - (ii) determine the number of Train Services that did not operate under that contracted entitlement due to an Aurizon Network Cause; and
 - (iii) convert this to egtk by using the Nominal Train Payload for the relevant Reference Tariff as reasonably determined by Aurizon Network.
 - (d) For clarity:
 - (i) there is no Take or Pay trigger test, that is **item 4.1** of **Schedule 4** does not apply; and
 - (ii) there are no capping mechanisms, that is **items 4.2(f) to 4.2(i)** of **Schedule 4** do not apply.

5 Review of schedule 4

5.1 Acknowledgment

The Parties agree that **items 2 to 4** of this **Schedule 4** were determined by reference to the Reference Tariff Provisions as at:

- (a) if the Train Service Type was a Train Service Type as at the Commencement Date – the Commencement Date; or
- (b) if **Schedule 2** was varied to include the Train Service Type – the date **Schedule 2** was varied to include the Train Service Type.

5.2 Review of schedule 4

- (a) Within 20 Business Days after the Advice Date for a Change in Reference Tariff Provisions, Aurizon Network must give the Access Holder a notice (**Schedule 4 Variation Notice**) specifying variations to:
 - (i) the Access Charge Rates for any Train Service Type;
 - (ii) the TOP Methodology; and
 - (iii) any other aspect of this **Schedule 4**.
- (b) In considering any variations to this **Schedule 4** under **item 5.2(a)** of this **Schedule 4** as a result of a Change in Reference Tariff Provisions, Aurizon Network must have regard to:

- (i) any change to Reference Tariffs (including new Reference Tariffs);
- (ii) any change to the methodology for calculating take or pay charges under the Access Undertaking;
- (iii) any change to the characteristics of the Reference Train Service;
- (iv) any differences between the Train Service Description for a Train Service Type and the characteristics of the Reference Train Service;
- (v) any change to RTP for the Train Service Type or its calculation;
- (vi) other related factors in the Reference Tariff Provisions; and
- (vii) the Access Undertaking.

5.3 Dispute

- (a) If Aurizon Network gives the Access Holder a Schedule 4 Variation Notice in respect of a Change in Reference Tariff Provisions, the Access Holder may, within 10 Business Days after Aurizon Network gives the Schedule 4 Variation Notice, give Aurizon Network a Dispute Notice which Disputes the variations specified in the Schedule 4 Variation Notice in accordance with **clause 28**.
- (b) If a Dispute referred to in **item 5.3(a)** of this **Schedule 4** is not resolved in accordance with **clause 28.2**, then the Parties must refer the Dispute to an Expert to determine the Dispute in accordance with **clause 28.3** and **item 5.4** of this **Schedule 4**.
- (c) If the Access Holder does not give Aurizon Network a Dispute Notice referred to in **item 5.3(a)** of this **Schedule 4** within the time referred to in **item 5.3(a)** of this **Schedule 4**, then:
 - (i) the variations specified in the Schedule 4 Variation Notice will take effect on the Review Date for relevant the Change in Reference Tariff Provisions;
 - (ii) the Access Holder must not give Aurizon Network a Dispute Notice Disputing the variations specified in the Schedule 4 Variation Notice;
 - (iii) any such Dispute Notice which is given by the Access Holder will be of no effect; and
 - (iv) the Access Holder must not make any Claim against Aurizon Network in respect of that Dispute.

5.4 Expert determination

If a Dispute referred in **item 5.3(a)** of this **Schedule 4** is referred to an Expert, then:

- (a) promptly after the date the Dispute is referred to the Expert, Aurizon Network must provide the Expert with documentation to support the variations specified in the Schedule 4 Variation Notice;
- (b) the Expert must:
 - (i) undertake to keep confidential all matters coming to its knowledge

- by reason of the Expert's appointment and performance of its duties, other than that already in the public domain; and
- (ii) not include such information in its reasons for reaching the determination;
- (c) the Expert must review the documentation provided by Aurizon Network under **item 5.4(a)** of this **Schedule 4** and determine whether or not the variations specified in the Schedule 4 Variation Notice are consistent with the Access Undertaking and the relevant Change in Reference Tariff Provisions;
 - (d) if the Expert determines that the variations specified in the Schedule 4 Variation Notice are consistent with the Access Undertaking and the relevant Change in Reference Tariff Provisions, the variations will take effect on the Review Date for the relevant Change in Reference Tariff Provisions;
 - (e) if the Expert determines that the variations specified in the Schedule 4 Variation Notice are not consistent with the Access Undertaking and the relevant Change in Reference Tariff Provisions, then:
 - (i) the Expert must use reasonable endeavours to attempt to reach agreement with Aurizon Network as to, and failing such agreement must determine, the variations to this **Schedule 4** which are reasonable as a result of the relevant Change in Reference Tariff Provisions, having regard to:
 - (A) the matters specified in **item 5.2(b)** of this **Schedule 4**; and
 - (B) any other matters which a Party submits that the Expert should have regard to in determining the Dispute.
 - (ii) the variations agreed between the Expert and Aurizon Network, or determined by the Expert, in accordance with **item 5.4(e)(i)** of this **Schedule 4** will take effect on the Review Date for the relevant Change in Reference Tariff Provisions.
 - (f) Despite **clause 28.3(j)**, the costs of the Expert (and the costs of any advisers to the Expert) will be borne by:
 - (i) the Access Holder if the Expert determines that the variations specified in the Schedule 4 Variation Notice are reasonable as a result of the relevant Change in Reference Tariff Provisions;
 - (ii) Aurizon Network if the Expert determines that the variations specified in the Schedule 4 Variation Notice are not reasonable as a result of the relevant Change in Reference Tariff Provisions; or
 - (iii) in such other proportion as the Expert may otherwise determine.

Schedule 5 – Insurance

1 Workers compensation insurance

The Access Holder must effect and maintain insurance covering such liability as may arise at common law or by virtue of any applicable workers' compensation legislation in respect of any Access Holder's Staff.

Schedule 6 – Suspension Events and Termination Events

Item	Suspension Event	Termination Event
1	The Access Holder fails to pay by the due date any amount payable under this Agreement, and such default continues for at least 10 Business Days after Aurizon Network notifies the Access Holder of the default (and always subject to clause 5.4).	The Access Holder fails to pay by the due date any amount payable under this Agreement, and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default (and always subject to clause 5.4).
2	An Insolvency Event occurs in respect of the Access Holder.	An Insolvency Event occurs in respect of the Access Holder and continues for a period of at least 40 Business Days.
3	The Access Holder fails to: (a) effect or maintain the insurances required under clause 23.2 ; or (b) provide evidence of the insurances required under clause 23.2 having been effected and maintained, and such default continues for at least five Business Days after Aurizon Network notifies the Access Holder of the default.	The Access Holder fails to: (a) effect or maintain the insurances required under clause 23.2 ; or (b) provide evidence of the insurances required under clause 23.2 having been effected and maintained, and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default.
4	The Access Holder fails to establish, maintain or replace the Security as required under this Agreement, and such default continues for at least five Business Days after Aurizon Network notifies the Access Holder of the default.	The Access Holder fails to establish, maintain or replace the Security as required under this Agreement, and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default.
5	The Access Holder purports to Assign any of its rights or interests in this Agreement other than as permitted in this Agreement.	The Access Holder purports to Assign any of its rights or interests in this Agreement other than as permitted by this Agreement.
6	The Access Holder fails to comply with any obligation under this Agreement (other than any obligation which, if not complied with by the Access Holder, may (either of itself or if other requirements are satisfied) result in any other Suspension Event occurring), and such default continues for at least 20 Business Days after Aurizon Network notifies the Access Holder of the default.	The Access Holder fails to comply with any obligation under this Agreement (other than any obligation which, if not complied with by the Access Holder, may (either of itself or if other requirements are satisfied) result in any other Termination Event occurring), and such default continues for at least 40 Business Days after Aurizon Network notifies the Access Holder of the default.

Schedule 7 – Pro forma Access Interface Deed

Aurizon Network Pty Ltd

[Insert Customer]

Access Interface Deed

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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**)

[insert] of [insert address] (**Customer**)

Background

- A Aurizon Network and the Access Holder are parties to the Access Agreement.
 - B Aurizon Network and the Access Holder (in its capacity as the 'Operator' under the Train Operations Deed) are also parties to the Train Operations Deed.
 - C The Access Holder (in its capacity as 'Operator') and the Customer are parties to the Rail Haulage Agreement.
 - D In accordance with the Access Agreement, the Parties enter into this Deed to create a contractual relationship between Aurizon Network and the Customer and record their agreement in respect of circumstances in which they will be liable to each other for loss suffered in connection with the provision or utilisation of Access.
-

Agreed terms

1 Interpretation

1.1 Definitions

In this Deed:

Access Agreement means the Access Agreement [insert] between Aurizon Network and the Access Holder dated on or about [insert], as amended from time to time.

Access Agreement Liability Provisions has the meaning given in clause 2.4(a).

Access Holder means [insert].

Access Rights means rights of access granted by Aurizon Network to the Access Holder under the Access Agreement.

Access Undertaking means the access undertaking submitted by Aurizon Network to the QCA and approved by the QCA under the *Queensland Competition Authority Act 1997* (Qld) as in force at the time of entering into the Access Agreement.

Business Day means a day which is not a Saturday, Sunday or public holiday

in Brisbane or, if and to the extent that this Deed expressly refers to another place, in that other place.

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

Consequential Loss means:

- (a) any loss of revenue, 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) any wasted overheads or demurrage;
- (f) loss of or damage to credit rating;
- (g) in respect of a breach of an agreement, loss or damage that does not naturally, according to the usual course of things, arise from the breach; and
- (h) loss or damage suffered or incurred by a Party arising out of a Claim against that Party by a Third Party, to the extent that the loss or damage would not be recoverable by the Third Party if the Party was not liable to the Third Party for "Consequential Loss" (as defined in this definition) in respect of the Claim by the Third Party,

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

- (i) any costs or expenses incurred by the party in connection with mitigating the effects of any breach of the Access 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 the Access Agreement) provided that if a loss arising from the breach of the Access Agreement is itself not recoverable because it is a Consequential Loss, the costs or expenses incurred in mitigating that loss must also be treated as (non-recoverable) Consequential Loss;
- (j) 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
- (k) 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
- (l) 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 Access 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 failure or breaches.

Deed means this Access Interface Deed.

Financial Obligation means any obligation of the Customer to pay, or cause to be paid, an amount of money.

Haulage Services means the haulage services provided by the Access Holder to the Customer under the Rail Haulage Agreement.

Infrastructure has the meaning given to the term "Rail Infrastructure" in the Access Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

Joint Venture means the unincorporated joint venture (if any) between the JV Participants specified in Item 2 of Schedule 1.

JV Participants means the entities (if any) specified in Item 3 of Schedule 1.

Party means a party to this Deed.

Product has the meaning given in **clause 3.1(a)**.

Queensland Competition Authority or **QCA** means the authority established under the *Queensland Competition Authority Act 1997* (Qld).

Rail Haulage Agreement means the agreement between the Access Holder and the Customer for the provision of rail haulage services to the Customer and for which purpose the Access Holder requires the Access Rights.

Staff of a party, means the employees, contractors, volunteers and agents of the party and any other person under the control or supervision of the party which is involved in:

- (a) in the case of Aurizon Network, any activity associated with the Access Agreement, the Infrastructure or the provision of Access Rights; and
- (b) in the case of the Customer, any activity associated with:
 - (i) the Haulage Services; or
 - (ii) the Customer's mine or other production facility (if any) or any loading or unloading facility to which the Haulage Services relate.

Third Party means a person other than the Customer or Aurizon Network.

Train Operations Deed means the Train Operations Deed referred to in paragraph B of the Background of this Deed.

1.2 Definitions in the Access Undertaking

Words or expressions which are used and not defined in this Deed, but are defined in the Access Undertaking have the meaning given to them in the Access Undertaking.

1.3 Construction

In this Deed, unless expressed to the contrary:

- (a) the singular include the plural and vice versa;
- (b) a gender includes all other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (e) a reference to:
 - (i) a person includes a partnership, unincorporated association, corporation or other entity, government or statutory body;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) conduct includes any omission or any representation, statement or undertaking, whether or not in writing;
 - (iv) conduct includes a benefit, remedy, discretion or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) the words "include", "includes" or "including" must be read as if they are followed by the words "without limitation";
 - (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
 - (viii) time is to local time in Brisbane, Queensland;
 - (ix) "A\$", "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (x) this or any other document or agreement includes the document or agreement as novated, varied or replaced from time to time and despite any change in the identity of the parties;
 - (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (xii) under a clause includes in accordance with that clause;
 - (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Deed;
 - (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision

substituted for it and all regulations and statutory instruments issued under it;

- (xv) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body;
- (xvi) access or access rights does not include rights granted by the Railway Manager to a Railway Operator under a train operations deed; and
- (xvii) subject to **clause 6**, the Customer, if the Customer is comprised of more than one entity (for example, if the Customer is comprised of the participants in an unincorporated joint venture), is a reference to each entity comprising the Customer.

1.4 Headings

Headings do not affect the interpretation of this Deed.

2 Relations between the Parties

2.1 No liability for Consequential Loss

A Party (**first Party**) is not liable to the other Party, and the other Party must not make any Claim against the first Party under or in connection with this Deed, the Access Agreement, the Access Rights or the Infrastructure in respect of any Consequential Loss whether as a result of:

- (a) the performance, non-performance or breach of this Deed, the Access Agreement or any other obligation;
- (b) the standard of or any failure of or defect in the Infrastructure;
- (c) negligence;
- (d) breach of warranty or representation; or
- (e) any other act, omission or circumstance whatsoever.

2.2 Indemnities for personal injury and property damage and duty to mitigate

(a) Subject to **clauses 2.1** and **2.4**, each Party (indemnifying Party) is solely liable for and releases, indemnifies and will keep indemnified the other Party, its directors and Staff against all Claims of any nature suffered or incurred by or made or brought against the other Party, its directors or Staff due to or arising out of the Access Agreement or this Deed in respect of:

- (i) any loss of or damage to or destruction of property (including property of the other Party); or
- (ii) personal injury to or death of any person,

in each case caused by or (to the extent of the contribution) contributed to by:

- (iii) the wilful default of; or
 - (iv) any deliberate act or omission (unless that act or omission is permitted under the Access Agreement or Train Operations Deed) or negligent act or omission of,
- the
- (v) indemnifying Party or the directors or Staff of the indemnifying Party; or
 - (vi) Access Holder (where the indemnifying Party is the Customer), if the default or act or omission is caused by, or (to the extent of the contribution) contributed to by, an act or omission of the Customer,
- in connection with this Deed, the Access Agreement or the Access Rights.

2.3 Extent of Aurizon Network’s liability to Customer for non-Consequential Loss

Subject to **clauses 2.1** and **2.4**, Aurizon Network will be liable to the Customer for any Claim to the same extent that Aurizon Network would have been liable for that Claim under the Access Agreement if the Claim was made by the Access Holder.

2.4 Exclusions of liability in Access Agreement apply

- (a) Each provision of the Access Agreement that directly or indirectly has the purpose or effect of regulating, excluding or limiting the liability of, or the making of a Claim against, Aurizon Network or the Access Holder (including limiting what conduct will constitute a breach and setting out when and how a Claim may be brought including any preconditions to doing so) (**Access Agreement Liability Provision**) will also operate to regulate, exclude or limit:

- (i) the liability of Aurizon Network or the Customer (as applicable); and
- (ii) the making of a Claim against, Aurizon Network or the Customer (as applicable) by the other Party under or in connection with this Deed or the Access Agreement, the Access Rights or the Infrastructure,

on the basis that all references to the Access Holder in the Access Agreement Liability Provisions will be deemed to include a reference to the Customer (unless **clause 2.4(b)** or **2.4(c)** applies).

- (b) If an Access Agreement Liability Provision refers to or requires the Access Holder or Aurizon Network and the Access Holder to agree anything:
 - (i) the matter to be agreed solely relates to the Claim or subject of the Claim by the Customer; and
 - (ii) the matter has not, before the Claim is first notified to the other Party, been agreed by Aurizon Network and the Access Holder,
 the reference to, or requirement for, the agreement of the Access Holder or the Access Holder and Aurizon Network in the Access Agreement Liability Provision (as applied under **clause 2.4(a)**) is to be read as if it was a reference to the agreement of the Customer or the agreement of the Customer and Aurizon Network (as applicable).

- (c) If:
 - (i) an Access Agreement Liability Provision refers to or requires the Access Holder or Aurizon Network and the Access Holder to agree anything;
 - (ii) the matter to be agreed partly relates to the Claim or subject of the Claim by the Customer; and
 - (iii) the matter has, before the Claim is first notified to the other Party, been agreed by Aurizon Network and the Access Holder,the Access Agreement Liability Provision (as applied under **clause 2.4(a)**) must be read subject to the matter as agreed by Aurizon Network and the Access Holder.
- (d) The Customer acknowledges that it has been provided with a copy of the Access Agreement Liability Provisions by the Access Holder.
- (e) For the avoidance of doubt, nothing in this **clause 2.4** operates to make the Customer liable or to increase any otherwise existing liability, or to entitle Aurizon Network to make any Claim against the Customer, for or to satisfy (whether in full or in part) any liability or obligation of the Access Holder or any act or omission of the Access Holder, its directors or Staff.

2.5 Duty to mitigate

Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this **clause 2** applies.

2.6 Acceptance of benefit

To the extent that the Rail Haulage Agreement or the Access Holder's (in its capacity as 'Operator') conditions of carriage with the Customer includes any exclusion or limitation of liability for Aurizon Network's benefit, this **clause 2.6** constitutes Aurizon Network's notice to the Customer of Aurizon Network's acceptance of the benefit of any such exclusion or limitation of liability for the purposes of section 55 of the *Property Law Act 1974* (Qld).

2.7 No effect on other arrangements

Nothing in this Deed, including **clauses 2.1, 2.3 and 2.4**, will operate to limit, exclude or qualify any liability or obligation of:

- (a) one Party to the other Party arising under or in connection with any agreement or deed (other than this Deed) to which Aurizon Network and the Customer are parties, whether alone or together with one or more other persons; or
- (b) any liability or obligation of the Access Holder (in its capacity as 'Operator') to the Customer arising under or in connection with the Rail Haulage Agreement or the Haulage Services.

2.8 General provisions regarding indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties.
- (b) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Deed.

3 Warranties by the Customer

[Drafting note: Where the Customer is unable to give each of the following warranties, (because the Customer does not own the mine, does not own the coal, or is not entitled to the proceeds of sale) Aurizon Network intends to enter into individual deeds with relevant parties which can give these warranties, where each deed will include clauses from the Access Interface Deed relevant to that party.]

3.1 Warranties

Each Customer warrants that at all times during the term of the Access Agreement and whilst the Customer is a party to this Deed, the Customers together are:

- (a) the owner of all of the mine or other production facility (if any) which produces the product which is to be transported using the Access Rights (**Product**);
- (b) the owner of the Product while that Product is being transported using the Access Rights; and
- (c) entitled to the proceeds of the sale of the Product while that Product is being transported using the Access Rights.

3.2 Reliance on warranties

The Customer acknowledges that Aurizon Network has entered (or will enter) into the Access Agreement and this Deed in reliance upon the warranties in clause **Error! Reference source not found.****Error! Reference source not found..**

4 Assignment

A Party must not assign its interests under the Access Agreement or the Rail Haulage Agreement (as applicable) to another person (**intended assignee**) unless the intended assignee has first executed and delivered to the other Party a deed of assumption, in a form acceptable to the other Party, acting reasonably, under which the intended assignee undertakes to be bound by the terms of this Deed.

5 General

5.1 Amendment

This Deed may only be varied or replaced by a written document executed by the Parties.

5.2 Entire understanding

- (a) This Deed and the Access Agreement contain the entire understanding and agreement between the Parties as to the subject matter of this Deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Deed are merged in and superseded by this Deed and are of no effect whatsoever. No Party is liable to any other Party in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:

- (i) affects the meaning or interpretation of this Deed; or
- (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

5.3 Counterparts

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

5.4 Duty

- (a) The Customer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it.
- (b) If a Party other than the Customer pays any duty (including any fine or penalty) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it, the Customer must pay that amount to the paying Party on demand.

5.5 GST

- (a) In this **clause 5.5**:
 - (i) words and expressions which are not defined in this Deed but which have a defined meaning in GST Law have the same meaning as in the GST Law;
 - (ii) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (b) If GST is or will be imposed on a supply made under or in connection with this Deed by a Party (Supplier), the Supplier may, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:
 - (i) increase the consideration otherwise provided for that supply under this Deed by the amount of that GST; or
 - (ii) otherwise recover from the recipient of the supply the amount of that GST.
- (c) Subject to **clause 5.5(d)**, the recipient of the supply will pay the amount referred to in **clause 5.5(b)** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.
- (d) The Supplier must deliver a tax invoice to the recipient of the supply before the Supplier is entitled to payment of any amount under **clause 5.5(b)**.

5.6 Legal costs

Except as expressly stated otherwise in this Deed, each Party must bear its own legal and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Deed.

5.7 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a Party of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.

- (b) No failure or delay by either Party to exercise any right or remedy under this Deed may be construed or operate as a waiver or be evidence of delay, laches or acquiescence in equity or at law in respect of such right or remedy.
- (c) A waiver or consent by any Party of any default or breach of any term of this Deed does not constitute a waiver of later defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Deed does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Deed.
- (e) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

5.8 Computation of time

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

5.9 Governing law and jurisdiction

- (a) This Deed is governed by, and is to be construed in accordance with, the law in force in Queensland.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

5.10 Liability

Subject to **clause 6**, an obligation of two or more persons binds them separately and together.

6 JV Participants and liability

6.1 Applicability

This **clause 6** only applies if Item 1 of Schedule 1 states that it applies.

6.2 Warranty

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

6.3 JV Participants and percentage interests

- (a) The percentage interest of the JV Participants in the Joint Venture will be as notified by the Customer to Aurizon Network from time to time.
- (b) As at the date the Customer executes and delivers this Deed, the respective percentage interests of the JV Participants in the Joint Venture are as specified in Item 3 of Schedule 1.

6.4 Liability of JV Participants

- (a) The liability of each JV Participant under this Deed will subject to **clause 6.4(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 Deed that are not Financial Obligations.
- (c) Subject to **clause 6.4(e)**, if a JV Participant is in default of a Financial Obligation and the Customer has not given notice to Aurizon Network identifying the defaulting JV Participant within 5 Business Days after the date Aurizon Network notifies the Customer identifying the default, all JV Participants will be jointly and severally liable for the performance of the Financial Obligation.
- (d) Any notice given by the Customer under **clause 6.4(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.
- (e) If the Financial Obligation is a payment obligation which does not have a specified due date, then **clause 6.4(c)** comes into effect only if:
 - (i) Aurizon Network notified the JV Participants of the failure to comply with the Financial Obligation; and
 - (ii) the default is not remedied after a reasonable time (of at least 20 Business Days) from the date the JV Participants receive the notice under **clause 6.4(e)(i)**.

Execution

Executed as a deed

Executed by Aurizon Network Pty Ltd)
ABN 78 132 181 116:)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Executed by [insert]:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Schedule 1

Joint Venture

1	Does clause 6.4 apply?	[yes/no]
2	Name of Joint Venture	[insert name of Joint Venture or "Not Applicable" if no Joint Venture]
3	JV Participants and percentage interests	Name of JV Participant Percentage Interest [insert name] [insert interest]% [insert name] [insert interest]% [insert name] [insert interest]%

Annexure 10 – STOD marked up against UT5

Aurizon Network 2017 DAU Draft - 30 November 2016

Aurizon Network Pty Ltd

[Insert name of Operator]

Train Operations Deed – Coal

[QRC mark-up of provisions regarding changes to payload 17 March 2017 \(collaboration draft marked up against UT5\)](#)

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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 person specified in **item 1** of **schedule 1+ (Operator)**

Background

- A Aurizon Network must provide access to the Nominated Network in accordance with the Access Undertaking.
 - B Aurizon Network is a party to one or more access agreements under which Aurizon Network has granted Access Rights to Network Customers (as defined in the Access Agreement) for the operation of Train Services over the Nominated Network.
 - C The Access Holder has nominated the Operator in respect of all or part of the Access Holder's Access Rights as reflected in the Train Description.
 - D Aurizon Network has agreed that the Operator may operate Train Services over the Nominated Network and to provide Train Control for those Train Services on the terms and conditions of this Deed.
 - E The Parties may enter into separate agreements for the provision of services by Aurizon Network to the Operator other than the grant of the Operational Rights.
-

1 Definitions and interpretation

1.1 Definitions

In this Deed:

Access has the meaning given in the Access Undertaking.

Access Agreement means the agreement between Aurizon Network and the Access Holder identified in **schedule 1**.

Access Charges has the meaning given in the Access Agreement.

Access Holder means the access holder identified in **item 3** of **schedule 1**.

Access Holder's Staff means the employees, contractors, volunteers and agents of the Access Holder and any other person under the control or supervision of the Access Holder involved in any Activity.

Access Rights means:

- (a) the rights of access to the Infrastructure granted to the Access Holder under the Access Agreement; and
- (b) for a Train Service Type, the "Access Rights" (as defined in paragraph (a))

of this definition) granted to the Access Holder in respect of the operation of Train Services for that Train Service Type.

Access Undertaking means the access undertaking submitted by Aurizon Network to the QCA and approved by the QCA under the *Queensland Competition Authority Act 1997* (Qld) from time to time.

Accreditation means the ability to lawfully carry out railway operations under the Rail Safety Act (whether by being accredited under the Rail Safety Act or by being exempt from the requirement to be accredited under the Rail Safety Act), and **Accredited** means to have Accreditation.

Activities means any activity associated with the Train Services, including “railway operations” as defined under the Rail Safety Act.

Ad Hoc Train Service for a Train Service Type means:

- (a) a Network Train Service which is additional to the Nominated Monthly Train Services for that Train Services Type but which is otherwise in accordance with the Train Description for that Train Service Type; or
- (b) a Network Train Service which is not a Train Service for a Train Service Type but which Aurizon Network permits the Operator to operate under this Deed as if it was a Train Service for the Train Service Type (subject to any derogations to the Train Description for the Train Service Type permitted by Aurizon Network, which includes a change in the Origin and Destination for that Train Service Type provided that the changed Origin and Destination forms part of the Nominated Network).

Adjoining Network means a rail network which is not part of the Infrastructure but which connects to the Infrastructure.

Amendment Notice has the meaning given in **clause [18.1\(a\)](#)~~17.1(a)~~**.

Ancillary Services means those services set out in **schedule 10** (if any) which Aurizon Network has agreed to provide to the Operator in addition to the grant of the Operational Rights.

Ancillary Services Charges means the ancillary services charges (if any) determined in accordance with **schedule 10** and any interest payable in relation to such charges under this Deed.

Applicable Safety Standards means:

- (a) in respect of the Operator, any Safety Standards identified in the IRMP as being applicable to the Operator; and
- (b) in respect of Aurizon Network, any Safety Standards identified in the IRMP as being applicable to Aurizon Network.

Applicable Safeworking Procedures means:

- (a) in respect of the Operator, any Safeworking Procedures identified in the IRMP as being applicable to the Operator; and
- (b) in respect of Aurizon Network, any Safeworking Procedures identified in the IRMP as being applicable to Aurizon Network.

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

Approved Derogation means, in respect of any Rollingstock or Rollingstock Configuration which does not comply with the Rollingstock Interface Standards, a departure from the Rollingstock Interface Standards which the IRMP identifies can be effectively managed by complying with measures specified in the IRMP in respect of such Rollingstock or Rollingstock Configuration.

Assign means to assign, novate, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber.

Aurizon Network Land means each parcel of land on, under or above which the Nominated Network is situated and which is:

- (a) land that is owned, leased or controlled by Aurizon Network; or
- (b) land in respect of which entry is required to be given by Aurizon Network as part of the definition of Access.

Aurizon Network Representative means the Aurizon Network officer for the time being appointed pursuant to **item 2.2(b) of schedule 9**.

Aurizon Network's Staff means the employees, contractors and agents of Aurizon Network and any other person under the control or supervision of Aurizon Network involved in the provision of Operational Rights.

Authorisation Request Notice has the meaning given in **clause [17.2\(a\)](#)~~16.2(a)~~**.

Authorised Parking has the meaning given in **clause Error! Reference source not found.**

Authorised Rollingstock means Rollingstock which is taken to be authorised Rollingstock under **clause [17.5\(c\)\(i\)](#)~~16.5(e)(i)~~** from time to time.

Authorised Rollingstock Configurations for a Train Service Type means Rollingstock Configurations for a Train Service Type which are taken to be authorised Rollingstock Configurations for that Train Service Type under **clause [17.5\(c\)\(ii\)](#)~~16.5(e)(ii)~~** from time to time.

Authority has the meaning given in the Access Undertaking.

Average Annual Payload for a Train Service Type means, at a point in time, the average of the Payloads (expressed in tonnes) for each Train Service for that Train Service Type operated from the Origin to the Destination (as recorded by a Weighbridge or Overload Detector) during the 12 month period ending at that point in time.

Authority to Travel means an authorisation issued by Aurizon Network which authorises the Operator to operate Train Services for a Train Service Type on the Nominated Network, for a specified period, using specified Authorised Rollingstock Configurations for that Train Service Type.

Billing Period means the period of a Month, except that:

- (a) the first Billing Period starts on the Commitment Date and ends on the last day of the Month in which the Commitment Date occurs; and
- (b) the last Billing Period commences on the first day of the Month during which this Deed terminates or expires and ends on the date of termination or expiry.

Business Day means a day which is not a Saturday, Sunday or public holiday in Brisbane or, if and to the extent that this Deed expressly refers to another place, in that other place.

Category 1 Reduced Operational Rights has the meaning given in **clause Error! Reference source not found..**

Category 2 Reduced Operational Rights has the meaning given in **clause Error! Reference source not found..**

Certificate of Compliance means a certification issued by a Certifier under **clause [17.5\(a\)\(vi\)](#)~~16.5(a)(vi)~~.**

Certifier means a person that Aurizon Network is reasonably satisfied is suitably qualified, experienced and competent to assess whether or not Rollingstock and Rollingstock Configurations comply with the Rollingstock Interface Standards subject to any Approved Derogations.

Change in Access Undertaking means:

- (a) any amendment to or replacement of the Access Undertaking or any successor undertaking to the Access Undertaking; or
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of an Access Undertaking resulting from a decision of a court or other Authority.

Change in Control in relation to any entity (the first mentioned entity) means:

- (a) a change in the entity that Controls the first mentioned entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change);
- (b) an entity that Controls the first mentioned entity ceases to Control that entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change); or
- (c) if the first mentioned entity is not Controlled, another entity acquires Control of the first mentioned entity.

Change in Law has the meaning given in the Access Undertaking, except that the reference to “Commencing Date” is replaced with “Commencement Date” (as defined under this Deed).

Change in Relevant Taxes has the meaning given in the Access Undertaking.

Charge means:

- (a) any mortgage, charge, a general or special notarial bond, pledge, hypothec or lien; or
- (b) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Chargee has the meaning given in **clause Error! Reference source not found..**

Chargor has the meaning given in **clause Error! Reference source not found..**

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

Coal System has the meaning given in the Access Undertaking.

Collateral has the meaning given in the PPS Act.

Commencement Date means the date of this Deed.

Commitment Date means the earliest Train Service Commitment Date under this Deed.

Compliance Date means the earliest Train Service Compliance Date under this Deed.

Compliance Statement has the meaning given in **clause [17.3\(b\)](#)~~16.3(b)~~**.

Confidential Information means the terms of this Deed and any information, data or other matter disclosed to a Recipient by or on behalf of the Discloser in relation to this Deed where:

- (a) the disclosure of the information, data or other matter by the Recipient might reasonably be expected to affect the commercial affairs of the Discloser; or
- (b) the information, data or matter is marked confidential by the Discloser when disclosed,

but excluding any such information, data or other matter which:

- (c) is already in the public domain or becomes available to the public through means other than a breach of the confidentiality undertaking by the Parties under this Deed;
- (d) was in the Recipient's lawful possession before the disclosure by the Discloser;
- (e) is received by the Recipient independently from a Third Party who is free to disclose such information, data or other matter to the Recipient; or
- (f) has ceased to retain its confidential nature, for example, where the disclosure of the information, data or other matter by the Recipient would no longer reasonably be expected to affect the commercial affairs of the Discloser.

Consequential Loss means:

- (a) any loss of revenue, loss of profits or loss of production;
- (b) any loss of whatever nature concerning the 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) any wasted overheads or demurrage;
- (f) loss of or damage to credit rating;

- (g) in respect of a breach of this Deed, loss or damage that does not naturally, according to the usual course of things, arise from the breach; and
- (h) loss or damage suffered or incurred by a Party arising out of a Claim against that Party by a Third Party, to the extent that the loss or damage would not be recoverable by the Third Party if the Party was not liable to the Third Party for “Consequential Loss” (as defined in this definition) in respect of the Claim by the Third Party,

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

- (i) any costs or expenses incurred by the Party in connection with mitigating the effects of any breach of this Deed 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 Deed) provided that if a loss arising from the breach of this Deed is itself not recoverable because it is a Consequential Loss, the costs or expenses incurred in mitigating that loss must also be treated as (non-recoverable) Consequential Loss;
- (j) 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;
 - (ii) personal injury to or death of any person; or
- (k) 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
- (l) any fines or penalties imposed by an Authority 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 this Deed, and any costs or expenses incurred by the first Party in dealing with any actions, investigations, inquiries or proceedings by an Authority in respect of such failures or breaches.

Contaminating Materials means any material, substance, gas, liquid, chemical, biological substance, mineral or other physical matter which is toxic, flammable, harmful to the Environment (including any life form) or may cause pollution, contamination, harm to the Environment or otherwise cause damage.

Control has the meaning given in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Corresponding Suspension Event in respect of a Termination Event means the Suspension Event specified in the same row as that Termination Event in **schedule 8**.

Daily Train Plan means that document detailing the scheduled times for all Network Train Services operating on the Infrastructure and any Planned Possessions, Urgent Possessions and Emergency Possessions on a particular day on a specified part of the Infrastructure, in a form that indicates the

time/distance (location) relationship of all activities on that specific part of the Infrastructure.

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

Dangerous Goods Code means the following codes (as amended or replaced from time to time) or any other codes developed to replace or supplement them (from time to time):

- (a) the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (7th Edition);
- (b) the *Australian Code for the Transport of Explosives by Road and Rail* (3rd Edition); and
- (c) the *Code of Practice for the Safe Transport of Radioactive Material* (2008 Edition).

Deed means this document, including the schedules and annexures to it.

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

- (c) 2%; and
- (d) 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 trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause ~~30.3~~29.3**).

Depot for a Train Service Type means a depot, as specified in the Train Description for that Train Service Type.

Destination for a Train Service Type means the destination specified as such in the Train Description for that Train Service Type.

Discloser means a Party that discloses Confidential Information to the other Party.

Discretionary System Amendment has the meaning given in **clause ~~18.1(a)(iii)~~17.1(a)(iii)**.

Dispute has the meaning given in **clause ~~30.1~~29.1**.

Dispute Notice has the meaning given in **clause ~~30.1~~29.1**.

Disputed Aspect has the meaning given in **clause Error! Reference source not found.**

Effective Date has the meaning given in the Access Agreement.

Emergency Possession has the meaning given in the Access Undertaking.

Emergency Response Plan has the meaning given in **clause ~~15.1(a)(i)(B)~~14.1(a)(i)(B)**.

Emergency Procedures means the procedures developed and advised by Aurizon Network from time to time (as varied by Aurizon Network in accordance

with this Deed) for dealing with a Network Incident including all actions to be taken to prevent, mitigate or remedy any risks to the safety of persons, to property or to the Environment.

Environment has the meaning given in the Environmental Protection Act.

Environmental Authorities means:

- (a) a “development approval” or “registration certificate” for a chapter 4 activity or an “environmental authority”, as those terms are defined under the Environmental Protection Act; or
- (b) any approval (however described) which is deemed by the Environmental Protection Act to be a “development approval”, “registration certificate” or “environmental authority” referred to in **paragraph (a)** of this definition.

Environmental Harm has the meaning given in the Access Undertaking.

Environmental Incident means any:

- (a) release, spillage or leakage of any Contaminating Materials; or
- (b) any incident which results in Environmental Harm.

Environmental Law has the meaning given in the Access Undertaking.

Environmental Management Plan has the meaning given in **clause [15.1\(g\)](#)~~14.1(g)~~**.

Environmental Protection Act means the *Environmental Protection Act 1994* (Qld).

Environmental Regulator means, in respect of an Environmental Law, the Authority administering that Environmental Law.

Environmental Risks means all risks to the Environment arising or potentially arising from the Operator’s Activities in connection with this Deed (including risks associated with the environmental management matters identified as part of an Interface Risk Assessment).

Expert has the meaning given in **clause [30.3](#)~~29.3~~**.

Expiry Date means the latest Train Service Expiry Date under this Deed.

FM Access Rights means the Access Rights for each Train Service Type which cannot be made available by Aurizon Network for the Operator to operate Train Services due to damage to, or the destruction of, a part of the Nominated Network referred to in **clause [31.6\(a\)](#)~~30.6(a)~~** (assuming that part of the Nominated Network will not be repaired or replaced).

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

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

and, provided that the requirements in paragraphs (a) and (b) of this definition are satisfied, includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that

requirement, order, demand or direction results from any act or omission of the affected Party;

- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected Party is a party to such industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) act of God;
- (f) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (h) malicious damage or sabotage;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (j) failure of electricity supply from the electricity grid;
- (k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (l) fire, flood, storm surge, cyclone, tornado, earthquake, washaway, landslide, explosion, severe weather conditions or other catastrophe or natural calamity;
- (m) epidemic or quarantine restriction; and
- (n) delay of a supplier due to any of the foregoing whether any such cause of delay exists before or after the Commencement Date.

~~Foreseeable Costs and Detriments has the meaning given in clause 1.1(a).~~

Former Interface Risk Provisions has the meaning given in **clause Error!**
Reference source not found..

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

GST has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Incident means any Network Incident involving the Activities of the Operator.

Incident Commander means a member of Aurizon Network's Staff who has been delegated responsibility for the direction and coordination of Aurizon Network's and the Operator's resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with Authorities.

Indicative Tonnage for a Train Service Type means the tonnage as specified as such in the Train Description for that Train Service Type.

Infrastructure has the meaning given to the term “Rail Infrastructure” in the Access Undertaking.

Infrastructure Enhancement has the meaning given in the Access Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

Infrastructure Service Providers has the meaning given in the Access Undertaking.

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

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or
- (f) any similar event occurs in respect of the Party under the laws of any jurisdiction other than Australia.

Interface Coordination Arrangements means the plan set out in **schedule 9** as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party, in respect of all regular operational interfaces between the Parties that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Deed other than those specified in the Network Management Principles.

Interface Representative has the meaning given in **clause ~~24.3(a)~~23.3(a)**.

Interface Risk Assessment has the meaning given in the Access Undertaking.

Interface Risk Management Plan or **IRMP** has the meaning given in the Access Undertaking.

Interface Risk Provisions means:

- (a) the provisions of the Access Undertaking which include the details of:
 - (i) the Interface Risks, the Interface Risk Assessment and the IRMP (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and

- (ii) the Environmental Management Plan (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the Interface Risks, the Interface Risk Assessment, the IRMP and the Environmental Management Plan.

Interface Risks means all risks to the safety of persons or property arising or potentially arising from the interaction between the Operator's Activities in connection with this Deed and:

- (a) the Infrastructure;
- (b) any Land;
- (c) Activities on the Infrastructure or any Land (including other Network Train Services); or
- (d) persons on, using or near the Infrastructure or any Land.

Investigation means an investigation conducted in accordance with the Investigation Procedures.

Investigation Procedures means the procedures in relation to investigations which are:

- (a) specified in Aurizon Network's document entitled *Incident Report and Investigations* which is published on the Website (as amended and replaced from time to time); and
- (b) as far as practicable, applied consistently for all Railway Operators operating Network Train Services in the same Coal System.

Land means any:

- (a) parcel of land on, under or above which the Infrastructure is situated;
- (b) Aurizon Network Land; and
- (c) Third Party Land.

Law has the meaning given in the Access Undertaking.

Loading Facility for a Train Service Type means the loading facility located at the ultimate origin for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Maintenance Work has the meaning given in the Access Undertaking.

Major Periodic Maintenance has the meaning given in the Access Undertaking.

Material Change means a:

- (a) Change in Law;
- (b) Change in Access Undertaking; or
- (c) matter deemed to be a Material Change under **clause [39.17\(d\)](#)~~38.17(d)~~**.

Maximum Allowable Gross Tonnage means the maximum allowable gross tonnage for a Wagon, other Rollingstock or Train as specified in an Authority to Travel or a Train Route Acceptance.

Maximum Desirable Gross Tonnage means the maximum desirable gross tonnage for a Wagon, other Rollingstock or Train as specified in an Authority to Travel or a Train Route Acceptance.

Maximum Gross Mass means the maximum gross mass for the Wagon or other Rollingstock as specified in **schedule** Error! Reference source not found..

Maximum Other Dwell Times for a Train Service Type means the maximum Other Dwell Times for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Payload for a Train Service Type means the maximum Payload for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Sectional Running Time for a Section for a Train Service Type means the maximum Sectional Running Times for Train Services for that Train Service Type operating on that Section as specified as such in the Train Description for that Train Service Type.

Maximum SRT means the sum of Maximum Sectional Running Time for all relevant Sections for the relevant Train Service Type except if it is the first or last movement of the relevant Train Service where the time to start and stop the Train Service is included (as specified in **appendix A** to **schedule 2** for the relevant Train Service Type).

Maximum Time at Depot for a Train Service Type means the maximum Time at Depot for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Loading Facility for a Train Service Type means the maximum Time at Loading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Unloading Facility for a Train Service Type means the maximum Time at Unloading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Month means calendar month.

Net Financial Effect on a Party of an event or circumstance means the net effect in financial terms of the occurrence of the event or circumstance on the Party in relation to performing its obligations and exercising its rights under this Deed including any increases in costs (whether capital or operating, fixed or variable) and other detriments incurred, or to be incurred, by the Party but deducting the amount of any savings or other benefits or advantages received, or to be received, by the Party, and on the basis that the Party uses reasonable endeavours to mitigate the net effect of the event or circumstance.

Network Incident has the meaning given in the Access Undertaking.

Network Interface Point means a location at which the Infrastructure meets an Adjoining Network.

Network Management Principles has the meaning given in the Access Undertaking.

Network Train Service means the running of a Train between specified origins and destinations by a Railway Operator (including any Stowage) on the Infrastructure.

New Authorisation has the meaning given in **clause ~~17.6~~16.6**.

New Interface Risk Provisions has the meaning given in **clause Error! Reference source not found.**

Noise Code means:

- (a) unless and until a code of practice, guideline or other standard in relation to the management of railway noise (however described and whether or not a Law) is published by an Authority, the *CQCN Noise Management Guideline*; or

[AN Note: the QR Code of Practice has been repealed. It is now the CQCN Noise Management Guideline]

- (b) if a code of practice, guideline or other standard referred to in **paragraph (a)** of this definition is published by an Authority, that document.

Noise Levels means the levels for railway noise specified in the Noise Code.

Nominal Payload for a Train Service Type means the nominal Payload for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Nominated Monthly Operational Rights for a Train Service Type means the number of Train Services for that Train Service Type that the Operator is entitled to operate during any Month:

- (a) in the case of a Month that is 30 days, as specified in the Train Description for that Train Service Type; and
- (b) in the case of a Month that is longer or shorter than 30 days, a pro rata portion of the number of Train Services referred to in **paragraph (a)** of this definition (rounded to the nearest even number of whole Train Services provided that where the pro rata portion of the number of Train Services is a whole odd number, the number of Train Services will be rounded up to the nearest even number) to reflect the longer or shorter period,

as varied in accordance with this Deed.

Nominated Monthly Train Services has the meaning given in the Access Agreement.

Nominated Network means that part of the Infrastructure described in **item 1 of schedule ~~3~~3**.

Nominated Network FM Reduction Notice has the meaning given in the Access Agreement.

Non-Charging Party has the meaning given in **clause Error! Reference source not found.**

Notice has the meaning given in **clause ~~38.1(a)~~37.1(a)**.

Notice of Intention to Increase Nominal Payload has the meaning given in **clause 4**.

Obstruction means any circumstance relating to the whole or any part of the Infrastructure, including Rollingstock, debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation of Train Services or Train Movements, and includes any Network Incident but does not include an Operational Constraint imposed by Aurizon Network.

Operating Document means each of the following as in force from time to time:

- (a) this Deed;
- (b) the System Wide Requirements;
- (c) the IRMP;
- (d) the Operating Plan; and
- (e) each Authority to Travel and Train Route Acceptance issued by Aurizon Network to the Operator in respect of the operation of Train Services for a Train Service Type.

Operating Plan has the meaning given in **clause ~~15.1(a)(i)(A)~~14.1(a)(i)(A)**.

Operational Constraint has the meaning given in the Access Undertaking.

Operational Rights means the rights to operate Train Services on the Nominated Network granted to the Operator pursuant to this Deed.

Operator's Controller means the person for the time being nominated in that position pursuant to **item 1.2(h) of schedule 9**.

Operator's Incident Response Coordinator means the person appointed pursuant to **item 3.1 of schedule 9**.

Operator's Recovery Team Leader means the person appointed pursuant to **item 3.2 of schedule 9**.

Operator's Representative means the person for the time being appointed pursuant to **item 2.2(a) of schedule 9**.

Operator's Safety Management System has the meaning given in **clause ~~24.4~~23.4**.

Operator's Staff means the employees, contractors, volunteers and agents of the Operator and any other person under the control or supervision of the Operator involved in any Activity associated with the Train Services.

Origin for a Train Service Type means the origin specified as such in the Train Description for that Train Service Type.

Other Dwell Times means, for any other permitted Activity, the time period commencing when a Train Service arrives at the specified point for that Activity and ending when it is ready to depart from that point and the relevant Train Controller has been advised accordingly.

Overload Detector means a weighing mechanism other than a Weighbridge and specified in **item 5.2 of schedule ~~3~~3**.

Party means a party to this Deed, and **Parties** means the parties to this Deed. For the avoidance of doubt, the Access Holder is not a party to this Deed.

Passenger Priority Obligations has the meaning given in the Access Undertaking.

Payload of a Train Service means the weight of product loaded onto any Train used by the Operator in operating that Train Service.

Performance Levels means the performance levels which apply to the performance by the respective Parties of their obligations under this Deed are set out in **schedule 5**.

Plan means a plan developed and approved in accordance with the process outlined in **clause 15.4**.

Planned Dwell Times means each of Time at Loading Facility, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule.

Planned Possession has the meaning given in the Access Undertaking.

Possession has the meaning given in the Access Undertaking.

Possession Protocols means the protocols developed and advised by Aurizon Network from time to time (as varied in accordance with this Deed) for managing and scheduling Possessions.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Queensland Competition Authority or **QCA** means the Authority established under the *Queensland Competition Authority Act 1997* (Qld).

Rail Safety Act means the *Transport (Rail Safety) Act 2010* (Qld).

Rail Safety Regulator means the chief executive of the department administering the Rail Safety Act.

Railway Operator has the meaning given in the Access Undertaking.

Recipient means a Party that receives Confidential Information from the Discloser.

Recovery means action to be taken in respect of any derailed, malfunctioning or immobilised Rollingstock for which the Operator is responsible to enable prompt recommencement of Train Movements, but does not include the Retrieval of such Rollingstock.

Reduced Operational Rights has the meaning given in **clause 10.3(c)(iv)(A)(1)**.

Reference Tariff has the meaning given in the Access Undertaking.

Reference Tariff Provisions means:

- (a) the schedule of the Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service (which, as at the Commencement Date, is Schedule F of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the application or calculation of Reference Tariffs or access charges

(including any TOP Charge).

Reference Train Service has the meaning given in the Access Undertaking.

Regenerative Brake means an energy recovery system installed on Rollingstock which slows the Rollingstock by converting its kinetic energy into electrical energy, which can then be returned to the overhead electric traction system.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Collateral means Collateral which is the subject of a Security Interest granted under this Deed.

Relevant Rollingstock means any Rollingstock of the Operator with a minimum value of \$1 million and which has been specified as Relevant Rollingstock in **schedule 4**.

Required Information means any information in relation to any Operator's Staff engaged in Safety Related Work on the Infrastructure that Aurizon Network considers is reasonably required to be known by Aurizon Network to comply with its Accreditation and a Law.

Restoration means the removal of any Obstruction on the Infrastructure, the rectification of any Incident and the prompt recommencement of Train Movements including all requisite repairs to the Infrastructure, but does not include Recovery or Retrieval.

Retrieval means the subsequent removal of Rollingstock, from the Infrastructure and Land, following the Recovery of such Rollingstock.

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

Rollingstock Configuration has the meaning given in the Access Undertaking.

Rollingstock Interface Standards has the meaning given in the Access Undertaking.

Rollingstock Interface Standards Risk Assessment means, in respect of any Rollingstock or Rollingstock Configurations for a Train Service Type used, or proposed to be used, by the Operator in the operation of Train Services on the Nominated Network, means an assessment to:

- (a) for each non-compliance with the Rollingstock Interface Standards specified in a Compliance Statement for the Rollingstock or Rollingstock Configurations, identify all reasonably foreseeable Interface Risks and Environmental Risks arising from each non-compliance;
- (b) assess:
 - (i) the likelihood of those Interface Risks and Environmental Risks occurring;
 - (ii) the consequences (including commercial consequences) of those Interface Risks and Environmental Risks occurring; and

- (iii) whether those Interface Risks and Environmental Risks can be effectively managed and, if so, any factors relevant to the effective management of those Interface Risks and Environmental Risks; and
- (c) if those Interface Risks and Environmental Risks can be effectively managed by complying with appropriate measures, identify the measures to be complied with in respect of such Rollingstock or Rollingstock Configurations to effectively manage those Interface Risks and Environmental Risks within a risk management framework.

Safety Law means a Law relating to the safety of persons or property, including the Rail Safety Act and the *Work Health and Safety Act 2011* (Qld).

Safety Regulator means, in respect of a Safety Law, the Authority administering that Safety Law.

Safety Related Work means:

- (a) “rail safety work” as defined under the Rail Safety Act; and
- (b) any other work notified by Aurizon Network to the Operator as safety related work.

Safety Standards means the:

- (a) standards relating to safety, including work health and safety, established in published guidelines, industry practice or Aurizon Network policies specified in Aurizon Network’s document entitled *Safety Standards* notified by Aurizon Network to the Operator (as amended and replaced from time to time); and
- (b) standards relating to safety, including work health and safety, prescribed by any Law.

Safeworking Procedures means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure specified in Aurizon Network’s document entitled *Safeworking Procedures* as:

- (a) notified by Aurizon Network to the Operator; or
- (b) published on the Website,

(as amended and replaced from time to time).

Scheduled Time means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as set out in the Train Schedule or as amended by Aurizon Network from time to time on the day of operation in accordance with the Network Management Principles.

Schedules means the schedules attached to this Deed.

Section means a section of Track between two locations on the Nominated Network as shown in the diagram(s) in **schedule 33**.

Sectional Running Times means the time period measured from the time a Train Service passes the signal controlling entry into a Section until the time the Train Service arrives at the signal controlling entry into the next adjoining Section or the Adjoining Network (as applicable), and does not include an allowance for Planned Dwell Times.

Security Interest has the meaning given in **clause ~~39.20(a)~~38.20(a)**.

Signalling and Telecommunications Equipment means all electronic, electrical and other equipment, including signalling systems, safety devices and communications facilities, installed on or as part of the Infrastructure or on Rollingstock, for the purpose of compliance with Safeworking Procedures and to facilitate Train Control.

Staff means Aurizon Network's Staff or the Operator's Staff (as applicable).

State means the State of Queensland.

Stowage has the meaning given in the Access Undertaking.

Supplier has the meaning given in **clause ~~35.3~~34.3**.

Supply Chain Rights has the meaning given in the Access Agreement.

Suspension Event means any event or circumstance specified as such in **schedule 8**.

Suspension Notice has the meaning given under **clause ~~32.1~~31.4, ~~32.2~~31.2, ~~32.3~~31.3 or ~~32.4~~31.4**.

System Operating Parameters has the meaning given in the Access Undertaking.

System Rules has the meaning given in the Access Undertaking.

System Wide Requirements means the Possession Protocols, the Interface Coordination Arrangements, the Rollingstock Interface Standards, the Safeworking Procedures, the Safety Standards, the Emergency Procedures and the Investigation Procedures.

Tare Weight means the tare weight for a Wagon or other Rollingstock as specified in **Schedule 4**.

Term means the term of this Deed in accordance with **clause 2.1**.

Termination Event means any event or circumstance specified as such in **schedule 8**.

Third Party means a person other than the Operator or Aurizon Network.

Third Party Land has the meaning given in **clause ~~39.17(a)~~38.17(a)**.

Through-Running Train Service Type means a Train Service Type that has a Destination and/or Origin that is a Network Interface Point that is specified as such in the Train Description for that Train Service Type.

Time at Depot means the time period commencing when a Train Service arrives at the entry signal for a Depot and ending when it is ready to depart the Depot and the relevant Train Controller has been advised accordingly.

Time at Loading Facility means the time period commencing when a Train Service arrives at the entry signal for a Loading Facility and ending when it presents at the exit signal for the Loading Facility, is ready to depart the Loading Facility and the relevant Train Controller has been advised accordingly.

Time at Unloading Facility means the time period commencing when a Train Service arrives at the entry signal for an Unloading Facility and ending when it presents at the exit signal for the Unloading Facility, is ready to depart the

Unloading Facility and the relevant Train Controller has been advised accordingly.

Track has the meaning given in the Access Undertaking.

Train has the meaning given in the Access Undertaking.

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

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

Train Control Direction means any instruction or direction (whether given orally or in writing or by means of signal or other similar device) issued by or on behalf of Aurizon Network acting reasonably relating to Train Movements.

Train Controller means the person nominated by Aurizon Network from time to time as the supervisor of Train Movements on the relevant part of the Nominated Network, and whose details are initially specified in **item 1.1 of schedule 9**.

Train Description for a Train Service Type means the description of, specifications for, and constraints on, the Access Rights for that Train Service Type specified in **schedule 22**.

Train List means the information required to be supplied by the Operator in accordance with **item 1.2(b)(vi) of schedule 9** in respect of each individual Train Service to be operated on the Nominated Network.

Train Movement has the meaning given in the Access Undertaking.

Train Operator has the meaning given in the Access Undertaking.

Train Route Acceptance means an authorisation issued by Aurizon Network which authorises the Operator to operate Train Services for a Train Service Type on the Nominated Network using specified Authorised Rollingstock Configurations for that Train Service Type.

Train Schedule means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by Aurizon Network before the day of operation in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure.

Train Service for a Train Service Type means the running by the Operator, of a Train in one direction from the Origin to the Destination, or from the Destination to the Origin, for that Train Service Type (including any Stowage) in accordance

with the Train Description for that Train Service Type.

Train Service Commitment Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Compliance Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Expiry Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Type means each type of train service specified as such in [schedule 22](#).

Transport Infrastructure Act means the *Transport Infrastructure Act 1994* (Qld).

Ultimate Holding Company has the meaning given in the Corporations Act.

Unloading Facility for a Train Service Type means the unloading facility located at the ultimate destination for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Unreasonable in respect of an IRMP, or any aspect of or amendment to an IRMP, determined by Aurizon Network under clause [15.1\(c\)\(iii\)](#) ~~14.1(e)(iii)~~ means no reasonable person in the position of Aurizon Network could have made that determination.

Urgent Possession has the meaning given in the Access Undertaking.

Wagon means any rollingstock (including a wagon bogie) designed to carry any load other than passengers.

Website has the meaning given in the Access Undertaking.

Weighbridge means a weighbridge or weightometer verified under the *National Measurement Act 1960* (Cth), as specified in [item 5.1](#) of [schedule 33](#).

Year means each year commencing on 1 July and ending on 30 June during the Term and, if applicable, includes:

- (a) the shorter period commencing on the first day of the Month in which the Commitment Date occurs and ending on the next 30 June; and
- (b) the shorter period commencing on the 1 July occurring prior to the date of expiration or termination of this Deed and ending on the date of expiration or termination of this Deed.

1.2 Interpretation

In this Deed, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and

- (e) a reference to:
- (i) a person includes a partnership, unincorporated association, corporation or other entity, government or statutory body;
 - (ii) a person includes its legal personal representative, successors and assigns;
 - (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
 - (iv) conduct includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) the words “include”, “includes” or “including” must be read as if they are followed by the words “without limitation”;
 - (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
 - (viii) time is to local time in Brisbane, Queensland;
 - (ix) “A\$”, “\$” or “dollars” is a reference to the lawful currency of Australia;
 - (x) this or any other document or agreement includes the document or agreement as novated, amended or replaced from time to time and despite any changes in the identity of the parties;
 - (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (xii) under a clause includes in accordance with that clause;
 - (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Deed;
 - (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
 - (xv) any code, guideline, recommendation or policy, or any provision of any code, guideline, recommendation or policy, includes any modification of it, or the substitution of it or any of its provisions for others, unless otherwise specified or directed by Aurizon Network;
 - (xvi) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body

established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body; and

- (xvii) access or access rights does not include rights granted by Aurizon Network to a Railway Operator under a train operations deed.

1.3 References to descriptors of Train Service Types

In this Deed, references to any descriptor of a Train Service or a Train Service Type (for example, 'Destination', 'Loading Facility', 'Nominated Monthly Train Services', 'Origin' and 'Unloading Facility') is to that descriptor as applicable to that particular Train Service or Train Service Type.

1.4 Material published on the Website

For the avoidance of doubt, material published on the Website includes material which is available to the Operator via secured, password-protected online access to the Website.

1.5 Headings

Headings do not affect the interpretation of this Deed.

1.6 Words and expressions defined in Access Undertaking

- (a) Subject to **clause 1.6(b)**, if a word or expression is defined in this Deed to have the meaning given in the Access Undertaking, then it will have the meaning given in the Access Undertaking in force as at the date of this Deed.
- (b) If a word or expression used in the Interface Risk Provisions which form part of this Deed under **clause 3** is defined in the Access Undertaking, then, it will have the meaning given in the Access Undertaking in force on the date the relevant Interface Risk Provisions commenced to form part of this Deed under **clause 3.1** or **3.2** (as applicable).

1.7 Inconsistency

- (a) If there is any inconsistency between the substantive terms of this Deed (comprising **clauses 1** to **3938**) and the schedules of this Deed, the substantive terms of this Deed prevail to the extent of the inconsistency.
- (b) If there is any inconsistency between matters contained in the Access Undertaking (as amended by any Change in Access Undertaking) and this Deed, the provisions of this Deed prevail to the extent of the inconsistency unless expressly provided to the contrary.

2 Term

2.1 Term

This Deed commences on the Commencement Date and, unless earlier terminated in accordance with its terms, continues until the Expiry Date.

3 Access Undertaking

3.1 Incorporation

- (a) The Parties agree that, for the purposes of the Access Undertaking, the Operator is considered a Train Operator or a Railway Operator (as applicable).

- (b) Subject to **clause 3.2**, the Interface Risk Provisions (as in force as at the Commencement Date) form part of this Deed as if they were set out in full under this Deed.
- (c) For the avoidance of doubt, despite any other provision in the Access Undertaking:
 - (i) **clause 28~~27~~** applies to any Claim in respect of a breach of the Interface Risk Provisions which form part of this Deed under this **clause 3**; and
 - (ii) **clause 30~~29~~** applies in respect of any Dispute between the Parties in respect of any right or obligation (or in respect of the enforcement) of Interface Risk Provisions which form part of this Deed under this **clause 3**.

3.2 Changes in Access Undertaking

- (a) If there is a Change in Access Undertaking at any time which changes the Interface Risk Provisions, then this **clause 3.2** applies.
- (b) A Party (**Notifying Party**) may, within 20 Business Days from the date of the Change in the Access Undertaking (or such longer period as the Parties may agree) notify (**Amendment Notice**) the other Party (**Receiving Party**):
 - (i) that it elects to amend this Deed to replace the Interface Risk Provisions which form part of this Deed under **clause 3.1(b)** or this **clause 3.2 (Former Interface Risk Provisions)** with the Interface Risk Provisions as changed by the Change in Access Undertaking (**New Interface Risk Provisions**);
 - (ii) of any other changes to the other terms of this Deed (if any) which the Notifying Party requires as a consequence of, or to give full effect to the replacement of the Former Interface Risk Provisions with the New Interface Risk Provisions under this **clause 3.2**; and
 - (iii) of the date from which the changes become effective (and if any changes become effective from different dates, the dates applicable to each change) which must be on or after the date on which the Change in Access Undertaking became effective (**Change Date(s)**).
- (c) An Amendment Notice must include an amended version of this Deed, with the changes referred to in **clause 3.2(b)(i)** clearly identified.
- (d) Promptly following receipt of an Amendment Notice, the Receiving Party must notify the Notifying Party the extent to which the Receiving Party accepts or does not accept the drafting of the amendments to the terms of this Deed proposed in the Amendment Notice in accordance with **clause 3.2(b)(ii)**.
- (e) If the Receiving Party does not accept the drafting of the amendments to the terms of this Deed, then the Parties must promptly meet to negotiate and attempt to agree the changes to the terms of this Deed (if any) which are necessary as a consequence of, or to give full effect to, the replacement of the Former Interface Risk Provisions with the New Interface Risk Provisions under this **clause 3.2**.

- (f) If the Parties do not agree the amendments in respect of the matters outstanding under **clause 3.2(f)** by the Change Date(s), the matter must be referred to the QCA for determination in accordance with the provisions of the Access Undertaking which provide for determination of disputes by the QCA.
- (g) On and from the Change Date(s) (or such other time as the QCA may determine):
 - (i) the New Interface Risk Provisions will form part of this Deed as if set out in full in this Deed;
 - (ii) the Former Interface Risk Provisions will cease to form part of this Deed; and
 - (iii) amendments to the terms of this Deed:
 - (A) accepted under **clause 3.2(d)**;
 - (B) agreed under **clause 3.2(e)**; or
 - (C) determined by the QCA under **clause 3.2(f)**, become effective.
- (h) Within 10 Business Days from the date that amendments to the terms of this Deed are accepted, agreed and/or determined (as applicable) under this **clause 3.2**, Aurizon Network must prepare and send to the Operator a copy of this Deed as modified.

4 Operational Rights

4.1 Grant of Operational Rights

On and from the Train Service Commitment Date for each Train Service Type until the Train Service Expiry Date for that Train Service Type, Aurizon Network grants, and must provide, to the Operator the Operational Rights for that Train Service Type in accordance with the Train Description on the terms and conditions of this Deed.

4.2 Nature and scope of Operational Rights

- (a) The Operational Rights granted under **clause 4.1** are non-exclusive contractual rights and do not give the Operator any right, title or interest of any proprietary nature in the Nominated Network.
- (b) The Operator must not:
 - (i) operate on, or use any part of, the Infrastructure that is not specifically included in the Nominated Network; or
 - (ii) use the Nominated Network for:
 - (A) carrying out any provisioning, inspection, testing or maintenance of Rollingstock;
 - (B) any marshalling, shunting or other relocation of Rollingstock;
 - (C) storage of Rollingstock; or
 - (D) any purpose other than the operation of Train Services,
 unless otherwise expressly:

- (iii) permitted or required to do so under this Deed;
- (iv) directed to do so by Aurizon Network in accordance with this Deed;
or
- (v) expressly permitted under another agreement with Aurizon Network.

4.3 Operation of Ad Hoc Train Service

- (a) If:
 - (i) the Access Holder (or the Operator at the request of the Access Holder) notifies Aurizon Network under the Access Agreement that it wishes to have the Operator operate an Ad Hoc Train Service; and
 - (ii) the Operator notifies Aurizon Network that it is able and willing to operate an Ad Hoc Train Service for a Train Service Type at the request of the Access Holder,then, to the extent permitted by the Network Management Principles, Aurizon Network:
 - (iii) must if required in accordance with clause 5.4(c) of Schedule G of the Access Undertaking; or
 - (iv) otherwise must use reasonable endeavours to, schedule the Ad Hoc Train Service for the Train Service Type in the Daily Train Plan.
- (b) On and from the time that the Ad Hoc Train Service is scheduled in the Daily Train Plan, the terms and conditions of this Deed apply to the Ad Hoc Train Service as if the Ad Hoc Train Service is a Train Service for the Train Service Type which the Operator is entitled to operate under this Deed.

5 Ancillary Services

In consideration of the Operator paying the Ancillary Services Charge, Aurizon Network must provide the Operator with the Ancillary Services (if any) in accordance with **schedule 10**.

6 Nomination of the Operator

6.1 Nomination

If at any time the Access Holder nominates the Operator in respect of all or part of the Access Holder's Access Rights, in accordance with the Access Agreement, then Aurizon Network must promptly provide to the Operator:

- (a) if not already provided by the Access Holder, a copy of the Access Agreement;
- (b) replacement Schedules (as relevant) amended to be consistent with the Access Holder's nomination of the Operator; and

- (c) details of the date on which those replacement Schedules take effect being the date Aurizon Network notifies the Access Holder under the Access Agreement that it accepts the Operator's nomination,

and this Deed is varied in accordance with those replacement Schedules with effect on and from the date referred to under **clause 6.1(c)**.

6.2 Multiple Access Agreements

The Operator may not be nominated under more than one Access Agreement for the purposes of this Deed.

6.3 Variation of nomination of the Operator

- (a) If at any time:
 - (i) the Access Holder notifies, or is deemed to have notified, Aurizon Network of a variation to the nomination of the Operator by the Access Holder in accordance with the Access Agreement; or
 - (ii) the Access Holder withdraws, or is deemed to have withdrawn, the Access Holder's nomination of the Operator under the Access Agreement (or this Deed),

then:

- (iii) Aurizon Network must promptly provide to the Operator:
 - (A) a copy of the Access Holder's notice or withdrawal or, if no such notice or withdrawal has been given, details of the circumstances supporting the deeming of the notice or withdrawal;
 - (B) replacement Schedules (as relevant) amended consistent with the Access Holder's notice or withdrawal or deemed notice or withdrawal; and
 - (C) the date on which those replacement Schedules take effect; and
- (iv) this Deed is varied in accordance with those replacement Schedules with effect on and from the date referred to under **clause 6.3(a)(iii)(C)**.
- (b) The Access Holder is deemed to have withdrawn its nomination of the Operator if the Access Agreement is terminated or expires.

7 Interaction of rights

- (a) The Parties acknowledge and agree that:
 - (i) the Access Holder has contracted directly with Aurizon Network under the Access Agreement for the Access Rights:
 - (A) on the basis that the Access Rights will be used by one or more persons (such as the Operator) under agreements (such as this Deed) for the benefit of the Access Holder; and
 - (B) as such, the Access Holder has no direct above rail operational responsibilities in relation to Train Services for the Access Holder (unless it is also an "Operator" as defined in

the Access Agreement); and

(ii) the Operator will have above rail operational obligations in respect of the Train Services that will be operated by it for the Access Holder.

(b) The Operator has no right to renew, transfer (subject to **clauses 34.233.2** and **34.333.3**), vary or relinquish to Aurizon Network any part of the Operational Rights, whether under this Deed or the Access Undertaking. The right to seek a renewal, transfer, variation or relinquishment of Access Rights is solely a right of the Access Holder.

8 Billing and payments

8.1 Charges

The Operator must pay to Aurizon Network the Ancillary Services Charges and any other charges (if any) as calculated in accordance with this Deed.

8.2 Invoicing

- (a) As soon as reasonably practicable after the end of each Billing Period, Aurizon Network must give to the Operator an invoice for:
- (i) the Ancillary Services Charges for that Billing Period; plus
 - (ii) any amounts payable but unpaid by the Operator to Aurizon Network under this Deed, and which have not previously been invoiced, as at the end of the Billing Period.
- (b) If **clause 8.6** applies, Aurizon Network must give the Operator an invoice under **clause 8.2(a)** after the end of a Billing Period even if no amount is required to be invoiced under **clause 8.2(a)** for that Billing Period.
- (c) Each invoice given under this **clause 8.2** must be accompanied by reasonable details of Aurizon Network's calculation of the amounts claimed in the invoice, including an itemised description of any other amounts (for the amounts deducted under **clause 8.6**, particulars must include the amounts against which the deduction is applied).

8.3 Payment

Subject to **clause 8.4**, the Operator must:

- (a) pay to Aurizon Network the amount claimed in an invoice given under **clause 8.2** within 10 Business Days after the invoice is given to the Operator; and
- (b) pay all amounts payable to Aurizon Network under this Deed:
- (i) in Australian currency; and
 - (ii) by:
 - (A) direct deposit into the one or more bank account notified by Aurizon Network to the Operator in the invoice for this purpose (whether or not those bank accounts are in the name of Aurizon Network); or
 - (B) such other payment method as Aurizon Network specifies in the invoice (acting reasonably).

- (c) Any payment by the Operator of an amount payable under this Deed in accordance with this **clause 8.3** is taken to be a payment of such amount to Aurizon Network for the purpose of this Deed (whether or not such amount is paid into a bank account in the name of Aurizon Network).

8.4 Disputes

- (a) Any Disputes in connection with an amount claimed in an invoice:
 - (i) must be resolved in accordance with **clause 30.29**; and
 - (ii) which is not resolved in accordance with **clause 30.29.2**, may be referred by either Party to an Expert for determination in accordance with **clause 30.329.3**.
- (b) Despite **clause 8.4(a)**, if an amount claimed in an invoice given by Aurizon Network is Disputed, the Operator must pay to Aurizon Network:
 - (i) the portion of the amount claimed in the invoice that is not in Dispute; and
 - (ii) 50% of the portion of the amount claimed in the invoice that is in Dispute,within the time specified in **clause 8.3(a)**.
- (c) Upon resolution of any Dispute about an amount claimed in an invoice given by Aurizon Network, if the total amount which Aurizon Network was entitled to claim in the invoice (as resolved) is:
 - (i) more than the amount paid by the Operator, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.5** (from the date when the amount in Dispute would have been due and payable under **clause 8.3(a)** but for **clause 8.4(b)**, until the date on which the difference, together with any interest, has been paid in full), must be paid by the Operator to Aurizon Network within 20 Business Days after the resolution of the Dispute; or
 - (ii) less than the amount paid by the Operator, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.5** (from the date when the amount in Dispute was paid by the Operator until the date on which the credit is applied or the amount is paid (as applicable) under this **clause 8.4(c)(ii)**), must be:
 - (A) applied by Aurizon Network as credit in favour of the Operator against the amount claimed in the next invoice to be issued by Aurizon Network to the Operator after the resolution of the Dispute (and, if necessary, to subsequent invoices issued by Aurizon Network until the amount of the difference (including any interest) has been fully credited in favour of the Operator against amounts payable under invoices issued by Aurizon Network to the Operator under **clause 8.2**); or
 - (B) if there will be no further invoices issued by Aurizon Network to the Operator after the resolution of the Dispute or the last credit referred to in **clause 8.4(c)(ii)(A)**, paid by Aurizon Network to the Operator within 20 Business Days after

resolution of the Dispute or the last credit referred to in **clause 8.4(c)(ii)(A)** (as applicable).

8.5 Interest on overdue payments and Disputed amounts

- (a) Without prejudice to the rights, powers and remedies of a Party under this Deed or otherwise at Law, if for any reason a Party does not pay an amount payable under or in connection with this Deed on or before the due date for payment, then that Party must pay interest on the outstanding amount calculated in accordance with this **clause 8.5**.
- (b) Interest accrues on outstanding amounts from the due date for payment until that amount, together with the interest on that amount, has been paid in full.
- (c) Interest under **clauses 8.4(c)(i), 8.4(c)(ii) and 8.5(b)** is calculated at the Default Rate. Any interest accrued but unpaid at the end of each Month is capitalised and, once capitalised, will itself bear interest.

8.6 Right of set-off

A Party may deduct from any amounts which are due and payable by the Party to the other Party under this Deed any amounts which are due and payable by the other Party to the Party under this Deed.

9 Accreditation

- (a) The Operator must, before the commencement of the first Train Services under this Deed, provide to Aurizon Network evidence of the Operator's Accreditation (including all conditions and/or variations).
- (b) Each Party must have and maintain Accreditation to the extent required to perform its obligations and exercise its rights under this Deed and, if requested to do so in writing by the other Party, provide to the other Party copies of documentation evidencing currency, renewal or amendment of its Accreditation within five Business Days after such request.
- (c) Each Party must notify the other as soon as possible of any notice from an Authority affecting, or likely to affect, its Accreditation, and must provide a copy of that notice to the other Party on request.
- (d) If:
 - (i) schedule 2 is varied to include an additional Train Service Type; or
 - (ii) the Train Description for an existing Train Service Type is varied, then before the Operator commences or continues (as applicable) to operate any Train Services for such Train Service Type, the Operator must:
 - (iii) if the Operator's Accreditation is required to be varied to address the operation of Train Services for such additional Train Service Type or the operation of Train Services in accordance with such varied Train Description (as applicable), provide Aurizon Network evidence of the Operator's Accreditation as varied; or
 - (iv) if the Operator reasonably determines that no variations to the Operator's Accreditation are required to address the operation of

such Train Services, notify Aurizon Network of that determination and the reasons for that determination.

10 Operation of Train Services

10.1 Operation of Train Services

The Operator must not operate Train Services:

- (a) which do not comply with the applicable Train Description and this Deed, unless:
 - (i) acting under a Train Control Direction; or
 - (ii) with the prior written approval of Aurizon Network (which approval may specify terms in addition to or varying the terms of this Deed in respect of the Train Services or Ad Hoc Train Services to which the approval relates);
- (b) if clause 4.4 of the Access Agreement applies to those Train Services, unless an Access Interface Deed (as defined under the Access Agreement) has been executed by the relevant Customer and Aurizon Network; and
- (c) if the Access Holder does not hold, or does not have the benefit of, Supply Chain Rights for those Train Services.

10.2 Commencement of Train Services

- (a) Without limiting any other provision of this Deed, the Operator must only operate any Train Service if:

Category 1- Requirements for Train Services generally

- (i) an Operating Plan has been approved by Aurizon Network under **clause 15.1~~14.1~~**;
- (ii) the Operator has submitted an Emergency Response Plan to Aurizon Network which complies with, or is taken to comply with, the requirements of **clause 15.1(a)(i)(B)~~14.1(a)(i)(B)~~**;
- (iii) the Operator has provided evidence to Aurizon Network of the Operator's Accreditation as required by **clause 9(a)**;
- (iv) an IRMP has been agreed or determined under the Interface Risk Provisions which form part of this Deed under **clause 3**;
- (v) the Operator has developed:
 - (A) the Operator's Safety Management System under **clause 24.4~~23.4~~**;
 - (B) the Environmental Management Plan under **clause 15.1(g)~~14.1(g)~~**;
- (vi) the Operator has taken out the insurances, and provided evidence of those insurances to Aurizon Network, as required under **clause 26.3~~25.3~~**;
- (vii) the Operator has complied with, or implemented any aspects of, the Operating Plan, Emergency Response Plan, the Operator's Accreditation, the IRMP, the Operator's Safety Management

System and the Environmental Management Plan that are required to be complied with or implemented before the commencement of Train Services;

Category 2 – Requirement for specific Train Service Types

- (viii) the Operator has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock and/or Rollingstock Configurations which the Operator proposes to use in the operation of Train Services, and such Rollingstock and/or Rollingstock Configurations is Authorised Rollingstock and/or Authorised Rollingstock Configurations for each Train Service Type; and
 - (ix) Aurizon Network has given the Operator an Authority to Travel or a Train Route Acceptance.
- (b) Aurizon Network must use reasonable endeavours to cooperate with the Operator and act promptly to facilitate the Operator's compliance with **clause 10.2(a)**.
- (c) If the Operator has not complied with each of the requirements of **clause 10.2(a)** by:
- (i) the Compliance Date and Aurizon Network has a reasonable expectation that the Operator cannot commence the operation of Train Services by the Commitment Date; or
 - (ii) the Commitment Date,
- then, provided that the Operator's failure to comply with **clause 10.2(a)** was not due to Aurizon Network's breach of **clause 10.2(b)** Aurizon Network may give a notice to the Operator and the Access Holder requiring the Operator to comply with **clause 10.2(a)** within 20 Business Days after the date the notice is given to the Operator and specifying that it is a notice given under this **clause 10.2(c)**. For clarity, the Operator is not obliged to, and Aurizon Network may not require the Operator to, comply with **clause 10.2(a)** prior to the Commitment Date.
- (d) If Aurizon Network notifies the Operator and the Access Holder under **clause 10.2(c)** and the Operator fails to comply with the requirements set out in the notice then, subject to **clause 10.2(e)**, Aurizon Network may:
- (i) by notice to the Operator and the Access Holder reduce (as applicable):
 - (A) all of the Operational Rights (**Category 1 Reduced Operational Rights**); and
 - (B) the Operational Rights in respect of the affected Train Service Types only (**Category 2 Reduced Operational Rights**); or
 - (ii) if, as a result of such reduction, there will be no remaining Operational Rights, terminate this Deed.
- (e) Aurizon Network must allow the Access Holder to nominate an alternative "Operator" (as defined in the Access Agreement) to utilise the Category 1 Reduced Operational Rights and/or the Category 2 Reduced Operational Rights (as applicable).

10.3 Commencement of Train Services for Train Service Type

(a) Without limiting any other provision of this Deed, if:

- (i) **schedule 22** is varied or deemed to be varied to include an additional Train Service Type; or
- (ii) the Train Description for an existing Train Service Type is varied or deemed to be varied (including under **clause 14.213.2**),

then the Operator must only operate or continue to operate (as applicable) any such additional or varied Train Services for that Train Service Type if:

- (iii) the Operator:
 - (A) if required under **clause 17.516.5**, has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock or Rollingstock Configurations which the Operator proposes to use in the operation of Train Services for that Train Service Type, and such Rollingstock is Authorised Rollingstock or such Rollingstock Configurations are Authorised Rollingstock Configurations for that Train Service Type;
 - (B) has amended the Emergency Response Plan to address the operation of those Train Services, or notified Aurizon Network of its determination that no such amendments are required, under **clause 15.2(a)14.2(a)**;
 - (C) has provided evidence to Aurizon Network of the Operator's Accreditation as varied to address the operation of those Train Services, or notified Aurizon Network of its determination that no such variations are required, under **clause 9(d)**;
 - (D) and Aurizon Network have jointly conducted a further Interface Risk Assessment, and amendments to the IRMP, to the extent required, have been agreed or determined, under **clause 15.2(e)14.2(e)**;
 - (E) if required under **clause 24.423.4**, has amended the Operator's Safety Management System to address any amendments to the IRMP and the operation of those Train Services; and
 - (F) if required under **clause 15.214.2**, has amended the Environmental Management Plan to address any amendments to the IRMP and the operation of those Train Services; and
 - (G) has complied with or implemented any aspects of the Operating Plan, Emergency Response Plan, the Operator's Accreditation, the IRMP, the Operator's Safety Management System and the Environmental Management Plan that are required to be complied with or implemented before the commencement of those Train Services;
- (iv) amendments to the Operating Plan to address the operation of those Train Services have been approved by Aurizon Network, or

the Operator notified Aurizon Network of its determination that no such amendments are required, under **clause 15.2(a)**~~14.2(a)~~; and

- (v) Aurizon Network has given the Operator an Authority to Travel or a Train Route Acceptance authorising the Operator to operate Train Services for that Train Service Type using the Authorised Rollingstock Configurations for that Train Service Type.
- (b) Aurizon Network must use reasonable endeavours to cooperate with the Operator and act promptly to facilitate the Operator's compliance with **clause 10.3(a)**.
- (c) If **clause 10.3(a)** applies and the Operator has not complied with **clause 10.3(a)** in respect of the Train Services for a Train Service Type by:
 - (i) if **clause 10.3(a)(i)** applies:
 - (A) the Train Service Compliance Date for that Train Service Type and Aurizon Network has a reasonable expectation that the Operator cannot commence the operation of those Train Services by the Train Service Commitment Date for that Train Service Type; or
 - (B) the Train Service Commitment Date for that Train Service Type; or
 - (ii) if **clause 10.3(a)(ii)** applies, the date the variation to the Train Description for the Train Service Type takes effect,

then, provided that the Operator's failure to comply with **clause 10.3(a)** was not due to Aurizon Network's breach of **clause 10.3(b)** and subject to **clause 10.3(d)**:

- (iii) Aurizon Network may give a notice to the Operator and the Access Holder requiring the Operator to comply with **clause 10.3(a)** within 20 Business Days after the date the notice is given to the Operator and the Access Holder; and
- (iv) if Aurizon Network gives a notice to the Operator and the Access Holder under **clause 10.3(c)(iii)** and the Operator fails to comply with **clause 10.3(a)** within 20 Business Days after the date that the notice is given to the Operator and the Access Holder, then:
 - (A) if **clause 10.3(a)(i)** applies:
 - (1) Aurizon Network may, by notice to the Operator and the Access Holder, reduce the Operational Rights by the Train Services for that Train Service Type by removing the variation (**Reduced Operational Rights**);
 - (2) if the Operational Rights of the Operator are reduced in accordance with **clause 10.3(c)(iv)(A)(1)**, Aurizon Network may allow the Access Holder to nominate an alternative "Operator" (as defined in the Access Agreement) to utilise the Reduced Operational Rights in accordance with the terms of the Access Agreement;
 - (3) Aurizon Network must provide to the Operator

replacement Schedules amended consistent with any notice under **clause 10.3(c)(iv)(A)(1)** and this Deed is varied in accordance with those replacement Schedules with effect on and from the date that the notice referred to in **clause 10.3(c)(iv)(A)(1)** is given to the Operator and the Access Holder; and

- (4) if there are no Operational Rights remaining following the issuance of a notice under **clause 10.3(c)(iv)(A)(1)**, Aurizon Network may terminate this Deed (without prejudice to those provisions which are stated to survive this Deed); or
- (B) if **clause 10.3(a)(ii)** applies:
- (1) Aurizon Network may give the Operator and the Access Holder a notice specifying that the variation to the Train Description for the Train Service Type will cease to be of any effect; and
 - (2) if Aurizon Network gives the Operator and the Access Holder a notice referred to in **clause 10.3(c)(iv)(B)(1)**, the Train Description for the Train Service Type will be taken not to have been varied (even if the relevant variation has taken effect) and the Train Description for the Train Service Type will be taken to be the Train Description for the Train Service Type in force immediately before the variation took effect.
- (d) For clarity, the Operator is not obliged to, and Aurizon Network may not require the Operator to, comply with **clause 10.3(a)** prior to the Commitment Date.

10.4 Power

- (a) If the operation of a Train Service consumes electricity supplied by Aurizon Network, in operating Train Services the Operator must not cause Aurizon Network to breach any reasonable and lawful requirements imposed on Aurizon Network by any supplier of electricity to Aurizon Network and which are notified by Aurizon Network to the Operator.
- (b) Aurizon Network must apply the same terms in respect of the consumption of electricity to all Train Operators.

10.5 Use of Regenerative Brakes

- (a) The Operator must obtain Aurizon Network's prior written consent to use Regenerative Brakes on any Rollingstock operated on the Nominated Network.
- (b) Aurizon Network must not unreasonably withhold its consent under this clause, but such consent may be given subject to conditions provided:
 - (i) Aurizon Network acts reasonably in imposing the conditions;
 - (ii) the conditions are required for Aurizon Network to comply with Aurizon Network's obligations under its electricity connection agreements; and

- (iii) to the extent practicable, Aurizon Network imposes the same conditions on all Railway Operators utilising Regenerative Brakes.

11 ~~Reduction of Nominated Monthly Train Services~~ if Increase in Maximum Payload ~~exceeded~~

~~11.1 Reduction of Nominated Monthly Train Services under Access Agreement~~

~~(a) The Operator acknowledges that under the Access Agreement:~~

~~(i) Aurizon Network has the right under clause 10 to reduce the Nominated Monthly Train Services of the Access Holder for a Train Service Type if, at a point in time, the Average Annual Payload for that Train Service Type operated by the Operator exceeds the Maximum Payload for that Train Service Type; and~~

~~(ii) upon the reduction of the Nominated Monthly Train Services in accordance with the Access Agreement as a result of Average Annual Payload for a Train Service Type operated by the Operator exceeding the Maximum Payload for that Train Service Type, the Access Holder will be deemed to have given notice to Aurizon Network to reduce the number of Nominated Monthly Operational Rights the Operator has the right to operate for that Train Service Type utilising the Access Rights in accordance with that notice.~~

~~(b) Aurizon Network will notify the Operator if the Nominated Monthly Train Services are reduced under clause 10 of the Access Agreement and this Deed will be varied in accordance with the notice which the Access Holder is deemed to have given to Aurizon Network as contemplated under **clause 11.1(a)(ii)**.~~

11.211.1 Increase in Request for increased Maximum Payload for a Train Service Type

(a) The Operator acknowledges that the Access Holder may:

(i) under clause ~~11-10~~ of the Access Agreement, request that Aurizon Network consider increasing the Maximum Payload for a Train Service Type; or

~~(a)(ii) be deemed to increase the Maximum Payload for a Train Service Type under clause 11 of the Access Agreement.~~

(b) If the Maximum Payload for a Train Service Type is increased under clause ~~11-10 or clause 11~~ of the Access Agreement, Aurizon Network will notify the Operator of any changes to:

(i) the Nominated Monthly Operational Rights;

(ii) the Maximum Payload for the relevant Train Service Type; ~~and~~

(iii) the Nominal Payload for the relevant Train Service Type; and

~~(iii)(iv) the Indicative Tonnage for the relevant Train Service Type,~~

as a result of the increase under clause ~~11-10 or clause 11~~ of the Access

Agreement [\(as applicable\)](#) and this Deed will be varied in accordance with that notice.

~~11.3~~11.2 No prejudice to other rights

This **clause 11** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Operator with the Train Description for a Train Service Type.

12 ~~[NOT USED]~~ Reduction of Nominated Monthly Train Services if Nominal Payload increased

~~12.1 Notice of Intention to Increase Nominal Payload~~

- ~~(a) The Operator acknowledges that Aurizon Network may give the Access Holder a notice of Aurizon Network's intention to increase the Nominal Payload for a Train Service Type under the Access Agreement (**Notice of Intention to Increase Nominal Payload**).~~
- ~~(b) Aurizon Network will provide to the Operator a copy of any Notice of Intention to Increase Nominal Payload it gives to the Access Holder.~~

~~12.2 Estimate of Net Financial Effect~~

- ~~(a) Within:
 - ~~(i) 20 Business Days after Aurizon Network gives the Operator a copy of the Notice of Intention to Increase Nominal Payload; or~~
 - ~~(ii) if the Access Holder gives Aurizon Network a Dispute Notice under clause 12.4(a) of the Access Agreement, 20 Business Days after Aurizon Network has notified the Operator of the resolution of the dispute under the Access Agreement,~~the Operator must give Aurizon Network a notice specifying the Operator's reasonable estimate of the Net Financial Effect (if any) on the Operator of the intended variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under this **clause 12** (including reasonable details of all matters taken into account in determining such estimate).~~
- ~~(b) The Operator warrants in favour of Aurizon Network that any estimate given by the Operator in a notice under **clause 12.6(a)** is accurate on the basis of the information reasonably available to it and sufficiently detailed to enable Aurizon Network to reasonably assess the estimate.~~
- ~~(c) Within 10 Business Days after the Operator gives Aurizon Network a notice under clause 12.6(a), Aurizon Network may give the Operator a notice requesting the Operator to provide to Aurizon Network any further information and documentation Aurizon Network reasonably requires for the purposes of assessing an estimate given by the Operator in a notice under clause 12.2(a).~~
- ~~(d) Within 10 Business Days after Aurizon Network gives the Operator a notice under **clause 12.2(c)**, the Operator must:
 - ~~(i) provide to Aurizon Network the information and documentation requested in the notice; and~~~~

(ii) — if required by Aurizon Network, meet with Aurizon Network to discuss the estimate given by the Operator in a notice under **clause 12.2(a)**.

12.3 — ~~Withdrawal of Notice of Intention to Increase Nominal Payload~~

- (a) — ~~The Operator acknowledges that, under the Access Agreement, Aurizon Network may, in its absolute discretion, withdraw a Notice of Intention to Increase Nominal Payload at any time before the date which is 10 months before the Effective Date.~~
- (b) — ~~If Aurizon Network withdraws a Notice of Intention to Increase Nominal Payload:~~
- (i) — ~~Aurizon Network will notify the Operator of any such withdrawal; and~~
 - (ii) — ~~the variations to the Nominal Payload, Maximum Payload and Monthly Nominal Train Services for the Train Service Type set out in the Notice of Intention to Increase Nominal Payload will not take effect.~~
- (c) — ~~If Aurizon Network gives the Access Holder a Notice of Intention to Increase Nominal Payload in respect of a Train Service Type, then, unless the Notice of Intention to Increase Nominal Payload is withdrawn as contemplated in **clause 12.8(b)**, Aurizon Network will notify the Operator of any changes to:~~
- (i) — ~~the Nominal Payload for the Train Service Type;~~
 - (ii) — ~~the Maximum Payload for the Train Service Type;~~
 - (iii) — ~~the Nominated Monthly Train Services for the Train Service Type,~~
- ~~in each case, as a result of the Notice of Intention to Increase Nominal Payload in respect of that Train Service Type.~~

12.4 — ~~Further estimate of Net Financial Effect~~

- (a) — ~~No less than six months, but not more than seven months, after the Effective Date, the Operator must give Aurizon Network a notice specifying reasonable details of the Operator's reasonable estimate of the Net Financial Effect (excluding any Foreseeable Costs and Detriments) on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under the Access Agreement as contemplated in this **clause 12**, including:~~
- (i) — ~~reasonable details of:~~
 - (A) — ~~any increased costs and other detriments actually incurred by the Operator; and~~
 - (B) — ~~any savings and other benefits and advantages actually received by the Operator;~~
 - (ii) — ~~reasonable details of the Operator's reasonable estimate of:~~
 - (A) — ~~any increased costs and other detriments to be incurred by the Operator; and~~
 - (B) — ~~any savings and other benefits and advantages to be~~

received by the Operator; and

(iii) ~~any Foreseeable Costs and Detriments.~~

(b) ~~A notice given by the Operator under **clause 12.4(a)** must not include any increased costs and other detriments actually, or estimated to be, incurred by the Operator which were not included in the notice given under **clause 12.2(a)** to the extent that, at the time of giving the notice under **clause 12.2(a)**, the Operator ought to have reasonably anticipated that those costs and other detriments would, or would likely, be incurred (**Foreseeable Costs and Detriments**).~~

(c) ~~The Operator warrants in favour of Aurizon Network that any estimate given by the Operator in a notice under **clause 12.4(a)** is accurate on the basis of the information reasonably available to it and sufficiently detailed to enable Aurizon Network to reasonably assess the estimate.~~

(d) ~~Within 10 Business Days after the Operator gives Aurizon Network a notice under **clause 12.4(a)**, Aurizon Network may give the Operator a notice requesting the Operator to provide to Aurizon Network any further information and documentation Aurizon Network reasonably requires for the purposes of assessing an estimate given by the Operator in a notice under **clause 12.4(a)**.~~

(e) ~~Within 10 Business Days after Aurizon Network gives the Operator a notice under **clause 12.4(d)**, the Operator must:~~

(i) ~~provide to Aurizon Network the information and documentation requested in the notice; and~~

(ii) ~~if required by Aurizon Network, meet with Aurizon Network to discuss the estimate given by the Operator in a notice under **clause 12.4(a)**.~~

12.5 — Dispute

(a) ~~Within 10 Business Days after the later of the date that:~~

(i) ~~the Operator gives Aurizon Network a notice under **clause 12.4(a)**;~~

(ii) ~~if Aurizon Network requests the Operator to provide any information and documentation under **clause 12.4(d)**, the Operator provides Aurizon Network the requested information and documentation; and~~

(iii) ~~if Aurizon Network requires the Operator to meet with it under **clause 12.4(e)(ii)**, the Operator meets Aurizon Network;~~

~~Aurizon Network must, if Aurizon Network Disputes the amount of the estimate of the Net Financial Effect (excluding any Foreseeable Costs and Detriments) on the Operator specified in the notice given by the Operator under **clause 12.4(a)**, give the Operator a Dispute Notice which disputes that estimate in accordance with **clause 30**.~~

(b) ~~If a Dispute referred to in **clause 12.5(a)** is not resolved in accordance with **clause 30.2**, then the Parties must refer the Dispute to an Expert to determine the Net Financial Effect (excluding any Foreseeable Costs and Detriments) on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under this **clause 12**.~~

~~12.6 — Payment of compensation~~

~~(a) — Within 20 Business Days after the later of:~~

- ~~(i) — the dates referred to in **clauses 12.5(a)(i), 12.5(a)(ii) and 12.5(a)(iii)**; and~~
- ~~(ii) — if Aurizon Network gives the Operator a Dispute Notice referred to in **clause 12.5(a)**, the date that the Dispute is resolved under **clause 30**;~~

~~Aurizon Network must pay to the Operator:~~

- ~~(iii) — if **clause 12.6(a)(ii)** applies, the amount which is agreed or determined under the Dispute resolution process to be the Net Financial Effect (excluding any Foreseeable Costs and Detriments) on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under this **clause 12**; or~~
- ~~(iv) — otherwise, the amount which is the Operator's estimate of the Net Financial Effect (excluding any Foreseeable Costs and Detriments) on the Operator of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under this **clause 12** specified in the notice given by the Operator under **clause 12.4(a)**.~~

~~(b) The Parties agree that the amount payable by Aurizon Network to the Operator under **clause 12.6(a)** fully compensates the Operator for the Net Financial Effect on the Operator of the variations to the Train Description for the relevant Train Service Type under this **clause 12**, and, except for the payment of that amount, the Operator must not make any Claim against Aurizon Network in respect of the variations to the Nominal Payload, Maximum Payload and Nominated Monthly Operational Rights for the relevant Train Service Type under this **clause 12**.~~

13 Day to day Train Movements

13.1 Exclusive responsibility for Train Control

Aurizon Network must provide, and has exclusive responsibility for, Train Control in respect of the Nominated Network.

13.2 Train Control rights and obligations - Aurizon Network

- (a) Aurizon Network must exercise Train Control by the issue of Train Control Directions to the Operator and the Operator's Staff consistent with the Network Management Principles.
- (b) In exercising Train Control, Aurizon Network must act reasonably and have regard to the safe conduct of rail operations on the Infrastructure and may, acting reasonably:
 - (i) delay, alter or add a Train Service or other Network Train Services;
 - (ii) cancel, re-route or re-schedule a Train Service or other Network Train Services;
 - (iii) alter the Scheduled Times for Train Services or other Network Train Services in the Train Schedule; and

- (iv) impose any Operational Constraint on the Nominated Network consistent with **clause 21.220.2**.

13.3 Train Control rights and obligations - Operator

Without limiting the rights of the Operator, the Operator must:

- (a) comply with Train Control Directions;
- (b) ensure the Operator's Staff comply with Train Control Directions;
- (c) ensure that its Train drivers are contactable by the Train Controller to receive Train Control Directions;
- (d) notify the Train Controller as soon as reasonably possible after the Operator becomes aware that:
 - (i) it is not possible for the Operator or the Operator's Staff to comply with a Train Control Direction; or
 - (ii) the Operator or the Operator's Staff have not complied with a Train Control Direction; and
- (e) notify the Train Controller as soon as reasonably possible after the Operator becomes aware of:
 - (i) any changes or delays in Train Services; or
 - (ii) any circumstances which have affected or may affect Train Control including the ability of any Train Service to conform to its Scheduled Times.

13.4 Train Control communications

The Operator must ensure all Trains are equipped with or have available means of communication to permit the Operator's Staff to comply with this Deed (including the Rollingstock Interface Standards and the Applicable Safeworking Procedures).

13.5 Removal at the end of Authorised Parking

- (a) To the extent that Aurizon Network has allowed any Train to be Stowed or directed or otherwise allowed any items of Rollingstock to be temporarily parked on the Nominated Network (in either case, **Authorised Parking**):
 - (i) the Operator must ensure that it ceases the Stowage or the temporary parking of the relevant Rollingstock on the Nominated Network on:
 - (A) the expiry of any permitted period specified by Aurizon Network in respect of such Authorised Parking; or
 - (B) if no such permitted period has been specified by Aurizon Network in respect of any such Authorised Parking, within 12 hours (or such longer period as may be specified by Aurizon Network) of notice from Aurizon Network requiring the cessation of Stowage or end to temporary parking of the relevant Rollingstock; and
 - (ii) without limiting any other rights which Aurizon Network may have, Aurizon Network may, subject to Aurizon Network using reasonable efforts to first consult with the Operator:

- (A) take such action as Aurizon Network (acting reasonably) considers necessary in relation to the cessation of Stowage or end to temporary parking of the relevant Rollingstock (including removing the Train or the relevant Rollingstock) following the expiry of the relevant period referred to in **clause 13.5(a)(i)~~12.5(a)(i)~~**; and
 - (B) recover such reasonable costs incurred by Aurizon Network in doing so and, subject to **clause 8.4**, the Operator must, within 10 Business Days after receiving such demand, pay to Aurizon Network such reasonable costs incurred by Aurizon Network.
- (iii) Aurizon Network will not be liable for any damage to or loss of freight, Train or Rollingstock caused by any action referred to in **clause 13.5(a)(ii)~~12.5(a)(ii)~~** and the Operator is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network and its directors and Aurizon Network's Staff against all Claims of any nature suffered or incurred by, or made or brought against, Aurizon Network, its directors or Aurizon Network's Staff in respect of any exercise of Aurizon Network's rights under **clause 13.5(a)(ii)~~12.5(a)(ii)~~**.

14 Compliance

14.1 General requirements

- (a) To the extent relevant to the performance of its obligations under this Deed:
 - (i) each Party must observe and comply with:
 - (A) all applicable Laws;
 - (B) the conditions of its own Accreditation;
 - (C) the lawful requirements of relevant Authorities;
 - (D) Train Control Directions;
 - (E) the Applicable Safeworking Procedures and Applicable Safety Standards;
 - (F) the Network Management Principles;
 - (G) the Interface Coordination Arrangements;
 - (H) to the extent applicable, the Emergency Procedures;
 - (I) the IRMP; and
 - (J) the Access Undertaking (including, in Aurizon Network's case, its obligations in Part 3 of the Access Undertaking);
 - (ii) the Operator must observe and comply with:
 - (A) the Train Description for each Train Service Type (subject to the Network Management Principles);
 - (B) the description of the relevant Reference Train Service except as otherwise permitted by this Deed;

- (C) the Operating Plan;
- (D) the Emergency Response Plan;
- (E) the Environmental Management Plan;
- (F) subject to the provision of reasonable notice from Aurizon Network specifying:
 - (1) the relevant requirements of the Environmental Authorities held by Aurizon Network from time to time and the permits, approvals and licences in respect of facilities to which access is provided by Aurizon Network to the Operator, those relevant requirements;
 - (2) relevant Approvals affecting the operations of Aurizon Network and their applicability to the Operator, those Approvals;
- (G) the applicable requirements under the Noise Code; and
- (iii) Aurizon Network must observe and comply with:
 - (A) the conditions of its Accreditation;
 - (B) all licences and permits affecting its operations, including any licences, permits and approvals in respect of facilities relevant to this Deed; and
 - (C) any Environmental Authorities it holds from time to time.

14.2 Non-compliance by Operator with Train Description

- (a) If:
 - (i) Train Services operated by the Operator do not comply, in any material respect, with the Train Description for the Train Service Type, except where such non-compliance is attributable to another Railway Operator or Aurizon Network; and
 - (ii) the Operator fails to demonstrate to the reasonable satisfaction of Aurizon Network, within 20 Business Days of being requested to do so, that those Train Services will consistently comply with the applicable Train Description for the remainder of the Term,

then, if following satisfaction by Aurizon Network of the requirements of clauses 15.3(a) and 15.3(b) of the Access Agreement, Aurizon Network continues to not be reasonably satisfied that the Operator will consistently comply with the Train Description for the remainder of the Term, Aurizon Network may, by giving the Operator and the Access Holder 20 Business Days' notice:

 - (iii) vary the applicable Train Description to a level it reasonably expects to be achievable by the Operator for the remainder of the Term, having regard to the extent of previous compliance with the applicable Train Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator or to Aurizon Network); and

- (iv) reasonably vary any other provisions of this Deed to reflect the impact of the change in the applicable Train Description.
- (b) The Operator is entitled to dispute any variation by Aurizon Network under **clause 14.2(a)13.2(a)** and such dispute must be referred to an Expert for resolution in accordance with **clause 30.329.3**.
- (c) This **clause 14.213.2** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Operator with the Train Description for a Train Service Type.
- (d) If any variations under this **clause 14.213.2** affect the Train Description, then the commencement of those variations is subject to and conditional upon the Operator being notified by Aurizon Network that all necessary amendments (if any) to the Access Agreements have been made in respect of such matters and any relevant nomination of the Operator by the Access Holder in accordance with the Access Agreement has, if necessary, been varied.

14.3 Certain matters to apply consistently to all Railway Operators

Aurizon Network must ensure that as far as reasonably practicable:

- (a) the Network Management Principles;
- (b) the System Operating Parameters;
- (c) the System Rules;
- (d) the Safeworking Procedures and Safety Standards;
- (e) the Emergency Procedures; and
- (f) the Investigation Procedures,

will be applied consistently for all Railway Operators operating Network Train Services to destinations located in the same Coal System.

14.4 Provision of information

- (a) Aurizon Network must provide the Operator with:
 - (i) information relevant to the Operator's operation of Train Services if and when required to do so under the Network Management Principles; and
 - (ii) a copy of each Operating Document (which may be via publication on the Website).

15 Plans

15.1 Approval of Plans

- (a) Before the commencement of any Train Services:
 - (i) the Operator must develop and submit to Aurizon Network for approval the following documents which must be, at all times during the Term, consistent with the terms of this Deed:
 - (A) a plan (**Operating Plan**) which:
 - (1) specifies reasonable details of the Operator's planned operations of Train Services; and

- (2) without limiting **clause 15.1(a)(i)(A)~~14.1(a)(i)(A)~~**, addresses the matters required under Schedule C of the Access Undertaking;
 - (B) a plan (**Emergency Response Plan**) which:
 - (1) contains the set procedures adequate for dealing with an Incident, including all actions to be taken to minimise or alleviate any threat or danger to any person or property or the environment;
 - (2) is compatible with the Emergency Procedures; and
 - (ii) the Parties must in accordance with the Interface Risk Provisions which form part of this Deed under **clause 3**:
 - (A) jointly with the Access Holder conduct an Interface Risk Assessment; and
 - (B) as soon as reasonably practicable after the completion of the Interface Risk Assessment (and in any event by not later than 20 Business Days after the completion), negotiate diligently and in good faith an IRMP, including any amendment to it.
- (b) As soon as possible and in any event by no later than 20 Business Days from the date of receipt of the Operating Plan or the Emergency Response Plan (as applicable), Aurizon Network must:
- (i) notify the Operator whether or not it approves the Plan; and
 - (ii) if not, provide reasonable details of its reasons for withholding its approval.
- (c) Aurizon Network:
- (i) may withhold its approval of the Operating Plan if it is not reasonably satisfied that the Operating Plan complies with **clause 15.1(a)(i)(A)~~14.1(a)(i)(A)~~**;
 - (ii) must notify the Operator if it is not reasonably satisfied that the Emergency Response Plan complies with **clause 15.1(a)(i)(B)~~14.1(a)(i)(B)~~** and the parties must meet to agree on a mutually acceptable course of action to address Aurizon Network's concerns within 10 Business Days after the notice is given;
 - (iii) must promptly determine, acting reasonably, the IRMP (including any amendment to it) and notify the Operator of its determination if the Parties are unable to agree an IRMP or any amendments to it under **clause 15.1(a)(ii)~~14.1(a)(ii)~~**.
- (d) If a dispute arises as a result of:
- (i) Aurizon Network withholding its approval of the Operating Plan under **clause 15.1(c)(i)~~14.1(c)(i)~~**;
 - (ii) the Parties failing to comply with the timeframe in **clause 15.1(c)(ii)~~14.1(c)(ii)~~**; or
 - (iii) the IRMP, or any aspect of or amendment to the IRMP, determined by Aurizon Network under **clause 15.1(c)(iii)~~14.1(c)(iii)~~** (**Disputed Aspect**) being Unreasonable,

it must be resolved under **clause 30.229.2**, failing which **clause 30.329.3** applies.

- (e) If a dispute is referred to an Expert, then:
 - (i) the Expert is required to determine whether or not the Operating Plan or the Emergency Response Plan (as applicable) complies with the **clause 15.1(a)(i)14.1(a)(i)**; and
 - (ii) if the Expert determines (as applicable):
 - (A) the Operating Plan does not comply with **clause 15.1(a)(i)(A)14.1(a)(i)(A)**;
 - (B) the Emergency Response Plan is not compatible with the Emergency Procedures and otherwise complies with **clause 15.1(a)(i)(B)14.1(a)(i)(B)**; or
 - (C) that the Disputed Aspect of the IRMP is Unreasonable, then the Expert must determine (and specify in the report of its determination of the Dispute):
 - (D) if **clause 15.1(e)(ii)(A)14.1(e)(ii)(A)** or **15.1(e)(ii)(B)14.1(e)(ii)(B)** applies, how the non-compliance should be rectified and the Operator must rectify the Operating Plan or the Emergency Response Plan (as applicable) accordingly; or
 - (E) if **clause 15.1(e)(ii)(C)14.1(e)(ii)(C)** applies, the amendments to the IRMP which the Expert reasonably considers, if made, would result in the Disputed Aspect ceasing to be Unreasonable.
- (f) A Plan is effective only from the date:
 - (i) in respect of an Operating Plan or Emergency Response Plan, Aurizon Network notifies the Operator that it approves the Operating Plan or the Emergency Response Plan (as applicable);
 - (ii) in respect of an IRMP (including any amendments to it):
 - (A) the Parties agree in writing on the terms of the IRMP or the amendments to it; or
 - (B) if the Parties cannot agree, Aurizon Network determines the IRMP or the amendment to it and notifies the Operator;
 - (iii) if **clause 15.1(d)14.1(d)** applies in respect of any Plan, it is agreed or determined that the Plan complies with the relevant requirements under **clause 15.1(a)(i)14.1(a)(i)** (as applicable).
- (g) If it is agreed or determined through the Dispute resolution process that the Disputed Aspect of the IRMP is Unreasonable, then (unless otherwise agreed between the Parties through the Dispute resolution process):
 - (i) despite the Dispute, the IRMP, or the aspect of it or amendment to it, determined by Aurizon Network under **clause 15.1(c)(iii)14.1(c)(iii)** or **15.1(g)(ii)14.1(g)(ii)** (as applicable) is taken to be valid and binding; but

- (ii) as soon as reasonably practicable (and in any event within 20 Business Days) after such agreement or determination, Aurizon Network must:
 - (A) determine, acting reasonably, the amendments to the IRMP (in the case of an Expert determination, having regard to the reasons for the Expert's determination and the amendments to the IRMP specified in the Expert's report of the determination of the Dispute) which result in the Disputed Aspect ceasing to be Unreasonable; and
 - (B) notify the Operator of the amendments to the IRMP determined by Aurizon Network;
 - (C) the amendments to the IRMP, as determined by Aurizon Network, will take effect on the date notified to the Operator under **clause 15.1(g)(ii)(B)~~14.1(g)(ii)(B)~~**; and
 - (D) if Aurizon Network does not notify the Operator of amendments to the IRMP by the time referred to in **clause 15.1(g)(ii)~~14.1(g)(ii)~~**, then the IRMP will be taken to be amended as specified in the Expert's report of the determination of the Dispute with effect immediately after the end of the time referred to in **clause 15.1(g)(ii)~~14.1(g)(ii)~~**.
- (h) The Operator must develop, implement and maintain a plan to address Environmental Risks (**Environmental Management Plan**) in accordance with the Interface Risk Provisions which form part of this Deed under **clause 3**.

15.2 Amendments to Plans

- (a) The Operator:
 - (i) may amend the Operating Plan or the Emergency Response Plan (as applicable) from time to time provided it complies with this **clause 15.2~~14.2~~**;
 - (ii) must, to the extent reasonably required, amend:
 - (A) the Operating Plan and/or the Emergency Response Plan if:
 - (1) **Schedule 2** is varied to include an additional Train Service Type or the Train Description for an existing Train Service Type is varied, to address the operation of the Train Services before the Operator commences or continues (as applicable) to operate the Train Services for that Train Service Type; or
 - (2) they cease to be consistent with the terms of this Deed or any document that the Operator is required under this Deed to comply with, to address the inconsistency;
 - (B) the Operating Plan if at any time **clause 17.2(a)(ii)~~16.2(a)(ii)~~** applies, to address the proposal under the Authorisation Request Notice (assuming that the Rollingstock Configurations become Authorised Rollingstock Configurations for the Train Service Type); and

- (iii) must notify Aurizon Network if it reasonably determines that no amendments to the Operating Plan and the Emergency Response Plan are required as a result of a variation to **Schedule 2**, including the reasons for that determination.
 - (b) If Aurizon Network becomes aware of an inconsistency between the Operating Plan or the Emergency Response Plan and this Deed or any document that the Operator is required under this Deed to comply with, Aurizon Network must notify the Operator.
 - (c) If the Operator intends or is required to amend the Operating Plan or the Emergency Response Plan (as applicable), it must submit to Aurizon Network for approval full details of each proposed amendment, including its reasons for the amendment.
 - (d) **Clauses ~~15.1(b)~~14.1(b)** to **~~15.1(e)~~14.1(e)** apply to any amendments to a Plan the Operator submits to Aurizon Network for approval.
 - (e) If, at any time during the Term:
 - (i) a Party notifies the other Party that it believes that:
 - (A) the IRMP is no longer effective in managing an Interface Risk or Environmental Risk addressed in the IRMP; or
 - (B) an additional or varied Interface Risk or Environmental Risk exists, or is likely to exist, that is not addressed in the IRMP;
 - (ii) **Schedule 2** is varied to include an additional Train Service Type or the Train Description for a Train Service Type is varied; or
 - (iii) Aurizon Network notifies the Operator that the Rollingstock Interface Standards are varied and Aurizon Network considers that a further Interface Risk Assessment is required; or
 - (iv) a Certifier gives Aurizon Network a Compliance Statement, then:
 - (v) as soon as reasonably practicable after:
 - (A) a Party notifies the other Party under **clause ~~15.2(e)(i)(A)~~14.2(e)(i)(A)** or **~~15.2(e)(i)(B)~~14.2(e)(i)(B)**; or
 - (B) Aurizon Network notifies the Operator under **clause ~~15.2(e)(iii)~~14.2(e)(iii)**; or
 - (C) the Certifier gives Aurizon Network the Compliance Statement; or
 - (vi) before the Operator commences or continues (as applicable) to operate any Train Services for a Train Service Type referred to in **clause ~~15.2(e)(ii)~~14.2(e)(ii)**;
- the Parties must undertake a further Interface Risk Assessment and agree on amendments to the IRMP in accordance with **clauses ~~15.1(a)(ii)~~14.1(a)(ii)** and **~~15.1(c)(iii)~~14.1(c)(iii)**.

16 Train operations

16.1 Compliance with Scheduled Time

- (a) The Operator must use reasonable endeavours to:
 - (i) operate Train Services in accordance with the relevant Daily Train Plan unless:
 - (A) otherwise permitted by the Network Management Principles;
 - (B) varied in the circumstances specified in this Deed;
 - (C) otherwise directed in a Train Control Direction; or
 - (D) otherwise agreed between the Parties (such agreement not to be unreasonably withheld); and
 - (ii) otherwise comply with all other Scheduled Times.
- (b) A Train Service is deemed to operate in accordance with its Scheduled Time if it is operated within three minutes before or after the Scheduled Time.

16.2 Alterations to Train Services

- (a) Without limiting the rights of the Operator, Aurizon Network must give the Operator a Train Control Direction as soon as reasonably practicable after it becomes aware that it is unable to make the Infrastructure available for the operation of a Train Service which is scheduled in the Daily Train Plan.
- (b) Unless Aurizon Network has already given the Operator a Train Control Direction under **clause 16.2(a)15.2(a)**, the Operator must notify Aurizon Network as soon as reasonably practicable after it decides not to, or becomes aware that it will be unable to, operate a Train Service which is scheduled in the Daily Train Plan and specify the Access Holder for that Train Service.
- (c) If clause **16.2(a)15.2(a)** or **16.2(b)15.2(b)** applies, Aurizon Network must reschedule the relevant Train Service in accordance with the Network Management Principles.

16.3 Authorisation of other Train Movements

If:

- (a) the Operator gives Aurizon Network a notice in accordance with **clause 16.2(b)15.2(b)**;
- (b) Aurizon Network gives the Operator a Train Control Direction in accordance with **clause 16.2(a)15.2(a)**; or
- (c) for any reason, the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule (including a revised Scheduled Time for that Train Service),

then Aurizon Network may authorise the operation of another Train Movement at that Scheduled Time.

16.4 Notification

- (a) Without limiting its obligations under **clause 1.3 of Schedule 9**, Aurizon Network must notify the Operator's Controller (such notification to include, where relevant, the anticipated effect on the relevant Train Service) as soon as reasonably practicable after Aurizon Network becomes aware of any circumstances (including Obstructions) which:
 - (i) have materially affected, or could potentially materially affect, the ability of the Operator to operate any Train Service in accordance with its Scheduled Time; or
 - (ii) have affected, or could potentially affect, the security or safety of a Train Service or the Operator's Staff.
- (b) Aurizon Network must, as soon as reasonably practicable after becoming aware of the relevant changes, advise the Operator's Controller from time to time of changes to notices previously provided under **clause ~~16.4(a)~~15.4(a)**.
- (c) A Party must inform the other Party if it becomes aware of any failure by the Operator to comply with:
 - (i) any requirement specified in **clause ~~14.1~~13.1**; or
 - (ii) the Authorised Rollingstock and Authorised Rollingstock Configurations for each Train Service Type.

16.5 Operator to supply information

- (a) The Operator must provide to Aurizon Network:
 - (i) and at all times maintain operable software, hardware and associated communication links to establish (to Aurizon Network's reasonable satisfaction) an interface with Aurizon Network's information systems; and
 - (ii) information in relation to each Train Service in accordance with **item 1.2 of Schedule 9** before the operation of that Train Service.
- (b) The Operator's interface with Aurizon Network's information systems are subject to any reasonable controls specified by Aurizon Network to protect the integrity and confidentiality of Aurizon Network's information systems and the information contained in them.
- (c) Aurizon Network must cooperate with the Operator to establish the Operator's interface with Aurizon Network's information systems.

16.6 Operation of Trains and Rollingstock

The Operator is responsible for the safe operation of its Rollingstock and must ensure that at all times the operation of such Rollingstock (including all loading and unloading of such Rollingstock) is undertaken in a manner that:

- (a) is consistent with the Rollingstock Interface Standards (subject to any Approved Derogations);
- (b) does not affect the safe operation of the Rollingstock or any other Train Movements; and
- (c) ensures that all items on or in the Operator's Rollingstock remain secured in position during transit.

17 Authorisation of Rollingstock and Rollingstock Configurations

17.1 Use of Rollingstock and Rollingstock Configuration

- (a) The Operator must only operate Train Services using Rollingstock or Rollingstock Configurations which:
 - (i) comply with the Rollingstock Interface Standards (subject to any Approved Derogations);
 - (ii) are Authorised Rollingstock;
 - (iii) are Authorised Rollingstock Configuration for that Train Service Type; and
 - (iv) comply with all applicable Laws.

17.2 Authorisation Request Notice

- (a) Subject to **clause 17.2(b)16.2(b)**, if, at any time during the Term, the Operator proposes to operate:
 - (i) Train Services using Rollingstock which are not Authorised Rollingstock; or
 - (ii) Train Services for a Train Service Type using Rollingstock Configurations which are not Authorised Rollingstock Configurations for that Train Service Type,

then the Operator may give Aurizon Network a notice (**Authorisation Request Notice**) of its proposal, specifying reasonable details of the proposed Rollingstock or Rollingstock Configurations (as applicable).

- (b) The Operator must not give Aurizon Network an Authorisation Request Notice in respect of a proposal to operate Train Services using Rollingstock Configurations which are not Authorised Rollingstock Configurations for the Train Service Type unless the proposed Rollingstock Configurations are only comprised of Rollingstock which, at the time of the notice, are Authorised Rollingstock.

17.3 Compliance Statement

If the Operator gives Aurizon Network an Authorisation Request Notice, then the Operator must procure a Certifier to:

- (a) assess whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice comply with the Rollingstock Interface Standards; and
- (b) provide a statement (**Compliance Statement**) to Aurizon Network which specifies whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards and, if not, reasonable details of each non-compliance.

17.4 Rollingstock Interface Standards Risk Assessment

If the Operator gives Aurizon Network an Authorisation Request Notice, the Interface Risk Assessment required to be conducted under **clause**

~~15.2(e)~~~~14.2(e)~~ will, unless otherwise required by Aurizon Network, be limited to a Rollingstock Interface Standards Risk Assessment in respect of the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice.

17.5 Certificate of Compliance

- (a) If:
- (i) the Operator gives Aurizon Network an Authorisation Request Notice; and
 - (ii) a Certifier provides Aurizon Network with a Compliance Statement in respect of the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice,
- then promptly after:
- (iii) the Parties have conducted an Interface Risk Assessment under **clause ~~17.4~~16.4** in respect of such Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable); and
 - (iv) any amendments to the IRMP have been agreed or determined in accordance with **clause ~~24~~23** following such Interface Risk Assessment,
- the Operator must procure a Certifier to:
- (v) assess whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations); and
 - (vi) if the assessment is positive, certify that such Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations).
- (b) If a Certifier provides a Certificate of Compliance under **clause ~~17.5~~16.5**, the Operator must promptly (and in any event, within 10 Business Days) after being requested to do so by Aurizon Network provide (or procure the Certifier to provide) to Aurizon Network:
- (i) the Certificate of Compliance; and
 - (ii) any information or documentation (including reports on trials and/or commissioning tests) in relation to the Rollingstock or Rollingstock Configurations for a Train Service Type (as applicable) specified in that Certificate of Compliance;
- (c) If the Operator complies with **clause ~~17.5(b)~~16.5(b)**, then 20 Business Days after the date the Operator complies with **clause ~~17.5(b)~~16.5(b)**:
- (i) the Rollingstock specified in the Certificate of Compliance is taken to be Authorised Rollingstock; and/or
 - (ii) the Rollingstock Configurations for the Train Service Type specified in the Certificate of Compliance is taken to be Authorised Rollingstock Configurations for that Train Service Type,

unless within 20 Business Days of the date the Operator complied with **clause 17.5(b)16.5(b)**, Aurizon Network notifies the Operator that it is not satisfied that the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance complies with the Rollingstock Interface Standards (subject to any Approved Derogations), and provide reasonable details of any non-compliance.

17.6 Disputes

- (a) If Aurizon Network gives the Operator a notice under **clause 17.5(c)16.5(c)** and the Operator disputes that notice, then the Operator may give a Dispute Notice to Aurizon Network under **clause 30.129.1**.
- (b) If a Dispute referred to in **clause 17.6(a)16.6(a)** is not resolved in accordance with **clause 30.229.2**, then the Operator may refer the Dispute to an Expert under **clause 30.329.3** to determine whether or not the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance comply with the Rollingstock Interface Standards (subject to any Approved Derogations).

17.7 Update of schedule 4Error! Reference source not found. as a consequence of New Authorisations

If, at any time during the Term, any Rollingstock is taken to be Authorised Rollingstock (**New Authorisation**), then **item 1 of Schedule 4** is deemed to be amended to include:

- (a) the maximum gross mass for any Wagon or other Rollingstock for that New Authorisation; and
- (b) the tare weight for any Wagon or other Rollingstock for that New Authorisation,

at the time the Rollingstock is taken to be Authorised Rollingstock.

17.8 Issue of Train Route Acceptance or Authority to Travel

Within five Business Days after Rollingstock Configurations for a Train Service Type become Authorised Rollingstock Configuration for the Train Service Type, Aurizon Network must give the Operator a Train Route Acceptance or Authority to Travel (as applicable) for the Train Service Type.

18 Amendments to System Wide Requirements

18.1 Amendment Notice

- (a) Aurizon Network may, acting reasonably, amend a System Wide Requirement by the issue of a notice (**Amendment Notice**) to the Operator:
 - (i) at any time to ensure the ongoing safe operation of the Nominated Network, provided it consults with the Operator before its implementation;
 - (ii) if required pursuant to a Material Change; or
 - (iii) in any other circumstance (**Discretionary System Amendment**), subject to:

- (A) the Operator's agreement to such proposed amendment (such agreement not to be unreasonably withheld or delayed); or
 - (B) the other provisions of this **clause 18.17**.
- (b) An Amendment Notice must be reasonably in advance of the proposed implementation date for the proposed amendments and specify:
- (i) such details of the proposed amendments as reasonably necessary to:
 - (A) properly inform the Operator of the terms of the proposed amendments; and
 - (B) enable the Operator to assess the consequences for the Operator of the proposed amendments;
 - (ii) whether the Amendment Notice is issued on the ground referred to in **clause 18.1(a)(i)17.1(a)(i)**, **18.1(a)(ii)17.1(a)(ii)** or **18.1(a)(iii)17.1(a)(iii)**; and
 - (iii) details of the proposed implementation date for the proposed amendments.

18.2 Response to a Discretionary System Amendment

- (a) Within 20 Business Days (or such longer period as may be agreed between the Parties, such agreement not to be unreasonably withheld or delayed) after receiving an Amendment Notice in accordance with **clause 18.1(b)17.1(b)** which proposes a Discretionary System Amendment, the Operator must notify Aurizon Network whether:
- (i) irrespective of any financial arrangements agreed or determined under **clause 18.4(c)17.4(e)**, the proposed amendments will materially impact the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Deed over a sustained period of time; and/or
 - (ii) the Net Financial Effect on the Operator of the Discretionary System Amendment is equivalent to one percent or greater of the annual Access Charges payable by the Access Holder under the Access Agreement.

18.3 Discretionary System Amendment which frustrate operations

- (a) If the Operator notifies Aurizon Network under **clause 18.2(a)(i)17.2(a)(i)**, Aurizon Network must, acting reasonably, assess the Operator's response and notify the Operator if it agrees or disagrees with the Operator's notice within 20 Business Days after receipt of that notice (or such longer period as may be agreed between the Parties).
- (b) If Aurizon Network agrees with the Operator's notice under **clause 18.2(a)(i)17.2(a)(i)**, then Aurizon Network must:
- (i) amend the proposed amendments to ensure that such amendments will not materially impact the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Deed over a sustained period of time; and

- (ii) within 5 Business Days of making the amendments under **clause 18.3(b)(i)~~17.3(b)(i)~~** give the Operator a copy of its amendments to the proposed amendments.
- (c) If Aurizon Network disagrees with the Operator's notice under **clause 18.2(a)(i)~~17.2(a)(i)~~**, Aurizon Network may implement the proposed amendments from the later of:
 - (i) the date Aurizon Network notifies the Operator of its determination; and
 - (ii) if the Operator has notified Aurizon Network within the required timeframe under **clause 18.2(a)(ii)~~17.2(a)(ii)~~**, the date that the Parties comply with **clause 18.4~~17.4~~**.
- (d) If the Operator disputes Aurizon Network's determination under **clause 18.3(b)~~17.3(b)~~**, then either Party may refer the dispute for determination by an Expert in accordance with **clause 30.3~~29.3~~** and Aurizon Network must not implement the proposed amendments pending the Expert's determination.

18.4 Discretionary System Amendment with negative financial impact

- (a) If the Operator notifies Aurizon Network under **clause 18.2(a)(ii)~~17.2(a)(ii)~~**, the Operator must, within 20 Business Days after providing such notice (or such longer period as may be agreed between the Parties), provide to Aurizon Network details of such Net Financial Effect reasonably required by Aurizon Network to assess such Net Financial Effect, including estimates of any additional costs, savings, benefits or detriments to be obtained or suffered, or reasonably expected to be obtained or suffered, by the Operator as a direct result of Aurizon Network implementing the proposed amendments.
- (b) The Operator warrants that any estimates given by it under **clause 18.4(a)~~17.4(a)~~** are to its knowledge accurate on the basis of the information reasonably available to it.
- (c) Promptly after the Operator complies with **clause 18.4(a)~~17.4(a)~~**, the Parties must negotiate in good faith to seek to agree appropriate financial arrangements between them with respect to such Net Financial Effect and, failing agreement within a further 20 Business Days after the Operator provides the relevant details under **clause 18.4(a)~~17.4(a)~~**, either Party may refer the matter to an Expert in accordance with **clause 30.3~~29.3~~** to determine an appropriate financial arrangement to compensate the Operator for the Net Financial Effect on the Operator of the Discretionary System Amendment. Aurizon Network must not implement the proposed amendments pending the Expert's determination.

18.5 Expert must have regard to certain matters

In making a determination referred to in **clause 18.3(d)~~17.3(d)~~** or **clause 18.4(c)~~17.4(c)~~**, the Expert must have regard to, except in circumstances where consequences are otherwise provided under this Deed, the reasonable costs and benefits accruing to the Operator.

18.6 Costs of implementing amendments to a System Wide Requirement

- (a) The Operator must use all reasonable endeavours to minimise the Net Financial Effect on the Operator of any proposed amendments to a System Wide Requirement.
- (b) Despite **clause 18.417.4**, where any System Wide Requirement is varied to ensure the ongoing safe operation of the Network, each Party must fund its own costs of implementing the proposed amendments including the equipping of Rollingstock with new or additional equipment such as Signalling and Telecommunications Equipment or making any other modification to Rollingstock.
- (c) At any time before Aurizon Network implements any proposed amendments, Aurizon Network may elect not to proceed with the proposed amendments provided it notifies the Operator within 1 Business Day of making such election.
- (d) The Parties must account to each other in respect of the contributions agreed or determined under **clause 18.4(c)17.4(e)** after completion of the implementation of the proposed amendments and subsequent modifications to the Operator's systems, equipment or Rollingstock as required by the amendments.

18.7 Implementation of amendments to System Wide Requirements

- (a) Where Aurizon Network implements the proposed amendments in accordance with this **clause 1817**, the relevant System Wide Requirement will be altered as contemplated in the Amendment Notice following completion of the implementation of the proposed amendments.
- (b) The Parties must take all necessary action and make all necessary amendments to the IRMP, Environmental Management Plan, the Operating Plan and/or the Emergency Response Plan in response to the relevant amendments to the System Wide Requirements (including providing Aurizon Network with a further Certificate of Compliance where the Authorised Rollingstock or Rollingstock Configurations require modification as a result of a change to a System Wide Requirement).
- (c) Aurizon Network must allow a reasonable period for the Operator to amend its procedures and plans to comply with any such amended System Wide Requirement, except in the case of emergency circumstances for safety reasons where Aurizon Network may require immediate compliance.

19 Weighbridges and Overload Detectors

19.1 General

- (a) Where a Weighbridge or Overload Detector is located en route between an Origin and Destination for a Train Service Type:
 - (i) the Party responsible for that Weighbridge or Overload Detector (as specified in **item 5 of Schedule 3**) must use reasonable endeavours to ensure that such Weighbridge or Overload Detector is operational, calibrated and available to weigh Trains operated

- over such Weighbridge or Overload Detector; and
 - (ii) the Operator must use reasonable endeavours to operate its Trains over such Weighbridge or Overload Detector in a manner so that the Weighbridge or Overload Detector weighs the Operator's Trains.
- (b) Aurizon Network may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Operator.

19.2 Exceeding Maximum Allowable Gross Tonnage

- (a) The Operator must use reasonable endeavours to ensure that the gross mass of any Wagon or Train operated by it under this Deed does not exceed the relevant Maximum Allowable Gross Tonnage.
- (b) If any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Allowable Gross Tonnage, then the Operator must reduce the gross mass to a level below the relevant Maximum Allowable Gross Tonnage:
- (i) unless otherwise directed by Aurizon Network, if the Train has not entered the mainline, before the Train enters the mainline; and
 - (ii) if directed by Aurizon Network, at a specific siding or location directed by Aurizon Network.

19.3 Exceeding Maximum Desirable Gross Tonnage

If any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Desirable Gross Tonnage, then Aurizon Network may impose any Operational Constraints which Aurizon Network considers to be reasonable in the circumstances.

19.4 Record keeping

Where the Operator's Trains or Wagons are weighed by a Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in **item 5 of Schedule 33** must use reasonable endeavours to ensure that:

- (a) if it is not the owner or operator of the Weighbridge or Overload Detector, it obtains all relevant records from the Weighbridge or Overload Detector including records of the gross mass of each loaded Wagon and Train;
- (b) whether or not it is the owner or operator of the Weighbridge or Overload Detector, it keeps a record of the gross mass of each loaded Wagon and Train;
- (c) the records referred to in **clauses 19.4(a)18.4(a)** and **19.4(b)18.4(b)** (as applicable) are provided to:
 - (i) the Party or other person loading the Trains; and
 - (ii) the other Party within 10 Business Days after the end of each Month.

19.5 Verification

- (a) If the Party that is not responsible for the Weighbridge or Overload Detector reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the other Party to procure the testing of the accuracy of such Weighbridge or Overload Detector.
- (b) As soon as reasonably practicable after being given a notice under **clause 19.5(a)18.5(a)**, the Party responsible for the Weighbridge or Overload Detector must use reasonable endeavours to procure a suitably qualified person to:
 - (i) test the calibration of the relevant Weighbridge or Overload Detector (as applicable); and
 - (ii) make any adjustments required to correct the calibration of the Weighbridge or Overload Detector (as applicable).
- (c) Subject to **clause 19.5(e)18.5(e)**, the relevant Weighbridge or Overload Detector (as applicable) is deemed to have malfunctioned from the date the notice is given under **clause 19.5(a)18.5(a)** until the testing referred to in **clause 19.5(b)18.5(b)** has been carried out and, if required, the Weighbridge or Overload Detector has been recalibrated. Until such testing has been carried out and the Weighbridge or Overload Detector has been recalibrated, the mass of the relevant Train or Wagon which would otherwise have been measured by that Weighbridge or Overload Detector is the Maximum Desirable Gross Tonnage for the Train or Wagon, as applicable.
- (d) Except in the case of manifest error or fraud, the determination of the person conducting the test in accordance with **clause 19.5(b)18.5(b)** is final and binding on the Parties.
- (e) Where the person conducting the test in accordance with **clause 19.5(b)18.5(b)** determines that the Weighbridge or the Overload Detector is measuring within the tolerances specified in **item 5 of Schedule 33**, the Weighbridge or the Overload Detector (as applicable) will be treated as having been measuring accurately from the date on which the relevant notice was given under **clause 19.5(a)18.5(a)**.
- (f) The cost of conducting the test and making adjustments in accordance with **clause 19.5(b)18.5(b)** must be borne by:
 - (i) the Party responsible for the Weighbridge or Overload Detector as specified in **item 5 of Schedule 33** if the Weighbridge or Overload Detector is determined to be not measuring within the tolerances specified in **item 5 of Schedule 33**; or
 - (ii) the Party giving notice under **clause 19.5(a)18.5(a)** if the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in **item 5 of Schedule 33** (and, to the extent that the Party responsible for the Weighbridge or Overload Detector has paid any costs of conducting the test, subject to **clause 8.4**, the Party giving the notice must reimburse the Party responsible for the Weighbridge or Overload Detector such reasonable costs of conducting the test).

19.6 No Claim

- (a) Despite any other provision in this Deed, neither Party (**first Party**) is liable to the other Party for any damage, loss, cost or expense that the other Party may suffer or incur as a result of the first Party, in good faith, acting on the basis of any mass determined in accordance with this Deed.
- (b) Despite any other provision in this Deed, neither Party has any Claim against the other Party as a result of, or arising from, any delay to or cancellation of Train Services as a result of the operation of this **clause 1918**.

20 Performance Levels

20.1 Consequences of failure to comply with Performance Levels

- (a) A failure by either Party to achieve the relevant Performance Level does not constitute a breach of this Deed and the only consequences of such failure as between the Parties are the consequences set out in this **clause 2019**.

20.2 Review of Performance Levels

- (a) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six Months after the Commitment Date or any previous review of the Performance Levels.
- (b) If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties must use reasonable endeavours to agree, but only with the written consent of the Access Holder, on varied Performance Levels and any associated variations to this Deed (including the applicable Train Descriptions).
- (c) If the Parties and the Access Holder are unable to agree to such variations then the existing Performance Levels will continue to apply unless varied by Aurizon Network in accordance with **clause 14.2(a)(iv)13.2(a)(iv)**.

21 Infrastructure management

21.1 Management and control of the Nominated Network

Aurizon Network is responsible for the management of the Nominated Network and retains control over all activities on the Nominated Network.

21.2 Maintenance of the Nominated Network

- (a) Aurizon Network must carry out Maintenance Work on the Nominated Network such that, subject to any criteria or derogations for the Nominated Network specified in the IRMP and the Network Management Principles:
 - (i) the Infrastructure is consistent with the Rollingstock Interface Standards; and
 - (ii) the Operator can operate Train Services in accordance with their Scheduled Times.
- (b) Aurizon Network may impose (either temporarily or permanently) such Operational Constraints as it considers necessary, acting reasonably, for the protection of any person or any property (including the Infrastructure)

or to facilitate the carrying out of Maintenance Work or Infrastructure Enhancements provided that, in exercising its rights under this **clause 21.2(b)**~~20.2(b)~~, Aurizon Network must:

- (i) use its reasonable endeavours to minimise disruption to Train Services (including giving as much notice as possible and, where possible, providing alternative Scheduled Times having regard to the reasonable requirements of the Operator); and
 - (ii) comply with the relevant procedures specified in the Interface Coordination Arrangements.
- (c) The Operator must notify Aurizon Network as soon as is reasonably practicable of any damage to, or disrepair or failure in operation or function of, any part of the Infrastructure of which the Operator becomes aware.
- (d) The Operator must provide reasonable cooperation to Aurizon Network in relation to the timetabling of Planned Possessions provided that any such Planned Possessions are consistent with the Network Management Principles and implemented in accordance with the Possession Protocols.
- (e) Subject to the Possession Protocols, Aurizon Network must use its reasonable endeavours to carry out:
- (i) Emergency Possessions within seven days after the detection of the fault giving rise to the need for the Emergency Possession; and
 - (ii) Urgent Possessions within between seven days and three Months after the detection of the fault giving rise to the need for the Urgent Possession.

22 Incident management

22.1 Compliance

- (a) If requested by Aurizon Network from time to time, the Operator must demonstrate to Aurizon Network's reasonable satisfaction that:
- (i) procedures are in place which ensure compliance by the Operator with any reporting requirements in the Emergency Response Plan and, to the extent relevant, the Emergency Procedures; and
 - (ii) the Operator is complying with such procedures and reporting requirements.
- (b) The Operator must ensure that, at all times:
- (i) sufficient members of the Operator's Staff are appropriately qualified to participate in Investigations; and
 - (ii) the names and positions of those members of the Operator's Staff are maintained in the Emergency Response Plan.

22.2 Obstructions

- (a) Unless permitted under this Deed or authorised by Aurizon Network, the Operator must not cause any Obstruction or permit any Obstruction caused by the Operator to continue.

22.3 Notification

- (a) The Operator must notify the Train Controller as soon as reasonably practicable after the Operator or the Operator's Staff discover or become aware of:
 - (i) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures;
 - (ii) anything which the Operator or the Operator's Staff observe which may reasonably be considered to cause or contribute to the occurrence of an Incident or Obstruction; or
 - (iii) any harm to the Environment caused or contributed to by the Operator's operation of Train Services on the Nominated Network, which the Operator knows would result in a breach by Aurizon Network of the terms of any environmental authority it holds in connection with the Nominated Network.
- (b) Aurizon Network must notify the Operator of all Incidents involving the Operator's Rollingstock.

22.4 Management of Incident response

- (a) Aurizon Network is responsible for the overall coordination and management of the response to an Incident (including notifying all relevant emergency services) so that Restoration and Recovery are effected as soon as practicable.
- (b) If an Incident occurs
 - (i) the Operator:
 - (A) is, subject to **clause 22.4(c)**~~21.4(e)~~, responsible for effecting Recovery and Retrieval;
 - (B) must:
 - (1) make arrangements to effect Recovery and Retrieval within three hours after the Incident occurred;
 - (2) cooperate with and assist Aurizon Network in Restoration;
 - (3) effect timely Recovery and Retrieval within 12 hours after the Incident occurred (or within such other period as the Parties may agree) in accordance with the Emergency Response Plan;
 - (4) as soon as reasonably practicable, notify Aurizon Network;
 - (5) take action as soon as reasonably practicable in respect of an Incident to prevent or minimise injury to any person or damage to any property (including harm to the Environment) where there is an imminent risk of such injury or damage, but otherwise take no action without the prior approval of Aurizon Network (not to be unreasonably withheld); and
 - (6) comply with the directions of Aurizon Network in respect

of the coordination and management of Recovery, Retrieval and Restoration.

- (c) If an Incident occurs and Aurizon Network reasonably believes that it will be able to effect Recovery more quickly than the Operator, then Aurizon Network may, subject to using reasonable efforts to consult with the Operator:
 - (i) take such action as is reasonably necessary (including the use of a Railway Operator's Rollingstock to clear the Operator's Rollingstock) to effect Recovery; and
 - (ii) recover such reasonable costs incurred by Aurizon Network in doing so. Subject to **clause 8.4**, the Operator must, within 10 Business Days after receiving such demand, pay to Aurizon Network such reasonable costs incurred by Aurizon Network.
- (d) Subject to **clause 22.4(e)21.4(e)**, each Party must use all reasonable endeavours to ensure that any property damage, actual or potential harm to the Environment or delays to the recommencement of Train Movements arising from Restoration or Recovery are minimised.
- (e) Aurizon Network may, subject to Aurizon Network using its best efforts to first consult with the Operator about such action, take such action (including to give directions to the Operator and the Operator's Staff and to remove or require the Operator to remove any of its Rollingstock from the Nominated Network) as Aurizon Network considers reasonably necessary to recommence Train Movements as soon as practicable and, subject to **clause 22.4(k)(i)21.4(k)(i)**, Aurizon Network will not be liable for any damage to or loss of freight or Rollingstock caused by such action.
- (f) Where:
 - (i) Aurizon Network seeks to remove, or require the Operator to remove, any Relevant Rollingstock from the Nominated Network under **clause 22.4(e)21.4(e)**; and
 - (ii) such removal would reasonably be expected to cause material damage to or materially increase the damage to the Relevant Rollingstock,then Aurizon Network and the Operator must:
 - (iii) use reasonable endeavours to consult and agree on the removal of the Relevant Rollingstock as soon as reasonably practicable and, in any event, within six hours after the occurrence of the Incident or such longer period as the Parties may agree; and
 - (iv) if the Parties do not consult or reach agreement within the period referred to in **clause 22.4(f)(iii)21.4(f)(iii)**, then the Parties must refer the decision to their representatives with authority to make the necessary decisions who must in good faith seek to agree a course of action within two hours of the referral to them or such longer period as the Parties may agree.
- (g) If Aurizon Network's and the Operator's representatives with authority to make the necessary decisions do not consult or do not agree within the specified period in **clause 22.4(f)(iv)21.4(f)(iv)**, then Aurizon Network must

refer its proposed course of action with respect to the removal of the Relevant Rollingstock to an Expert who must determine in accordance with **clause 30.3~~29.3~~** whether or not, having regard to:

- (i) the potential to further damage the Relevant Rollingstock or cause damage to any property (including harm to the Environment);
- (ii) the impact on Aurizon Network's ability to effect Restoration; and
- (iii) the time critical nature of the decision,

the course of action proposed by Aurizon Network is reasonable.

- (h) Following completion of the process set out in **clauses 22.4(f)~~21.4(f)~~** and **22.4(g)~~21.4(g)~~** (as applicable), Aurizon Network may progress with the proposed course of action unless the Expert determines that Aurizon Network's proposed course of action is not reasonable.
- (i) Aurizon Network may, where it is reasonable and practicable in the circumstances to do so, issue a Train Control Direction to the Operator to provide assistance with clearing any Network Incident including providing Rollingstock, where appropriate, for use by or under the direction of Aurizon Network and undertaking any variation in the operation of a Train Service (including coupling its Rollingstock with Rollingstock of Aurizon Network or another Railway Operator). The Operator must comply with any such Train Control Direction. The Operator may recover from Aurizon Network such reasonable costs incurred in complying with this **clause 22.4(i)~~21.4(i)~~** as agreed or, failing agreement within 20 Business Days after notice by the Operator to Aurizon Network, as determined by an Expert in accordance with **clause 30.3~~29.3~~**.
- (j) The assessment of the costs to be recovered under **clause 22.4(c)~~21.4(c)~~** or **clause 22.4(i)~~21.4(i)~~** for the use of Rollingstock must have regard to any industry or other agreement covering such costs and any payments facilitated by such agreement.
- (k) Except as otherwise provided in this Deed, Aurizon Network is not liable to the Operator and the Operator must not make any Claim against Aurizon Network, Aurizon Network's director and/or Aurizon Network's Staff for:
 - (i) any damage to or loss of freight or Rollingstock caused by a course of action permitted in accordance with **clause 22.4(e)~~21.4(e)~~**, except to the extent:
 - (A) such damage or loss is caused by the negligent act or omission or wilful default or misconduct of Aurizon Network or Aurizon Network's Staff; or
 - (B) the Expert determines that Aurizon Network's course of action is not reasonable; and
 - (ii) any delays, cancellation of Train Services or Claims suffered or incurred by, or made or brought by or against, the Operator as a result of complying with a request by Aurizon Network pursuant to **clause 22.4(i)~~21.4(i)~~**.
- (l) The Operator is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network and its directors and Aurizon Network's Staff

against all Claims of any nature suffered or incurred by, or made or brought against, Aurizon Network, its directors or Aurizon Network's Staff in respect of any course of action permitted in accordance with clause [22.4\(h\)](#)~~21.4(h)~~.

22.5 Investigations

- (a) If an Incident occurs, an Investigation into the Incident must be:
 - (i) commenced as soon as practicable unless otherwise agreed between the Parties; and
 - (ii) conducted in accordance with the Investigation Procedures.
- (b) Each Party must cooperate, and ensure that Aurizon Network's Staff or the Operator's Staff (as applicable) cooperate, fully with any Investigation.
- (c) The Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the Investigation Procedures.

22.6 Management of Environmental Incidents

- (a) If:
 - (i) the Operator's Activities in connection with this Deed have caused or contributed to an actual or potential Environmental Incident and Aurizon Network reasonably considers that action is required to prevent, mitigate or remedy that Environmental Incident; or
 - (ii) Aurizon Network is given a direction, notice or order by an Environmental Regulator that some action is required to prevent, mitigate or remedy any actual or potential Environmental Incident caused or contributed to, or likely to be caused or contributed to, by the Operator's Activities in connection with this Deed,then:
 - (iii) Aurizon Network may notify the Operator of the actions which are required; and
 - (iv) the Operator must, at its cost and as soon as reasonably practicable after receiving such notice from Aurizon Network, ensure such actions are implemented.
- (b) If **clause [22.6\(a\)\(ii\)](#)~~21.6(a)(ii)~~** applies, a notice given under **clause [22.6\(a\)\(iii\)](#)~~21.6(a)(iii)~~** must be accompanied by a copy of the direction, notice or order given by the Environmental Regulator (if given in writing) provided that Aurizon Network can redact from the copy of the document any information which relates to the Activities of a person other than the Operator or Aurizon Network.
- (c) If any actions which Aurizon Network could require the Operator to implement under **clause [22.6\(a\)](#)~~21.6(a)~~** ought best be undertaken by Aurizon Network, then Aurizon Network may elect to undertake such actions and the Operator must pay to Aurizon Network the reasonable costs and expenses incurred by Aurizon Network in doing so.
- (d) If the Operator disputes any actions taken by Aurizon Network under this **clause [22.6](#)~~21.6~~**, either Party may refer the dispute to an Expert in

accordance with **clause 30.3**~~29.3~~ and if the Expert determines the dispute in favour of the Operator, then Aurizon Network must reimburse the Operator for the costs incurred by the Operator as a result of the actions implemented by the Operator at Aurizon Network's request (or, if applicable, Aurizon Network must bear the costs and expenses incurred by Aurizon Network in accordance with **clause 22.6(b)**~~21.6(b)~~ and is not entitled to recover those costs from the Operator) to the extent determined by the Expert.

22.7 Environmental Incident reporting

- (a) The Operator must notify:
 - (i) Aurizon Network as soon as reasonably practicable after becoming aware of the occurrence of an Environmental Incident occurring on the Nominated Network caused, or contributed to, by the Operator.
 - (ii) all relevant Environmental Regulators of the occurrence of any Environmental Incident which is caused, or contributed to, by the Operator in accordance with the Operator's obligations under Environmental Laws.
- (b) Aurizon Network may report the occurrence of the Environmental Incident to any relevant Environmental Regulator provided it first consults with the Operator about the proposed content of any such report.
- (c) In the event that an Environment Regulator requires information, or undertakes an investigation, in relation to an Environmental Incident, the Operator and Aurizon Network must cooperate with the Environmental Regulator and provide appropriate resources to comply with any lawful requirements of the Environmental Regulator in relation to the Environmental Incident.

23 Operator's staff

23.1 Safety of Operator's Staff

The Operator is fully responsible and liable for the health and safety of the Operator's Staff and the personal property of the Operator's Staff, and, subject to **clause 27**~~26~~, indemnifies and releases Aurizon Network to the extent permitted by Law from any liability in relation to the Operator's Staff except to the extent that such liability is caused or contributed to by the breach of this Deed by Aurizon Network or any negligent act or omission of Aurizon Network or Aurizon Network's Staff.

23.2 Qualifications of Operator's Staff

The Operator must:

- (a) ensure that:
 - (i) all risks associated with Safety Related Work (including the competence of all Operator's Staff to safely and properly discharge their duties related to the exercise of the Operator's rights or performance of its obligations under this Deed) are addressed in the Interface Risk Assessment;
 - (ii) all Operator's Staff:

- (A) hold and keep current all qualifications and accreditations required under any Law and as specified in the IRMP; and
 - (B) undertake any additional training from time to time in order to keep current such qualifications and accreditations;
- (b) meet all costs of any training and/or testing required to meet the requirements of this **clause 23.222.2**; and
 - (c) keep Aurizon Network advised of any Required Information in relation to all of the Operator's Staff engaged in Safety Related Work on the Nominated Network and ensure that all Safety Related Work is performed only by those Operator's Staff whose details have been provided to Aurizon Network in accordance with this **clause 23.222.2** and who satisfy the requirements of this **clause 23.222.2**.

23.3 Entry onto Aurizon Network Land

The Operator must ensure that the Operator's Staff do not enter upon the Aurizon Network Land in a manner inconsistent with the Interface Coordination Arrangements, the IRMP or the Emergency Response Plan without the prior written approval of Aurizon Network and that, in the event such approval is given, the relevant Operator's Staff comply with all conditions of the approval and hold the necessary qualifications and accreditations.

24 Interface and environmental risk management

24.1 Compliance with Interface Risk Management Plan

Each Party must advise the other Party of any failure to comply with the IRMP as soon as reasonably practicable after the Party becomes aware of such non-compliance, including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

24.2 Environmental consultant

The Parties must, at the Operator's cost (unless otherwise agreed between the Parties), engage suitably qualified persons (reasonably acceptable to both Parties) to undertake any specialist assessments required for the purpose of identifying and assessing Environmental Risks as part of an Interface Risk Assessment.

24.3 Interface representative

- (a) Prior to the commencement of any Train Services, each Party must nominate one or more appropriately qualified representatives (by identifying the name, title, experience (including length of experience) and qualifications of each representative) (**Interface Representative**) who is or are (as applicable) to be responsible for:
 - (i) making decisions in relation to interface and environmental issues that arise in connection with this Deed;
 - (ii) liaising and cooperating with representatives of the other Party on those interface and environmental issues; and
 - (iii) meeting with representatives of the other Party at locations, times and by means (including in person) specified by Aurizon Network from time to time.

- (b) Each Party must ensure that any representative it nominates under this **clause 24.3~~23.3~~** is available to efficiently and effectively perform the responsibilities of the Interface Representative specified in **clause 24.3(a)~~23.3(a)~~** and that it has nominated an Interface Representative under this **clause 24.3~~23.3~~** at all times during the Term.

24.4 Operator's Safety Management System

The Operator must develop, implement and maintain a safety management system (**Operator's Safety Management System**) which must specify (as a minimum):

- (a) the Interface Risks identified in the IRMP from time to time and the measures for managing those Interface Risks specified in the IRMP from time to time which the Operator is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of; and
- (b) processes for ensuring that the Operator, its Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Deed, including the IRMP from time to time.

24.5 Aurizon Network's Safety Management System

Before the commencement of any Train Services, Aurizon Network must incorporate into its safety management system any measures for managing Interface Risks specified in the IRMP from time to time which Aurizon Network is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of.

24.6 Aurizon Network's environmental management system

Before the commencement of any Train Services, Aurizon Network must incorporate into its environmental management system any measures for managing Environmental Risks specified in the IRMP from time to time which Aurizon Network is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of.

24.7 Carriage of Dangerous Goods on Train Services

- (a) If Dangerous Goods are to be carried on a Train Service, the Operator must ensure that:
 - (i) all requirements of the Dangerous Goods Code in relation to the Train Service are fully complied with (including placement of relevant, accurate and current documentation on Trains);
 - (ii) Aurizon Network is advised of the details of the Dangerous Goods (including a description of them and the applicable Dangerous Goods United Nations (UN) Number) as part of the Train List before the operation of the Train Service; and
 - (iii) any authorisation or prior approvals required under the Dangerous Goods Code in relation to the Train Service have been obtained and are available for inspection by Aurizon Network (if requested).
- (b) Before any Dangerous Goods can be carried on a Train Service, the Operator must ensure that the Emergency Response Plan prepared in accordance with **clause 15.1(a)(i)(B)~~14.1(a)(i)(B)~~** includes procedures for

responding to an Incident involving Dangerous Goods of the type to be carried on the Train Service.

24.8 Noise management during Train Services

- (a) In addition to any noise attenuation or noise management measures which may form part of or be identified in the IRMP or the Environmental Management Plan, the Operator must contribute to the reasonable costs, as reasonably determined by Aurizon Network, incurred by Aurizon Network in undertaking reasonable noise abatement measures on or adjacent to the Nominated Network where the Noise Levels are (or, but for the taking of these measures by Aurizon Network, would be) exceeded during the Term.
- (b) If, during the Term, the Noise Levels are varied (reduced) such that noise from the Nominated Network exceeds the reduced Noise Levels, then Aurizon Network may elect, acting reasonably, to implement reasonable noise abatement measures on the Nominated Network to ensure compliance with the reduced Noise Levels. The Operator must contribute to Aurizon Network's reasonable costs of those noise abatement measures as reasonably determined by Aurizon Network.
- (c) If the Operator disputes any determination made by Aurizon Network under this **clause 24.8** regarding the contribution of costs, then the Operator may refer that dispute to an Expert for determination in accordance with **clause 30.3**.

24.9 Community liaison and environmental complaint procedures

- (a) Before the commencement of any Train Services the Operator must take all steps necessary to comply with all relevant community liaison requirements required by Law, any Authority or reasonably required by Aurizon Network.
- (b) The Operator must invite Aurizon Network to be represented at any community meetings related to the operation of the Train Services under this Deed organised by the Operator.
- (c) If Aurizon Network or the Operator receives noise complaints or other complaints dealing with Environmental issues in relation to the Nominated Network, then both Aurizon Network and the Operator must:
 - (i) inform each other of those complaints as soon as reasonably practicable; and
 - (ii) cooperate in investigating and responding to those complaints.

24.10 Audit and review

- (a) The Operator must, if requested by Aurizon Network, promptly provide to Aurizon Network copies of those parts of any environmental audits undertaken by or on behalf of the Operator in respect of its Train Services operated on the Nominated Network.
- (b) Aurizon Network must provide the Operator with copies of those parts of Aurizon Network's environmental audits that are relevant to the operation of the Operator's Train Services operated on the Nominated Network.

- (c) Without limiting **clause 15.214.2**, if Aurizon Network becomes aware of any inadequacy of the IRMP or the Operator's Environmental Management Plan due to:
 - (i) any change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
 - (ii) any Activities of the Operator in connection with this Deed which cause or contribute to, or are to likely cause or contribute to, an Environmental Incident,

then Aurizon Network can give the Operator a notice under **clause 15.214.2** notifying the Operator that it requests that the IRMP be reviewed.

24.11 Notification

- (a) The Operator must notify Aurizon Network of any failure by the Operator to comply with the Environmental Management Plan or its obligations under any Safety Law or Environmental Law which are directly relevant to the Operator's Activities under this Deed as soon as reasonably practicable after the Operator becomes aware of such failure and provide details of how it intends to address the non-compliance.
- (b) Without limiting any other provisions of this Deed, the Operator must remedy such non-compliance as soon as reasonably practicable having regard to, without limitation, the nature of the non-compliance and any action required by any Safety Regulator or any Environmental Regulator.
- (c) The Operator must comply with all notices given by Aurizon Network requiring the Operator to cease conduct which is causing or threatening to cause:
 - (i) a risk to the safety of persons or property; or
 - (ii) harm to the Environment.
- (d) A Party must promptly provide to the other Party any notices, directions or orders relating to the operation of Train Services under this Deed that it receives from any Safety Regulator or Environmental Regulator.
- (e) Aurizon Network must notify the Operator of any changes to any Environmental Authorities held by Aurizon Network or variations to any other environmental information provided by Aurizon Network to the Operator relevant to the operation of Train Services.

25 Inspection and audit rights

25.1 Right of inspection by Operator

- (a) Subject to **clause 25.1(b)24.1(b)**, the Operator may, before the initial commencement of Train Services for any Train Service Type, at its cost and risk, inspect the Infrastructure comprising the Nominated Network, including fencing and level crossing protection, in order to satisfy itself as to the standard of the Infrastructure and assess the operational, environmental and safety risks associated with the operation of Train Services on the Nominated Network.
- (b) Any inspection by the Operator under **clause 25.1(a)24.1(a)**:

- (i) is subject to:
 - (A) the Operator providing reasonable notice to Aurizon Network of its requirement to inspect the Infrastructure and conducting that inspection at reasonable times;
 - (B) any such inspection being conducted in the presence of a representative of Aurizon Network; and
 - (C) such other reasonable conditions as may be imposed by Aurizon Network on such inspection, including compliance with any Safeworking Procedures and Safety Standards; and
- (ii) must be conducted by the Operator in a manner which does not cause any disruption to any Train Movements or to the carrying out of Maintenance Work or Infrastructure Enhancements.

25.2 Right of inspection of Trains and Rollingstock by Aurizon Network

- (a) If Aurizon Network reasonably believes that Rollingstock or Rollingstock Configurations for a Train Service Type used in the operation of Train Services do not comply with:
 - (i) the Authorised Rollingstock or the Authorised Rollingstock Configurations for the Train Service Type;
 - (ii) the Rollingstock Interface Standards (subject to any Approved Derogations);
 - (iii) the IRMP; or
 - (iv) any applicable Laws relevant to the Operator's Train Services,

and Aurizon Network cannot otherwise reasonably determine whether this is the case, then Aurizon Network may inspect any Trains or Rollingstock which is utilised, or intended to be utilised, in the operation of Train Services, or require the Operator to have an inspection conducted, and for this purpose Aurizon Network or Aurizon Network's Staff will be entitled at any time to enter and ride on the Operator's Trains or Rollingstock.
- (b) Subject to Aurizon Network notifying the Operator, if required, under **clause 25.2(a)24.2(a)**, Aurizon Network may require any of the Operator's Rollingstock (either loaded or empty) to be available at such location as Aurizon Network may reasonably require, including locations on the Infrastructure but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by Aurizon Network. The Operator must comply with any of Aurizon Network's requirements under this **clause 25.2(b)24.2(b)**.
- (c) Any inspection by Aurizon Network under **clause 25.2(b)24.2(b)** is subject to:
 - (i) Aurizon Network providing reasonable notice to the Operator of its requirement to inspect the Rollingstock and conducting that inspection at reasonable times; and
 - (ii) any such inspection being conducted in the presence of a representative of the Operator.

- (d) Despite **clause 19~~18~~**, if any of the Operator's Rollingstock is loaded in excess of the limits specified in an Authority to Travel or a Train Route Acceptance or reasonably considered by Aurizon Network to be loaded in an unsafe or insecure manner, then Aurizon Network may at any time:
 - (i) require the Operator to discontinue the Train Service until such time that the Rollingstock is loaded in accordance with this Deed and Aurizon Network gives the Operator a Train Control Direction authorising it to recommence the operation of the Train Service; and/or
 - (ii) after notifying the Operator, require the Operator to remove the excess or adjust the load at the Operator's expense.
- (e) If the Operator fails to remove the excess or adjust the load as soon as reasonably practicable after Aurizon Network notifies the Operator under **clause 25.2(d)(ii)~~24.2(d)(ii)~~**, then Aurizon Network may arrange for its removal or adjustment and the Operator must, within 10 Business Days after receiving such demand, reimburse to Aurizon Network all reasonable costs incurred by Aurizon Network. The Operator must comply with any of Aurizon Network's requirements under this **clause 25.2~~24.2~~(e)**.

25.3 Parties' obligations

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

26 Insurance by Operator

26.1 Maintain insurance policies

Before the commencement of Train Services under this Deed, the Operator must, at its expense, take out and subsequently maintain current at all times during the Term insurance with a corporation (as defined in the Corporations Act) licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to Aurizon Network) those policies of insurance required by this Deed.

26.2 Required insurance policies

The Operator must effect and maintain insurance for the risks and on the terms specified in **schedule 7**.

26.3 Disclosure of insurance policies

The Operator must provide to Aurizon Network evidence of the insurance policies effected and maintained pursuant to this **clause 26~~25~~** (including evidence that the cover provided under those insurance policies complies with this **clause 26~~25~~** and of the currency of those insurance policies) to Aurizon Network's reasonable satisfaction:

- (a) at least 10 Business Days before the commencement of Train Services under this Deed;
- (b) within 10 Business Days after renewal of each insurance policy during the Term; and
- (c) within 10 Business Days after being requested to do so in writing by Aurizon Network.

26.4 Failure to disclose insurance policies

Without prejudice to Aurizon Network's other rights and remedies in respect of such default, if the Operator, whenever required to do so under this Deed, fails to produce to Aurizon Network evidence to the reasonable satisfaction of Aurizon Network of insurances that have been effected or maintained by it and does not remedy that default within 10 Business Days after Aurizon Network gives notice to the Operator requiring that default to be remedied, Aurizon Network may effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Aurizon Network.

26.5 Minimum terms of policies

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

- (a) note the interests of the Operator, any contractor of the Operator engaged by the Operator in relation to the performance of the Operator's obligations under this Deed and Aurizon Network;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of Aurizon Network (not to be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **schedule 7**.

26.6 Operator not to render policy void

The Operator must not render any of the insurances effected in accordance with this **clause 26~~25~~** void or voidable or liable to refusal of any claim.

26.7 Compliance

The Operator must at all times comply with the terms and conditions of all insurance policies effected pursuant to this **clause 26~~25~~**.

26.8 Notice of potential claims

In addition to any other obligation on the Operator under this Deed, the Operator must:

- (a) notify Aurizon Network as soon as practicable after the making of any Claim under any insurance policy required by this Deed;
- (b) notify Aurizon Network of the Claim in reasonable detail; and
- (c) keep Aurizon Network informed of subsequent developments concerning any Claim,

to the extent that such Claim is in connection with this Deed.

26.9 Operator to pay all excess/deductibles

- (a) The Operator must in respect of any Claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected in accordance with this **clause 26~~25~~**.
- (b) If the Operator fails to pay any excesses/deductibles provided for in any insurances effected in accordance with this **clause 26~~25~~**, Aurizon Network may pay the relevant excesses/deductibles and any amount so paid will be a debt due from the Operator to Aurizon Network.

26.10 Settlement of claims

If:

- (a) Aurizon Network makes a Claim against the Operator for damage to the Infrastructure;
- (b) the Claim is in respect of the same matter as the Operator claims under a policy required by this Deed for damage to Infrastructure; and
- (c) the Operator has not disputed Aurizon Network's Claim,

then upon settlement of the Operator's claim, under such policy, the portion of monies owed by the Operator to Aurizon Network must be paid to Aurizon Network from the monies received by the Operator under the policy against which the Operator made a claim.

27 Indemnities

27.1 Indemnity for personal injury and property damage

Subject to **clause 28~~27~~**, each Party is solely liable for, and releases, indemnifies and will keep indemnified the other Party, its directors and Staff against, all Claims of any nature suffered or incurred by, or made or brought against, the other Party, its directors or Staff in respect of:

- (a) any loss of, damage to or destruction of property (including property of the other Party); or
- (b) personal injury to or death of any person,

in each case caused by or contributed to (to the extent of the contribution) by:

- (c) any breach of this Deed by the Party; or
- (d) any negligent act or omission of, the Party or the Party's Staff in connection with this Deed.

27.2 Indemnity by Operator for certain liabilities to Third Parties

Subject to **clause 28~~27~~**, the Operator is solely liable for, and releases, indemnifies and must keep indemnified Aurizon Network, Aurizon Network's directors and Aurizon Network's Staff against, all Claims of any nature made or brought against, Aurizon Network, Aurizon Network's directors or Aurizon Network's Staff by a Third Party in respect of:

- (a) any loss of, damage to or destruction of real or personal property; or
- (b) personal injury to or death of any person,

where such person or property is being transported on a Train Service except to the extent that such damage, loss, injury or death is caused by or contributed to (to the extent of the contribution) by:

- (c) any breach of this Deed by Aurizon Network; or
- (d) any negligent act or omission of Aurizon Network or Aurizon Network's Staff.

27.3 Duty to mitigate

Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Deed applies.

27.4 General provisions regarding indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties and survives the expiry or termination of this Deed.
- (b) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Deed.

28 Limitations and exclusions of liability

28.1 Exclusion of Consequential Loss

Except as expressly provided otherwise in **clause 32.6(c)**~~31.6(e)~~ or the Interface Risk Provisions which form part of this Deed under **clause 3**, neither Party is liable to the other under or in connection with this Deed (including under an indemnity) for any Consequential Loss however caused (including any breach of this Deed or negligent act or omission of a Party).

28.2 Time limit and minimum threshold on Claims

Neither Party (**first Party**) is liable for, and the other Party must not make any Claim against the first Party under or in connection with this Deed unless:

- (a) notice of the Claim has been given to the first Party within 12 Months after the other Party becomes aware of the occurrence of the event or circumstance giving rise to the Claim; and
- (b) the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action, provided that if this condition is satisfied then the other Party may proceed for the full amount of the Claim and not only the amount in excess of \$100,000.

28.3 Claims and exclusions in respect of Infrastructure standard

Despite any other provision of this Deed, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Operator for any Claim, and the Operator must not make any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff, in respect of any:

- (a) loss of or damage to real or personal property, including property of the Operator;
- (b) personal injury to or death of any person; or
- (c) any other damage, expense, injury, cost or loss whatsoever,

arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure, except to the extent that such loss, damage, injury or death, cost or expense results directly from the failure of Aurizon Network to perform its obligations under **clause 21.2(a)**~~20.2(a)~~ or Aurizon Network's negligence in performing those obligations.

28.4 Claims and exclusions in respect of non-provision of Operational Rights

- (a) Subject to **clause 28.4(b)(i)**~~27.4(b)(i)~~ only and despite any other provision of this Deed, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Operator for any Claim, and the Operator must not make any Claim against Aurizon Network, Aurizon Network's directors

and/or Aurizon Network's Staff, in respect of any failure by Aurizon Network to provide the Operational Rights by making the Infrastructure available for the Operator to operate a Train Service at the Scheduled Time in the Train Schedule.

- (b) Aurizon Network is liable to the Operator in respect of any failure by Aurizon Network to provide the Operational Rights by making the Infrastructure available to enable the Operator to operate a Train Service at the Scheduled Time in the Train Schedule if (and then only to the extent that):
- (i) Aurizon Network did not reschedule the relevant Train Service in accordance with **clause 16.215.2** or **16.315.3** if required to do so under **clause 16.215.2** or **16.315.3**; and
 - (ii) the failure by Aurizon Network to make the Infrastructure available was caused by or was the result of an Operational Constraint, that Operational Constraint resulted from a breach of this Deed by Aurizon Network or the negligence of Aurizon Network; and
 - (iii) the failure by Aurizon Network to make the Infrastructure available was not permitted under the Access Agreement or this Deed or was attributable to a breach of this Deed by, or negligent act or omission of, Aurizon Network; and
 - (iv) the failure by Aurizon Network to make the Infrastructure available was not attributable to:
 - (A) the Operator or the Operator's Staff;
 - (B) the Access Holder or the Access Holder's Staff;
 - (C) another Railway Operator (other than Aurizon Network) or any employees, contractors, volunteers or agents of another Railway Operator (other than Aurizon Network);
 - (D) a Force Majeure Event;
 - (E) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles;
 - (F) the circumstances described in clause 21.4(b)(iv)(F) of the Access Agreement existing;
 - (G) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
 - (H) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
 - (v) either:
 - (A) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of **clause 2019** and the total number of Train Services (expressed as a percentage) cancelled in a Billing Period as a result of a failure by Aurizon Network to make the Infrastructure available (other than any failure by Aurizon

Network to make the Infrastructure available which is attributable to an event or circumstance specified in **clauses 28.4(b)(iv)(A)**~~27.4(b)(iv)(A)~~ to **28.4(b)(iv)(H)**~~27.4(b)(iv)(H)~~ exceeds five percent of the total number of Train Services scheduled in the Daily Train Plan for that Billing Period; or

- (B) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of **clause 2019**, but the failure to make the Infrastructure available is of a magnitude which is beyond the scope of that performance and adjustment regime.

28.5 Claims and exclusions in respect of delays to Train Movements

Despite any other provision of this Deed, a Party (**Defaulting Party**) is not liable to the other Party (**Affected Party**) for any Claim, and the Affected Party must not make any Claim against the Defaulting Party, in respect of delays to Train Movements unless (and then only to the extent that):

- (a) the delay was a result of a breach of this Deed by the Defaulting Party, or negligent act or omission on the part of the Defaulting Party; and
- (b) if the delay was caused by or the result of an Operational Constraint:
- (i) where Aurizon Network is the Affected Party, the Operational Constraint resulted from a breach of this Deed by the Operator; or
- (ii) where the Operator is the Affected Party, the Operational Constraint was not permitted under the Access Agreement or this Deed or resulted from a breach of this Deed by, or negligent act or omission of, Aurizon Network; and
- (c) the delay is not attributable to:
- (i) the Affected Party or where the Affected Party is:
- (A) Aurizon Network - Aurizon Network's Staff; or
- (B) the Operator - the Operator's Staff, the Access Holder or the Access Holder's Staff;
- (ii) another Railway Operator (other than the Defaulting Party) or any employees, contractors, volunteers or agents of another Railway Operator (other than the Defaulting Party);
- (iii) a Force Majeure Event;
- (iv) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles;
- (v) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
- (vi) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
- (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of **clause 2019**; or

- (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of **clause 2019**, but the delays are of a magnitude which is beyond the scope of that performance and adjustment regime.

28.6 Defence of Claims by Third Parties

- (a) Each Party must provide such reasonable assistance as requested by the other Party in the defence of any Claim made against the other Party by a Third Party arising out of any Incident or other event giving rise to the Claim.
- (b) The Party that requested assistance under **clause 28.6(a)27.6(a)** must, within five Business Days after a demand is made, pay to the other Party any costs and expenses reasonably incurred by the other Party in providing the assistance requested under **clause 28.6(a)27.6(a)**.

29 Determination of liability and loss adjustment

29.1 Determination of liability

In the event of an Incident involving the Operator or any other event which results or could result in a Claim by or against the Operator or Aurizon Network, liability as between the Operator and Aurizon Network is determined, for the purposes of **clauses 2726** and **28.327.3**:

- (a) as agreed between the Parties;
- (b) subject to **clause 29.1(c)28.1(c)**, failing such agreement within one Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed under **clause 29.228.2**; or
- (c) where the amount of the Claim exceeds \$200,000 and either Party is dissatisfied with the report of the loss adjuster, by a court of competent jurisdiction.

29.2 Loss Adjuster

Subject to **clause 3736**, where a matter is to be referred to a loss adjuster in accordance with **clause 29.128.1**:

- (a) the loss adjuster:
 - (i) must be appointed by the Parties; or
 - (ii) in default of such appointment within 10 Business Days after the need to appoint a loss adjuster, is to be nominated at either Party's request by the President of The Australasian Institute of Chartered Loss Adjusters;
- (b) if the loss adjuster is to be nominated under **clause 29.2(a)(ii)28.2(a)(ii)** and the President of The Australasian Institute of Chartered Loss Adjusters declines to nominate a person as the loss adjuster but provides a list of people that could be appointed as the loss adjuster, then:
 - (i) the first person specified in that list will be taken to be nominated as the loss adjuster;
 - (ii) if the first person specified in that list does not accept the appointment as the loss adjuster, 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 loss adjuster; and
- (iii) the process specified in **clause 29.2(b)(ii)**~~28.2(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 loss adjuster accepts the appointment as the loss adjuster;
- (c) 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 loss adjuster (including providing relevant indemnities and paying any charges or fees (which charges or fees must be borne equally by the Parties)) that must be satisfied or complied with as a condition of the President of The Australasian Institute of Chartered Loss Adjusters agreeing to nominate a loss adjuster;
 - (d) the loss adjuster must:
 - (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
 - (ii) have no interest or duty which conflicts or may conflict with the loss adjuster's function as a loss adjuster (the loss adjuster being required to fully disclose any such interest or duty before their appointment); and
 - (iii) not be, or have been in the last five years, an employee of the Access Holder, the Operator, any other contracted operator of the Access Holder utilising the Access Rights or Aurizon Network or of a Related Body Corporate of any of them;
 - (e) the loss adjuster appointed under this **clause 29.2**~~28.2~~:
 - (i) is not permitted to act until the loss adjuster has given written notice of the acceptance of the appointment to both Parties;
 - (ii) is required to undertake to keep confidential all matters coming to the loss adjuster's knowledge by reason of their appointment and the performance of their duties; and
 - (iii) is deemed to be and act as an expert and not an arbitrator, and the Law relating to arbitration, including the *Commercial Arbitration Act 2013* (Qld), does not apply to the loss adjuster or their determination or the procedures by which they may reach a determination.

29.3 Parties to assist loss adjuster

- (a) Each Party must ensure to the best of its ability that the loss adjuster appointed under **clause 29.2**~~28.2~~ is given the opportunity to interview any employee, agent or contractor involved in, or with knowledge of, the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (b) Each Party must make available to the loss adjuster appointed under **clause 29.2**~~28.2~~ any files, documents, data, recordings or other information in the possession or control of the Party that may be of use to, or is requested by, the loss adjuster for the purposes of their investigation.

29.4 Decision of the loss adjuster

- (a) The loss adjuster appointed under **clause 29.2** must determine the quantum of the relevant Claim and the liability of the Operator and/or Aurizon Network in respect of such Claim and must provide a copy of their report on such matters to each of the Parties within a reasonable time after their appointment.
- (b) In the absence of manifest error, the decision of the loss adjuster is final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than \$200,000.

29.5 Costs of the loss adjuster

The costs of the loss adjuster must be borne by the Parties in such proportions as liability is determined by the loss adjuster, or where the liability is ultimately determined by a court of competent jurisdiction, in such proportions as liability is determined by the court.

30 Disputes

30.1 Method

If any claim, dispute or question (**Dispute**) arises under this Deed, then unless otherwise expressly provided to the contrary in this Deed, such Dispute must be resolved in accordance with this **clause 30.2** and either Party may give to the other Party a notice in writing (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with in accordance with this **clause 30.2**.

30.2 Authorised representative resolution

- (a) Except as otherwise provided in this Deed, within five Business Days after a Dispute Notice is given, the Dispute must be referred for resolution to an authorised representative of each of the Parties with authority to settle the Dispute on behalf of the relevant Party.
- (b) Within 10 Business Days after a Dispute Notice is given, the officers referred to in **clause 30.2(a)** must meet to resolve the Dispute.
- (c) Meetings referred to in **clause 30.2(b)** may be held in person or by telephone, video conference or other means of instantaneous communication.
- (d) If the Dispute is not resolved within 10 Business Days (**Resolution Period**) after:
 - (i) the date that authorised representatives first meet to resolve the Dispute in accordance with **clause 30.2(b)**; or
 - (ii) if the authorised representatives do not meet within the time required under **clause 30.2(b)**, the date the Dispute Notice is given,

then the relevant Dispute may, by agreement between the Parties within 10 Business Days of expiration of the Resolution Period, be referred for determination by an Expert in accordance with **clause 30.3** or by arbitration in accordance with **clause 30.4**.

- (e) If the Parties fail to agree, within 10 Business Days of expiration of the Resolution Period, whether to refer the Dispute to an Expert or to arbitration, either Party may refer the Dispute to the courts of the State in accordance with **clause 30.6**~~29.6~~.

30.3 Expert

Subject to **clause 37**~~36~~, where any matter may be referred to an expert (**Expert**) pursuant to **clause 30.2(d)**~~29.2(d)~~, or is expressly required by this Deed to be referred to an Expert, then except as otherwise provided for in this Deed:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within 10 Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
- (i) if the Parties agree the Dispute is purely of:
 - (A) a financial or accounting nature; or
 - (B) a technical nature,the President (for the time being) of the Resolution Institute in Australia; or
 - (ii) in any other case, the President (for the time being) of the Queensland Law Society Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 30.3(a)**~~29.3(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, then:
- (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, then the next person specified in that list will be taken to be nominated as the Expert; and
 - (iii) the process specified in **clause 30.3(b)(ii)**~~29.3(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 30.3(b)**~~29.3(b)~~, if the Expert is to be nominated by a person referred to in **clause 30.3(a)**~~29.3(a)~~ and the person nominated as the Expert does not accept 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 30.3(a)**~~29.3(a)~~;
- (d) if the Expert is to be nominated by a person referred to in **clause 30.3(a)**~~29.3(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 must 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 must 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, the Expert 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 the Operator, any other contracted operator of the Access Holder utilising the Access Rights or the Access Holder in respect of the Access Rights which are the subject matter of the Dispute, or Aurizon Network or of a Related Body Corporate of any of them;
 - (iv) not be permitted to act until the Expert has given notice to the Parties that the Expert is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Deed and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter provided to the Expert by the Parties;
 - (vi) provide both Parties with a copy of the Expert's 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; and
 - (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);
- (g) the Expert is deemed to be and must act as an expert and not an arbitrator and the Law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)) will not apply to the Expert or the determination or the procedures by which the Expert may reach a determination;
- (h) in the absence of manifest error, the decision of the Expert is final and binding upon the Parties;
- (i) the costs of the Expert (and the costs of any advisers to the Expert) must be borne, severally (and not jointly and severally), by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties);
- (j) the expert determination must be conducted in accordance with the expert determination rules adopted by the Resolution Institute from time to time,

except that to the extent of any inconsistency between those rules and this Deed, the terms of this Deed prevail;

- (k) any determination made by an Expert must be consistent with the provisions of this Deed; and
- (l) the Parties must:
 - (i) procure the Expert to use reasonable endeavours to make its determination or finding in respect of the Dispute within 2 Months from the date the initial statement regarding the Dispute is submitted by the claimant to the Expert; and
 - (ii) do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including providing or making available to the Expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the Expert and attending any hearing convened by the Expert.

30.4 Arbitration

- (a) Subject to **clause 37~~36~~**, the Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between the Parties and, failing agreement upon such arbitrator within 10 Business Days after the date of notice from one Party to the other requiring the appointment of an arbitrator, by an arbitrator appointed by the President of the Resolution Institute. Every such reference will be an arbitration within the meaning of the *Commercial Arbitration Act 2013* (Qld), and subject to the provisions relating to arbitration contained in that Act.
- (b) If the Resolution Institute declines to nominate a person as the arbitrator but provides a list of people that could be appointed as the arbitrator, then:
 - (i) the first person specified in that list will be taken to be nominated as the arbitrator;
 - (ii) if the first person specified in that list does not accept the appointment as the arbitrator, then the next person specified in that list will be taken to be nominated as the arbitrator; and
 - (iii) the process specified in **clause 30.4(b)(ii)~~29.4(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 arbitrator accepts the appointment as the arbitrator;
- (c) subject to **clause 30.4(b)~~29.4(b)~~**, if the person nominated as the arbitrator under **clause 30.4(a)~~29.4(a)~~** does not accept appointment as the arbitrator, then either Party may request that the Resolution Institute appoints an alternative person as the arbitrator.

30.5 Queensland Competition Authority (QCA)

Subject to **clause 37~~36~~** the Parties may agree to refer, and where required by this Deed must refer, any Dispute to the QCA.

30.6 Determination by Court

If any Dispute is not:

- (a) resolved in accordance with **clause 30.2~~29.2~~**;

- (b) referred to an Expert in accordance with **clause 30.3**~~29.3~~; nor
 - (c) referred to the QCA in accordance with **clause 30.5**~~29.5~~,
- then either Party may refer the Dispute to the courts of the State.

31 Force Majeure

31.1 Notice of Force Majeure

- (a) If, by reason of a Force Majeure Event affecting a Party, that Party (**Affected Party**) is prevented or hindered (or likely to be prevented or hindered) from carrying out, whether wholly or in part, its obligations under this Deed (other than an obligation to pay money), then:
 - (i) if the Affected Party is Aurizon Network and the Force Majeure Event also affects the Access Agreement, Aurizon Network must provide a copy of each notice it gives to the Access Holder in respect of that Force Majeure Event to the Operator; and
 - (ii) if **clause 31.1(a)**~~30.1(a)~~ does not apply, that Party must, as soon as reasonably practicable after it becomes aware of the Force Majeure Event, give to the other Party and the Access Holder prompt (and in any event within 5 Business Days after it becomes aware of the event or circumstance causing the Force Majeure Event) notice (which may be provided in electronic form) of the Force Majeure Event including:
 - (A) details of the Force Majeure Event and (if applicable) that part of the Nominated Network affected or likely to be affected; and
 - (B) details of the obligations affected or likely to be affected.
- (b) The Affected Party must provide the other Party with a further notice as soon as reasonably practicable but in any event within 2 Business Days of the notice provided under clause 29.1(a) if the notice provided in **clause 31.1(a)**~~30.1(a)~~ is either in electronic form or does not include the following information:
 - (i) the information in **clause 31.1(a)**~~30.1(a)~~; and
 - (ii) full particulars of all relevant matters including:
 - (A) details of the action that the Affected Party has taken to remedy the situation and details of the action that the Affected Party proposes to take to remedy the situation (to the extent they are known); and
 - (B) a reasonable estimate of the time during which the Affected Party will be (or is likely to be) prevented or hindered from carrying out, whether wholly or in part, its obligations under this Deed due to the Force Majeure Event.
- (c) Without prejudice to its rights under this **clause 31.1**~~30.1~~, the Affected Party may issue further notices in respect of the Force Majeure Event as the Affected Party considers reasonably necessary to update the other Party and the Access Holder as to each of the matters set out in this **clause 31.1**~~30.1~~.

- (d) Aurizon Network must:
 - (i) include the Operator (and the Access Holder or Customer, if any) in any meeting which Aurizon Network may have in respect of the Force Majeure Event; and
 - (ii) provide a copy of any notice given to the Operator to the Access Holder or Customer, if any.

31.2 Suspension of obligations

- (a) Subject to compliance with the requirements of **clause 31.1**~~30.1~~, the obligations of the Affected Party under this Deed are suspended during the time and to the extent that the Affected Party's performance of its obligations is prevented or hindered by the Force Majeure Event.
- (b) If the notice is not provided in accordance with **clause 31.1(a)**~~30.1(a)~~ or **31.1(b)**~~30.1(b)~~, then the obligations of the Affected Party under this Deed will be suspended on and from the later of the time the notice requirements of **clauses 31.1(a)**~~30.1(a)~~ and **31.1(b)**~~30.1(b)~~ are satisfied.

31.3 Duty to mitigate

- (a) Subject to **clause 31.3(b)**~~30.3(b)~~, a Party must use all reasonable endeavours to remedy or overcome the effect of the Force Majeure Event affecting the Party's obligations under this Deed as soon as possible and must attempt to:
 - (i) mitigate the effect of the Force Majeure Event; and
 - (ii) in the case of a Force Majeure Event affecting Aurizon Network, identify alternative viable means of providing the Operational Rights affected (if applicable).
- (b) The Affected Party is not obliged to settle any strike, lockout or other labour dispute other than on terms acceptable to it.

31.4 End of period of Force Majeure

Subject to **clauses 31.6**~~30.6~~ and **31.7**~~30.7~~, the suspension of the obligations of the Parties due to a Force Majeure Event ends when, but only to the extent that, the Affected Party is able to resume performance of its obligations under this Deed, at which time it must promptly:

- (a) notify the other Party and the Access Holder advising the extent to which it is recommencing the performance of its obligations; and
- (b) recommence the performance of its obligations to the extent outlined in the notice.

31.5 Reduction of Access Rights

- (a) If:
 - (i) any part of the Nominated Network specified in item 2 of Schedule 3 is damaged or destroyed by a Force Majeure Event; and
 - (ii) in Aurizon Network's reasonable opinion the cost of repairing such damage or destruction or replacing that part of the Nominated Network is not economic on the basis of the then and committed

future utilisation of that part of the Nominated Network,
then Aurizon Network may, by notice, advise the Operator, the Access Holder (and its Customer, if applicable), other affected Access Holders, each affected Railway Operator and the QCA of:

- (iii) the estimated cost of effecting the necessary repairs or replacement;
 - (iv) the level of insurance available to effect the necessary repairs and replacement;
 - (v) a detailed explanation as to why the cost of repairing or replacing is not economic; and
 - (vi) Aurizon Network's intention to not repair or replace the relevant part of the Nominated Network unless the Operator (or the Access Holder or its Customer, as applicable) using that part of the Nominated Network pay the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.
- (b) If the Operator (or the Access Holder or its Customer, as applicable) notifies Aurizon Network that:
- (i) it agrees to bear the whole incremental cost of necessary repairs or replacement (after the amount of insurance available has been applied); or
 - (ii) it agrees to bear that part requested by Aurizon Network of the incremental cost of necessary repairs or replacement (and subject to Aurizon Network being satisfied that all other relevant Access Holders (or their Customers or Railway Operators, as applicable) have also agreed to bear their respective part of such costs) (after the amount of insurance available has been applied),

then Aurizon Network will proceed with the repairs or replacement within a reasonable time after:

- (iii) if **clause 31.5(b)(i)30.5(b)(i)** applies, receipt by Aurizon Network from the Operator (or the Access Holder or its Customer) of payment of the relevant amount; and
 - (iv) if **clause 31.5(b)(ii)30.5(b)(ii)** applies, receipt by Aurizon Network from the Operator (or the Access Holder or its Customer) of the last payment of the relevant amount.
- (c) If the Operator (or the Access Holder or its Customer, as applicable) pays to Aurizon Network any of the costs under **clause 31.5(b)30.5(b)**, on completion of the necessary repairs or replacement:
- (i) Aurizon Network must, within a reasonable time, refund to the party who made such payment any amount by which the amount paid that party exceeds the actual cost; or
 - (ii) the Operator (or the Access Holder or its Customer, if applicable) must, within a reasonable time, pay to Aurizon Network the amount by which the actual cost exceeds proportionately the amount

agreed to be paid by that party (as applicable).

If, within 40 Business Days after receipt of a notice from Aurizon Network under **clause 31.5(a)30.5(a)**, the Operator (or Access Holder or Customer, as applicable) has not given notice to Aurizon Network under **clause 31.5(b)30.5(b)**, then Aurizon Network may, by giving not less than 20 Business Days' notice to the Access Holder (**Nominated Network FM Reduction Notice**), reduce the FM Access Rights, in which case, the FM Access Rights will cease to form part of the Access Rights of the Access Holder on and from the date specified in the Nominated Network FM Reduction Notice (which must be at least 20 Business Days from the date of the Nominated Network FM Reduction Notice).

31.6 Effect of Nominated Network FM Reduction Notice on Operator nomination

- (a) If a Nominated Network FM Reduction Notice is given under the Access Agreement, then the FM Access Rights will cease to form part of the Access Rights on and from the date specified in the notice (which must be at least 20 Business Days from the date of the notice).
- (b) As soon as practicable after the expiry of the period set out in clause 25.4(a) of the Access Agreement, Aurizon Network must issue a notice to the Operator summarising, in respect of each Train Service Type affected by the FM Access Rights, the changes to the "Nominated Monthly Operational Rights (for a 30 day Month)" in **Schedule 2**.

31.7 Termination after extended Force Majeure Event

If the Affected Party is wholly prevented or hindered from carrying out its obligations under this Deed (other than an obligation to pay money) for a period of more than three consecutive Months, then:

- (a) the Parties must meet to endeavour to identify any alternative viable means to perform the suspended obligations; and
- (b) failing any alternative means being agreed within one Month after the end of the three Month period, the other Party may terminate this Deed by 20 Business Days notice to the Affected Party and the Access Holder and **clauses 31.430.4 and 31.530.5** apply without prejudice to any of the rights of the Parties which accrued before the date of such termination.

32 Suspension

32.1 Suspension of Train Services for a Train Service Type

If a Suspension Event specified in **part A of schedule 8** occurs in respect of a Train Service Type, Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (**Suspension Notice**), suspend the right of the Operator to operate some or all of the Train Services for that Train Service Type on the Nominated Network.

32.2 Suspension of Train Services generally

If a Suspension Event specified in **part B of schedule 8** occurs, Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (also a **Suspension**

Notice), suspend the right of the Operator to operate some or all of the Train Services (for any one or more Train Service Types) on the Nominated Network.

32.3 Suspension of certain Rollingstock or Rollingstock Configurations

- (a) If:
- (i) Rollingstock or Rollingstock Configurations used by the Operator in the operation of Train Services:
 - (A) are not Authorised Rollingstock or Authorised Rollingstock Configurations for that Train Service Type; or
 - (B) do not comply with:
 - (1) applicable Laws; or
 - (2) the Rollingstock Interface Standards (subject to any Approved Derogations); or
 - (ii) the Operator otherwise fails to comply with the Rollingstock Interface Standards,
- and
- (iii) the Operator fails to rectify such non-compliance within a reasonable period of time (being at least 20 Business Days) notified by Aurizon Network to the Operator; or
 - (iv) such non-compliance creates a risk to the safety of any person or a material risk to property,

then Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate Train Services using such Rollingstock or Rollingstock Configurations.

32.4 Suspension due to suspension under Access Agreement

If any of the Access Holder's rights under the Access Agreement are suspended under the Access Agreement for any reason, then Aurizon Network may, by notice in writing to the Operator (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate Train Services for a Train Service Type, which would otherwise be operated utilising the Access Holder's Access Rights which have been suspended.

32.5 Details of suspension

A Suspension Notice given by Aurizon Network to the Operator and the Access Holder under **clause 32.131.1, 32.231.2, 32.331.3 or 32.431.4** must set out:

- (a) the rights of the Operator which are affected by the suspension; and
- (b) the reason for the suspension; and
- (c) except for a suspension under **clause 32.431.4**, the actions the Operator must take to have the suspension lifted.

32.6 Effect of suspension

- (a) If Aurizon Network exercises a right of suspension under this

clause 32.31, then the Operator and the relevant Operator's Staff must immediately cease to operate:

- (i) the relevant Train Services; or
- (ii) the Train Services using the relevant Rollingstock or Rollingstock Configurations,

as applicable, until such time as the suspension is lifted by Aurizon Network.

- (b) The suspension of any rights under this **clause 32.31** does not affect or suspend any other obligation of the Operator under this Deed, and is without prejudice to Aurizon Network's other rights and remedies in respect of that or any other default.
- (c) Where Aurizon Network suspends the Operator's right to operate some or all of the Train Services:
 - (i) Aurizon Network will only be liable to the Operator in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, no reasonable person in Aurizon Network's position could have formed the view that the stated grounds for the suspension existed, provided that the Operator must use all reasonable endeavours to mitigate the loss or damage arising from the suspension; and
 - (ii) Aurizon Network bears the burden of establishing that a reasonable person in Aurizon Network's position could have formed that view.
- (d) Notwithstanding **clause 32.631.6(c)**, Aurizon Network will not be liable to the Operator for any Third Party claim (including a claim for Consequential Loss), made against the Operator in relation to a suspension where the Third Party is the Access Holder and the Access Holder has a direct contractual relationship with Aurizon Network in respect to the Access Rights to which the suspension relates.

32.7 Duration of suspension

- (a) The suspension of any rights under **clause 32.131.1**, **32.231.2** or **32.331.3** continues until such time as the Operator has remedied the relevant default or non-compliance notified in the Suspension Notice.
- (b) The suspension of any rights under **clause 32.431.4** continues until such time as the relevant suspension of the Access Holder's rights under the Access Agreement is lifted.

33 Termination

33.1 Termination of Train Services for a Train Service Type by Aurizon Network

- (a) Subject to **clause 33.1(b)32.1(b)** and without limiting any rights of termination contained elsewhere in this Deed, Aurizon Network may, by notice in writing to the Operator and the Access Holder, reduce the Operational Rights by the Train Services for a Train Service Type if a Termination Event specified in **part A of schedule 8** occurs in relation to that Train Service Type.

- (b) If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 33.1(a)32.1(a)**, then Aurizon Network may only exercise its rights under **clause 33.1(a)32.1(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 3234**.

33.2 Termination of Agreement

- (a) Subject to **clause 31.2(b)** and without limiting any rights of termination contained elsewhere in this Deed, Aurizon Network may, by notice in writing to the Operator and the Access Holder, terminate this Deed if a Termination Event specified in **part B of schedule 8** occurs.

If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 33.2(a)32.2(a)**, then Aurizon Network may only exercise its rights under **clause 33.2(a)32.2(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 3234**.

33.3 Termination by the Operator

Without limiting any rights of termination contained elsewhere in this Deed, the Operator may, by notice in writing to Aurizon Network and the Access Holder, terminate this Deed if any of the following occurs:

- (a) an Insolvency Event in relation to Aurizon Network occurs and continues for a period of 40 Business Days;
- (b) Aurizon Network's Accreditation is suspended, cancelled or amended such that it cannot perform its obligations generally under this Deed, and such default continues for at least 20 Business Days after the Operator gives Aurizon Network notice of the default;
- (c) Aurizon Network fails to pay when due any amount payable under this Deed, and such default continues for at least 20 Business Days after the Operator gives Aurizon Network notice of the default; or
- (d) Aurizon Network is in default of the due performance of any other obligation under this Deed, and such default continues for at least 40 Business Days after the Operator gives Aurizon Network notice of the default.

33.4 Grounds for termination to be specified

A notice given under **clause 33.132.1, 33.232.2 or 33.332.3** must set out the grounds for the termination.

33.5 Obligations and other rights upon termination or expiry

- (a) Neither termination of this Deed by a Party under this **clause 3332** nor expiry of this Deed prejudices:
 - (i) a Party's right to make a Claim, recover damages or avail itself of other remedies under this Deed or at law; or
 - (ii) either Party's rights to recover money due to it under this Deed.
- (b) On termination of this Deed, Aurizon Network and the Operator are released from all further obligations or liabilities under this Deed, except for:

- (i) rights which accrued on or before termination, including for any breach of this Deed which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this Deed; or
- (ii) any provisions which are expressed as surviving the expiry or termination of this Deed.

33.6 Removal of Rollingstock following termination

- (a) Immediately on expiry of the Term, and within 12 hours (or such other period as the Parties may agree) after termination of this Deed for any other reason, the Operator must, at the Operator's cost, remove all of the Operator's Rollingstock operated under this Deed from the Nominated Network.
- (b) If the Operator fails to remove the Operator's Rollingstock from the Nominated Network, then Aurizon Network may give a notice to the Operator demanding the removal of the Rollingstock within a further 12 hours (or such longer period as the Parties may agree).
- (c) If the Operator fails to remove any of the Operator's Rollingstock from the Nominated Network the subject of the notice under **clause 33.6(b)**~~32.6(b)~~ within the time required under **clause 33.6(b)**~~32.6(b)~~, then Aurizon Network is entitled to remove the Rollingstock and recover the reasonable costs of removal from the Operator, provided it notifies the Operator reasonably in advance of its intention to exercise the rights under this clause.
- (d) Subject to **clause 28.1**~~27.1~~, the Operator is liable for, and indemnifies Aurizon Network against, any costs reasonably incurred by Aurizon Network in relation to any damage or obstruction caused to the Infrastructure or the Nominated Network by the Operator in removing any Rollingstock in accordance with this **clause 33.6**~~32.6~~.
- (e) The Operator must comply with all reasonable directions issued by Aurizon Network in relation to the removal of the Rollingstock in accordance with this **clause 33.6**~~32.6~~.

34 Assignment

34.1 Assignment by Aurizon Network

- (a) Aurizon Network may Assign the whole or any part of its rights or obligations under this Deed without the prior consent of the Operator, provided that:
 - (i) the Assignee is Accredited; and
 - (ii) Aurizon Network procures that the Assignee covenants with the Operator by deed to be bound by and to perform the obligations of Aurizon Network under this Deed to the extent of the rights and obligations Assigned to the Assignee.
- (b) On the Assignee entering into the deed referred to in **clause 34.1(a)**~~33.1(a)~~, Aurizon Network is released and discharged from further liability under this Deed in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

34.2 Assignment by the Operator

- (a) The Operator may not Assign its rights or obligations under this Deed other than in accordance with this **clause ~~34.2~~33.2**.
- (b) The Operator may, provided it is not in default in the performance or observance of any of its obligations under this Deed, Assign the whole of its rights and obligations under this Deed to:
 - (i) a Related Body Corporate of the Operator which is Accredited to operate Train Services and is otherwise capable of performing the obligations of the Operator under this Deed, provided that:
 - (A) the Operator remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee; and
 - (B) the performance by the Assignee will (to the extent of such performance) discharge the Operator's liability for the performance of the duties, responsibilities and obligations Assigned; or
 - (ii) a person other than a Related Body Corporate of the Operator with the prior written consent of Aurizon Network which must not be unreasonably withheld if Aurizon Network is satisfied that such person is:
 - (A) financially sound;
 - (B) Accredited to operate Train Services; and
 - (C) otherwise capable of performing the obligations of the Operator under this Deed.
- (c) Any Assignment by the Operator of its rights and obligations under this Deed is conditional on and will not take effect until:
 - (i) Aurizon Network has been provided with written evidence of the Access Holder's consent to the Assignment;
 - (ii) the Assignee covenants with Aurizon Network by deed, in such terms as Aurizon Network may reasonably require, to be bound by and to perform the obligations of the Operator under this Deed.
- (d) Subject to **clause ~~34.2(e)~~33.2(e)**, if a Change in Control of the Operator occurs without Aurizon Network's prior written consent, the occurrence of the Change in Control will be taken to be an Assignment of the Operator's rights and obligations under this Deed which is not permitted under this **clause ~~34.2~~33.2**.
- (e) **Clause ~~34.2(d)~~33.2(d)** does not apply to a Change in Control where:
 - (i) the Operator or its Ultimate Holding Company is listed on a recognised stock exchange;
 - (ii) the Change in Control is a result of a Change in Control of that listed entity; and
 - (iii) that listed entity remains listed on that recognised stock exchange both before and after that Change in Control.

34.3 Charging

A Party (**Chargor**) may create a Charge over all of its rights under this Deed in favour of a recognised financial institution (**Chargee**) to secure financial accommodation provided to the Chargor in relation to its obligations under this Deed, provided that the Chargee must first covenant in writing in favour of the other Party (**Non-Charging Party**), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee must comply with the provisions of this **clause 34.33** as if it were originally a party to this Deed, and must not exercise any power of sale of the rights and/or obligations of the Chargor under this Deed except in accordance with this **clause 34.33**.

35 GST

35.1 Construction

In this **clause 35.34**:

- (a) words and expressions which are not defined in this Deed 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*; 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.

35.2 Consideration GST exclusive

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

35.3 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 Deed, the recipient must pay to the Supplier an amount equal to the GST payable on the supply.

35.4 Timing of GST payment

The recipient must pay the amount referred to in **clause 35.334.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.

35.5 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 35.334.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

35.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Deed, the amount payable by the recipient under **clause 35.334.3** must be recalculated to reflect the adjustment event and a payment must be

made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

35.7 Reimbursements

Where a Party is required under this Deed 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.

36 Confidentiality

36.1 Confidentiality

Subject to **clause ~~36.235.2~~**, the Recipient must:

- (a) keep confidential, and must not disclose to any Third Party, any Confidential Information disclosed to the Recipient by the Discloser; and
- (b) not use the Confidential Information for any purpose other than for the purposes of this Deed or, if Aurizon Network is the Recipient, for the purposes of:
 - (i) capacity assessment and capacity modelling;
 - (ii) investigation and planning of Maintenance Work;
 - (iii) planning Infrastructure Enhancements; and
 - (iv) complying with its obligations under the Access Undertaking.

36.2 Permitted disclosures

The Recipient may disclose Confidential Information disclosed to it by the Discloser to a Third Party where:

- (a) the Recipient has obtained the prior written approval of the Discloser to such disclosure. The Discloser must not unreasonably withhold such approval if the Recipient has procured a confidentiality undertaking in respect of the information from such Third Party in favour of both Parties on terms and conditions satisfactory to both Parties, acting reasonably; or
- (b) disclosure is:
 - (i) required or compelled by any order of a court of competent jurisdiction;
 - (ii) required or compelled by any Law;
 - (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings, including any dispute resolution process under this Deed;
 - (v) reasonably required for the performance of Train Control functions;
 - (vi) required under any stock exchange listing requirement or rule;

- (vii) required by the Rail Safety Regulator or an Environmental Regulator;
- (viii) to the Access Holder provided that:
 - (A) the Disclosure is:
 - (1) required by the terms of this Deed;
 - (2) reasonably necessary for the performance of obligations or the exercise of rights under this Deed or the Access Agreement; or
 - (3) reasonably necessary in connection with the safe operation of the Nominated Network; and
 - (B) the Discloser must ensure that the Access Holder keeps the Confidential Information confidential on terms no less onerous than this ~~clause 36.35~~ **clause 36.35**;
- (ix) to the Recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (x) to an expert for the purposes of a dispute resolution process, or an auditor for the purposes of an audit, under a "User Funding Agreement" (as defined in the Access Undertaking), if such expert or auditor has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (xi) to legal practitioners and accountants of the Recipient or a Related Body Corporate of it:
 - (A) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (B) who are under a duty of confidentiality to the Recipient; and
 - (C) who have been advised of the confidential nature of the Confidential Information; or
- (xii) otherwise permitted or required in accordance with this Deed or the Access Undertaking (as amended by any Change in Access Undertaking).

36.3 Discloser may give certain directions

On expiry or termination of this Deed, the Discloser may direct the Recipient to do any combination of the following in respect of some or all of the Confidential Information disclosed by the Discloser to the Recipient:

- (a) subject to the lawful requirements of the Recipient to retain copies of Confidential Information for business records and document control registers, to immediately deliver to the Discloser the Confidential Information specified by the Discloser;
- (b) to immediately destroy the Confidential Information specified by the Discloser; and

- (c) where the Recipient has disclosed the Confidential Information to any Third Party, to procure the compliance by that Third Party with the requirements of this **clause 36.335.3** as if that Third Party were the Recipient.

36.4 PPS Act

In addition to the obligations imposed under this **clause 3635**, each Party agrees to not disclose any information of the kind described in section 275(1) of the PPS Act, including:

- (a) information about this Deed including a copy of it;
- (b) information about the amount or the obligation secured by any Security Interest created by or under this Deed and the terms of such payment or performance at any time; or
- (c) information about Relevant Collateral at any time.

36.5 Survival

Without limiting **clause 39.138.1**, this **clause 3635** survives the destruction or return of Confidential Information in accordance with this Deed.

36.6 Injunctive relief

The Recipient acknowledges and agrees that a breach of this **clause 3635** would be harmful to the business interests of the Discloser and that, as a result, the Discloser may seek urgent injunctive relief, specific performance or a similar remedy to prevent the occurrence or continuance of any breach or suspected breach of this **clause 3635** in addition to any other remedies available at law or in equity under or independently of this Deed.

37 Relationship with Access Agreements

- (a) Prior to any referral of a matter to a loss adjuster, expert, arbitrator or the QCA (**Adjudicator**) in accordance with **clause 29.128.1** or **3029**, either Party may notify the other Party that the Access Holder should be a party to that referral and, if such a notice is given, then the Party which has given the notice must:
 - (i) notify the Access Holder of the matter to be referred to the Adjudicator; and
 - (ii) provide the Access Holder with a copy of the provisions of this Deed governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, the Adjudicator.
- (b) If the Access Holder is given a notice under **clause 3736(a)**, then:
 - (i) where the Adjudicator is to be a loss adjuster, expert or arbitrator, the Parties are deemed not to have agreed the appointment of the loss adjuster, expert or arbitrator unless the Access Holder has also agreed to the appointment of that loss adjuster, expert or arbitrator;
 - (ii) the Parties must comply with **clause 29.128.127.1** or **28**, as applicable, in respect of the Access Holder as though the Access Holder was a Party to this Deed for the purposes of the matter referred to the Adjudicator; and

- (iii) the Adjudicator in addition to determining the matter between the Parties must also determine any claim, dispute, question or liability involving the Access Holder and the Access Agreement arising in connection with any of the events or facts the subject of the matter referred to the Adjudicator (unless that claim, dispute, question or liability has already been agreed by Aurizon Network and the Access Holder or otherwise determined).
- (c) If the Operator is notified of a matter to be referred to an Adjudicator in accordance with the Access Agreement, then the Operator:
 - (i) must comply with the provisions of that agreement governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, an Adjudicator;
 - (ii) must provide the Adjudicator with a copy of this Deed;
 - (iii) agrees that **clauses 29.1~~28.1~~** and **30~~29~~** do not apply to any claim, dispute, question or liability involving the Operator and this Deed arising in connection with the matter referred to the Adjudicator; and
 - (iv) agrees that, for the avoidance of doubt, the decision of the Adjudicator, in the absence of manifest error, will be final and binding upon the Operator.

38 Notices

38.1 Form of Notice

- (a) Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Deed (other than a Train Control Direction or a direction from the Incident Commander) (**Notice**) must be in writing and signed by an authorised officer of that Party and may, if agreed by the Parties, be in electronic form.
- (b) If a Party gives a Notice under this Deed, that Party must promptly notify the Access Holder. Such notification may be in electronic form.

38.2 Method of service

Subject to **clause 38.5~~37.5~~**, a Notice may be given by being:

- (a) personally delivered to a Party;
- (b) left at the Party's current address for service;
- (c) sent to the Party's current address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the Party's current facsimile number for service; or
- (e) if agreed by the Parties, sent by email to the Party's current email address for service.

38.3 Deemed Notice

Subject to **clause 38.5~~37.5~~**, a Notice given in accordance with this **clause 38~~37~~** is deemed to be given if:

- (a) personally delivered, upon delivery;

- (b) posted to an address in Australia, three Business Days after posting;
- (c) posted to an address outside Australia, 10 Business Days after posting;
- (d) sent by facsimile, on the next Business Day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number; or
- (e) sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

38.4 Addresses for notices

- (a) Each Party's address for notices is as set out in **item 2** of **schedule 14**.
- (b) A Party may from time to time change its particulars for service by giving notice of that change to the other Party.

38.5 Train Control Direction or Incident Commander's direction

- (a) A Train Control Direction is deemed to have been given at the time the direction is given, issued or made.
- (b) A direction from the Incident Commander is deemed to have been given at the time the direction is communicated by the Incident Commander.

39 General

39.1 Survival

This **clause 3938** and **clauses 7, 19.618-6, 2625, 2827, 2928, 3029, 3332, 3534, 3635** and **3837** survive the expiration or termination of this Deed.

39.2 Amendment

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

39.3 Entire agreement

- (a) This Deed, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Deed are merged in and superseded by this Deed and are of no force or effect whatever, and no Party is liable to any other Party in respect of those matters.
- (c) Neither Party has relied on any representations made by the other Party relating to the subject matter of this Deed or otherwise.

- (d) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

39.4 Counterparts

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

39.5 Non-merger

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

39.6 Authority to enter into agreement

- (a) Each Party warrants to the other Party that, in respect of itself, it has full power to enter into and perform its obligations under this Deed, and that this Deed constitutes valid and binding obligations on it, enforceable in accordance with its terms.
- (b) If this Deed is executed by an attorney, the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Deed.

39.7 Consents and approvals

Unless otherwise stated in this Deed, if a Party has a right to accept, reject, decide, determine, consent or make any decision or exercise any discretion or decide to give any notice under this Deed, the Party may do so conditionally or unconditionally at its discretion.

39.8 Relationship

The relationship between the Parties is entirely contractual. Nothing in this Deed creates, or is to be taken to create, any partnership, joint venture or relationship of employer and employee between the Parties or any of them.

39.9 Certificate

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

39.10 Costs

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

39.11 Duty

- (a) The Operator is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Deed and any document executed under or in connection with it.
- (b) If Aurizon Network pays any stamp duty (including any fine or penalty) on or relating to this Deed, or any document executed under or in connection

with it, the Operator must, within 10 Business Days after receiving such demand, reimburse Aurizon Network the amount paid.

39.12 Waiver and exercise of rights

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

39.13 Computation of time

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

39.14 Severance of invalid or illegal terms

- (a) If any term of this Deed, or its application to any Party, person or circumstance, is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever, then:
 - (i) that term, or its application to such Party, person or circumstance, is severed from this Deed;
 - (ii) the remainder of this Deed, excluding the severed part, remains in force, and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
 - (iii) to the extent permissible by Law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this **clause ~~39.14~~38.14** as to a replacement term.
- (c) If the Parties cannot agree upon a replacement term, this Deed is continued in accordance with **clauses ~~39.14(a)(i)~~38.14(a)(i)** and **~~39.14(a)(ii)~~38.14(a)(ii)**.

39.15 Rights cumulative

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

39.16 Approvals and consents

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

39.17 Third Party Land

The Operator acknowledges that:

- (a) the land specified in **item 4 of Schedule 33 (Third Party Land)** is not owned or controlled by Aurizon Network; and
- (b) entry onto that Third Party Land is not included within the definition of Access,

and agrees that in respect of that Third Party Land:

- (c) the Operator must comply with the requirements of the person that owns or controls that Third Party Land (**Landowner**) in relation to that Third Party Land as notified to the Operator by Aurizon Network from time to time;
- (d) if, after the Commencement Date, there is a change in the costs incurred by Aurizon Network due to the requirements of the Landowner in respect of that Third Party Land, then that change is deemed to be a Material Change for the purposes of the Access Agreement; and
- (e) if Aurizon Network's rights in respect of that Third Party Land are terminated for any reason other than the default of Aurizon Network of any agreement that affects Aurizon Network's use of that Third Party Land or other than by agreement with the Landowner, then Aurizon Network may, by notice to the Operator, suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that Third Party Land.

39.18 Implementation of agreement

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

39.19 Governing law and jurisdiction

- (a) This Deed is governed by, and is to be construed in accordance with, the law in force in the State.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State, and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

39.20 PPS Act

- (a) If a Party (**first party**) reasonably determines that this Deed contains a "Security Interest" for the purposes of the PPS Act (**Security Interest**), the other Party (**second party**) agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the first party (after consultation with the second party) reasonably asks and considers necessary for the purposes of:

- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the first party to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the first party; or
 - (iii) enabling the first party to exercise rights in connection with the Security Interest.
- (b) A Party is not required to give any notice under the PPS Act to the other Party or any other person and each Party waives the right to receive any such notice (including a notice of Verification Statement) unless the notice is required by the PPS Act and that obligation cannot be excluded.
- (c) To the extent that this Deed gives rise to a Security Interest, the Parties agree that for the purposes of section 115 of the PPS Act, the following sections of the PPS Act will not apply to any Relevant Collateral:
- (i) section 95 (notice by Secured Party of removal of Accession);
 - (ii) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
 - (iii) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
 - (iv) section 130, to the extent that it requires a party to give any notice to the other party (notice by Secured Party of disposal of Collateral);
 - (v) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
 - (vi) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
 - (vii) section 135 (notice by Secured Party of retention of Collateral);
 - (viii) section 142 (redemption of Collateral); and
 - (ix) section 143 (reinstatement of Security Agreement).

Execution

Executed as a deed and delivered on the date shown on the first page.

Executed by Aurizon Network Pty Ltd)
ABN 78 132 181 116:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Executed by [the Operator] ABN)
[insert]:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Schedule 1

Reference schedule

Item	Description	Details
Operator details		
1	Operator	Name: [insert] ABN: [insert]
Particulars for Notices		
2	Address for Notices	Aurizon Network Address: [insert] Facsimile: [insert] Email: [insert] Attention: [insert] Operator Address: [insert] Facsimile: [insert] Email: [insert] Attention: [insert]
Access Agreement		
3	Access Holder	Name: [insert] ABN: [insert]
4	Date of Access Agreement	[insert]

Schedule 2

Train Descriptions

Part A – Matters applicable to specific Train Service Types

1 Train Service Type #1

1.1 Key characteristics of Train Service Type

Details of dates	
Train Service Compliance Date	[insert]
Train Service Commitment Date	[insert]
Train Service Expiry Date	[insert]
General details	
Commodity	Coal
Coal System	[insert]
Reference Train Service	[yes /no]
Details of route and facilities	
Origin	[insert]
Destination	[insert]
Loaded distance from Origin to Destination (km)	[insert]
Empty distance from Destination to Origin (km)	[insert]
Loading Facility	[insert]
Unloading Facility	[insert]
Depot	[insert]
Though-Running Train Service Type	[yes /no]
Details of maximum dwell times	
Maximum Time at Loading Facility (hours)	[insert]
Maximum Time at Unloading Facility (hours)	[insert]
Maximum Time at Depot (hours)	[insert]
Maximum Other Dwell Times (hours)	[insert]

Maximum Sectional Running Times

Maximum Sectional Running Times	The Maximum Sectional Running Time for a Section for the Train Service Type are set out in appendix A to this schedule 22 .
---------------------------------	---

Nominated Monthly Operational Rights

Nominated Monthly Operational Rights	The Nominated Monthly Operational Rights for the Train Service Type is set out in appendix B to this schedule 22 .
--------------------------------------	--

Maximum Payload

Maximum Payload	The Maximum Payload for the Train Service Type is set out in appendix B to this schedule 22 .
-----------------	---

1.2 Special operating restrictions

Without limiting the special operating restrictions which are specified in **item 1.2** of **Part B** of **schedule 22** as being applicable to all Train Service Types, in scheduling Train Services for the Train Service Type in accordance with the Network Management Principles, Aurizon Network must comply with the following special operating restrictions (if any):

Item	Special operating restriction
1	[insert]
2	[insert]

1.3 Cycle description

Subject to:

- (a) any Train Control Direction given to the Operator in respect of a Train Service;
- (b) any exceptions which are specified in **part B** of this **schedule 22** as being applicable to all Train Service Types; and
- (c) any exceptions specified in the table below,

the Operator must operate Train Services for the Train Services Type over the most direct route on the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

Where there is duplicated Track or multiple roads (eg yards), Aurizon Network must have the ability to schedule the Train Service over any of the Tracks or roads.

1.4 Permitted Train Movements on the Nominated Network

Item	Permitted Movements
1	[Insert any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times.]
2	[insert]

Part B – Matters applicable to all Train Service Types

1 Matters applicable to all Train Service Types

1.1 Overview

The matters set out in this **part B** of **schedule 22** are applicable to all Train Service Types and form part of the Train Description for all Train Service Types.

1.2 Special operating restrictions

Without limiting the special operating restrictions for a Train Service Type which are specified in **item 1.2** of **Part A** of **schedule 22** (if any), in scheduling Train Services in accordance with the Network Management Principles, Aurizon Network must comply with the following special operating restrictions:

Item	Special operating restriction
1	[insert]
2	[insert]

1.3 Cycle description

Subject to the exceptions set out in the table below, Train Services cycle description is the most direct route over the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

1.4 Stowage

Item	Stowage requirements
1	[Insert short term Stowage requirements additional to that provided in the relevant Reference Tariff Provisions (as defined in the Access Agreement).]
2	[insert]

Appendix A to Schedule 2

Sectional Running Times

1 Train Services that are Reference Train Services

[Drafting note: This item will set out the Maximum Sectional Running Times for Train Services that a Reference Train Services.]

Maximum Sectional Running Times: Reference Train Services

		Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Reference Train Services

		Empty (mins)			Loaded (mins)		
		Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

2 Train Services that are not Reference Train Services

[Drafting note: If a Train Service for a Train Service Type is a not a Reference Train Service, the Maximum Sectional Running Times for Train Services for that Train Service Type for each Section will be specifically set out in this item.]

Maximum Sectional Running Times: Non- Reference Train Services

		Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Non-Reference Train Services

		Empty (mins)			Loaded (mins)		
		Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

Appendix B to Schedule 2

Nominated Monthly Operational Rights

1 Train Service Type #1

Nominated Monthly Operational Rights (for a 30 day Month)	[insert]
Maximum Payload	[insert] tonnes
Nominal Payload	[insert] tonnes
Indicative Tonnage (for a 30 day Month)	[insert] tonnes

Note for information purposes only: The Nominated Monthly Operational Rights (for a 30 day Month) for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

$$\text{NMTS} = 2 \times \text{Loaded Train Services}$$

where:

NMTS = the Nominated Monthly Operational Rights (for a 30 day Month) for the Train Service Type

Loaded Train Services = IT/AAP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)

IT = the Indicative Tonnage (for a 30 day Month) for the Train Service Type

AAP = the Nominal Payload for the Train Service Type as specified in the relevant Notice of Intention to Increase Nominal Payload

Schedule 3

Nominated Network

1 Nominated Network

The Nominated Network is that part of the Infrastructure described by reference to the diagrams and/or tables set out below, but does not include any freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

[Insert line diagram(s) depicting the Nominated Network]

2 Parts of Nominated Network subject to clause

31.5~~30.5~~

For the purpose of **clause 31.5~~30.5~~**, the specified parts of the Nominated Network are those parts of the Nominated Network described by reference the diagrams and/or tables set out below:

[Insert line diagram(s) depicting the Nominated Network]

[Drafting note: Aurizon Network may specify parts of the Nominated Network for the purpose of **clause 31.5~~30.5~~** which are life expired, obsolete and/or only used by a single user.]

3 Train Control centres and signal cabins

The movement of the Operator's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins at locations to be notified by Aurizon Network from time to time.

4 Third Party Land

[Insert diagram(s)/table(s) (if applicable)]

5 Weighbridges and Overload Detectors

5.1 Weighbridges

Location	Party responsible for Weighbridge	Tolerance
[insert]	[insert]	[The tolerances required to achieve verification under the <i>National Measurement Act 1960</i> (Cth)]

5.2 Overload Detectors

Location	Party responsible for Overload Detector	Tolerance
[insert]	[insert]	+/- [insert] %

Schedule 4

Rollingstock and Rollingstock Configurations

[Operator to include all of its Rollingstock]

1 Maximum Gross Mass and Tare Weight

Rollingstock	Maximum Gross Mass (tonnes)	Tare Weight (tonnes)
Wagons		
[Wagon type]	[insert]	[insert]
Other Rollingstock		
[Rollingstock type]	[insert]	[insert]

2 Relevant Rollingstock

[To be inserted as applicable]

Schedule 5

Performance Levels

1 Development of Performance Levels

- 1.1 The Parties must meet as soon as practicable after the Commencement Date to negotiate in good faith to endeavour to agree the Aurizon Network Performance Level (other than the Aurizon Network Performance Levels set out in **item 2.1** of this **schedule 5** which are already agreed between the Parties) and the Operator Performance Level within twelve Months (or such longer period as the Parties may agree) after the Commencement Date.
- 1.2 The Performance Levels may involve financially based incentives and sanctions and, unless otherwise agreed, will be applicable for the Term.
- 1.3 A failure to agree the Performance Levels is not a Dispute for the purposes of **clause 30~~29~~**.
- 1.4 On and from the date the Performance Levels are implemented by the Parties, the Parties must monitor, record and assess the performance of their respective obligations under this Deed against the Performance Levels. Each Party must comply with the reporting and assessment requirements (if any) set out in this **schedule 5**.

2 Aurizon Network Performance Levels

2.1 Average Below Rail Transit Time Threshold

The Average Below Rail Transit Time Factor for a Train Service Type for a Year must not exceed the Average Below Rail Transit Time Threshold for that Train Service Type specified in the table below:

Train Service Type	Average Below Rail Transit Time Threshold (%)
[insert]	[insert]
[insert]	[insert]

3 Operator Performance Levels

[To be inserted when agreed]

Appendix to Schedule 5

Calculation of Below Rail Transit Time

The **Below Rail Transit Time** (as defined in the Access Undertaking) for a Train Service for Train Service Type which has been operated is calculated in accordance with the following formula:

BRTT = SRT – Non BR Start Stop Time + BR Delays

where:

SRT = The lesser of Actual SRT and Standard SRT for the relevant Train Service

Actual SRT = The actual time it takes the relevant Train Service to traverse all relevant Sections for the relevant Train Service

Standard SRT = The sum of:

- (a) the Maximum SRT for all relevant Sections for the relevant Train Service Type; and
- (b) where a movement of the relevant Train Service over a relevant Section requires time to start or stop for a dwell, stop at the Destination or start at the Origin, the sum, for each relevant Section, of the additional time, taken to start or stop (as specified in **appendix A of schedule 22** for the relevant Train Service Type)

Non BR Start Stop Time = The time it takes the relevant Train Service to start after a non-below rail dwell or stop for a non-below rail dwell for all non-below rail delays incurred for all relevant Sections for that Train Service

BR Delay

Delays to the relevant Train Service from its scheduled time in the Daily Train Plan, where that delay can be attributed directly to Aurizon Network including:

- (a) the time taken in crossing other Trains (to the extent that such time is not contributed to by a Railway Operator or a Force Majeure Event and is not otherwise included in the Maximum Sectional Running Times for all relevant Section for the relevant Train Service Type); and
- (b) delays due to Operational Constraints caused or contributed to by Aurizon Network (to the extent of such contribution) or due to a fault or deficiency in the Infrastructure provided such delays are not contributed to by a Railway Operator or Force Majeure Events and are not otherwise included in paragraphs (d), (e) or (f) specified below,

but excluding:

- (c) cancellations;
- (d) delays resulting from compliance with a Passenger Priority Obligation;
- (e) delays due to a Possession and Major Periodic Maintenance where, the Possession Protocols have been followed;
- (f) delays resulting from a Force Majeure Event; and
- (g) delays to the relevant Train Service from its scheduled time in the Daily Train Plan, where that delay can be attributed the Access Holder (including delays attributable to a failure to load the Train at the Loading Facility for the relevant Train Service Type within the Maximum Time at Loading Facility, or to unload the Train at the Unloading Facility for the relevant Train Service Type within the Maximum Time at Unloading Facility, as specified in the Train Description for the relevant Train Service Type).

Schedule 6

High visibility clothing and Emergency Procedures

1 High visibility clothing

1.1 High visibility clothing

- (a) The Operator may specify the form of high visibility clothing that the Operator's Staff and the Operator's visitors may adopt, having regard to the requirements of Aurizon Network's safety standard for High Visibility Clothing (SAF/STD/0032/SWK/NET) as amended from time to time and provided to the Operator in the manner specified in **item 5 of schedule 9**.
- (b) The colour and materials for the high visibility clothing referred to in **item 1.1(a)** of this **schedule 6** must conform to the requirements of AS/NZS 1906.4:2010 *Retroreflective materials and devices for road traffic control purposes: Part 4: High-visibility material for safety garments and AS/NZS4602:2011 High Visibility Safety Garments* (as amended from time to time).

1.2 Compliance

Without limiting the Operator's obligations under this Deed, the Operator must ensure that the Operator's Staff and the Operator's visitors are instructed in relation to, and comply with, the provisions of this **item 1 of schedule 6**, the Applicable Safeworking Procedures and Aurizon Network's safety management system.

2 Emergency Procedures

Aurizon Network must provide the Operator with a copy of the Emergency Procedures from time to time in the manner specified in **item 5 of schedule 9**.

Schedule 7

Insurance

1 Public liability insurance

The Operator must effect and maintain public liability insurance:

- (a) to cover the legal liability of the insured arising out of or in connection with the activities of the Operator under this Deed whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than THREE HUNDRED AND FIFTY MILLION DOLLARS (\$350,000,000) for any one occurrence;
- (b) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date; and
- (c) to cover the Operator's rail operations and associated activities on the Nominated Network.

2 Workers compensation insurance

The Operator must effect and maintain insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of any Operator's Staff.

3 Carrier liability insurance

The Operator must effect and maintain carrier liability insurance in relation to the legal liability of the insured arising out of the transport of goods by Train Services to a sum insured of not less than TEN MILLION DOLLARS (\$10,000,000).

4 Motor Vehicle (non-Act) insurance

The Operator must effect and maintain motor vehicle (non-Act) insurance to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of this Deed by the Operator or Operator's Staff and must include:

- (a) third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000); and

- (b) a Dangerous Goods extension with a maximum sum insured as required by statute.

5 Motor Vehicle insurance

The Operator must effect and maintain motor vehicle insurance to cover the statutory liability in respect of personal injury arising out of or in connection with the use by the Operator or the Operator's Staff of all vehicles in the performance of their obligations under this Deed.

6 Required terms

Insurances effected pursuant to **items 1 and 4** of this **schedule 7** Error! Reference source not found. must:

- (a) include a principal's indemnity endorsement specifically noting Aurizon Network as an interested party in respect of its interest arising out of or under this Deed;
- (b) include a cross liability clause;
- (c) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
- (d) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

Schedule 8

Part A – Suspension Events and Termination Events applicable to specific Train Service Types

Item	Suspension Event	Termination Event
1	<p>The Operator materially fails to provide, before the operation of a Train Service for a Train Service Type in a material respect, information that is required to be provided to Aurizon Network in relation to the Train Service under clause 16.515.5.</p>	
2	<p>(a) The Operator operates Train Services for a Train Service Type which materially do not comply, in a material respect, with the Train Description for that Train Service Type; and</p> <p>(b) such default:</p> <p>(i) adversely affects the entitlements of any Access Holder (other than the Access Holder under the Access Agreement) or other users of the Infrastructure (including Infrastructure Service Providers) of the Infrastructure, provided that:</p> <p>(A) Aurizon Network has sought to minimise the impact of such default by applying the Network Management Principles; and</p> <p>(B) Aurizon Network is not obliged to take any such action that may cause any additional cost or risk to Aurizon Network or an adverse impact on any Access Holder</p>	

Item	Suspension Event	Termination Event
	<p>(other than the Access Holder under the Access Agreement); or</p> <p>(ii) has caused an increased risk to the safety of any person or material risk to property, unless the Operator operated the Train Service in accordance with Train Control Directions in which case the default will not be considered a Suspension Event.</p>	
3	<p>The Operator fails, in a material respect, to comply with any obligation under this Deed which is specific to a Train Service Type (other than any obligation which, if not complied with by the Operator, may (either of itself or if other requirements are satisfied) result in any other Suspension Event referred to in part A of this schedule 8 Error! Reference source not found. occurring) and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.</p>	<p>The Operator fails, in a material respect, to comply with any obligation under this Deed which is specific to a Train Service Type (other than any obligation which, if not complied with by the Operator, may (either of itself or if other requirements are satisfied) result in any other Termination Event referred to in part A of this schedule 8 occurring) and such default continues for at least 40 Business Days after Aurizon Network gives the Operator notice of the default.</p>

Part B – Suspension Events and Termination Events applicable to all Train Services Types

Item	Suspension Event	Termination Event
1	The Operator fails to pay by the due date any amount payable under this Deed, and such default continues for at least 10 Business Days after Aurizon Network gives the Operator notice of the default (and always subject to clause 8.4).	The Operator fails to pay by the due date any amount payable under this Deed, and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default (and always subject to clause 8.4).
2	<p>The Operator fails, in a material respect, to comply with any of its obligations under clause 14.13, 22.24 or 24.23 (other than clauses 22.3.21.3 or 24.9.23.9) and Aurizon Network is of the reasonable opinion that such failure:</p> <p>(a) adversely affects the entitlements of any Access Holder (other than the Operator under this Deed) or other users of the Infrastructure (including Infrastructure Service Providers); or</p> <p>(b) has caused an increased risk to the safety of any person or material risk to property.</p>	The Operator fails, in a material respect, to comply with any obligations under clause 14.13, 22.24 or 24.23 (other than clause 22.3.21.3 or 24.9.23.9) and such default continues for, or the Operator has failed to take reasonable action to prevent recurrence of the default, within 20 Business Days after Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event.
3	<p>The Operator fails in a material respect, to comply with:</p> <p>(a) any Train Control Direction given to the Operator; or</p> <p>(b) any Applicable Safeworking Procedures or Applicable Safety Standard.</p>	<p>The Operator fails, in a material respect, to comply with:</p> <p>(a) any Train Control Direction given to the Operator; or</p> <p>(b) any Applicable Safeworking Procedures or Applicable Safety Standard,</p> <p>and such default continues for, or the Operator has failed to take reasonable action to prevent recurrence of the default, within 20 Business Days after Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event.</p>
4	An Insolvency Event occurs in respect of the Operator.	An Insolvency Event occurs in respect of the Operator and continues for a period of at least 40 Business Days.
5	The Operator's Accreditation is	The Operator's Accreditation is

Item	Suspension Event	Termination Event
	suspended, cancelled or amended so that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Deed.	suspended, cancelled or amended so that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Deed, and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.
6	The Operator fails to comply in a material respect with clause 24.11(c) 23.11(e) .	The Operator fails to comply with clause 24.11(c) 23.11(e) which in the reasonable opinion of Aurizon Network is causing or threatening to cause: <ul style="list-style-type: none"> (a) a serious or material risk to the safety of persons or property; or (b) serious or material Environmental Harm, and such failure continues for at least 10 Business Days after Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event.
7	If an Environmental Regulator gives Aurizon Network or the Operator a direction, notice or order about the conduct of the Operator in relation to the operation of Train Services which causes or threatens to cause serious Environmental Harm and <ul style="list-style-type: none"> (a) if the direction, notice or order is given to Aurizon Network, Aurizon Network promptly notifies the Operator of such direction, notice or order; and (b) the Operator fails, within the time: <ul style="list-style-type: none"> (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or (ii) otherwise agreed to by the Environmental Regulator, to (c) comply with the direction, notice	If an Environmental Regulator gives Aurizon Network or the Operator a direction, notice or order about the conduct of the Operator in relation to the operation of Train Services which causes or threatens to cause serious Environmental Harm and <ul style="list-style-type: none"> (a) if the direction, notice or order is given to Aurizon Network, Aurizon Network promptly notifies the Operator of such direction, notice or order; and (b) the Operator fails, within the time: <ul style="list-style-type: none"> (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or (ii) otherwise agreed to by the Environmental Regulator, to (c) comply with the direction, notice or order, as modified by any

Item	Suspension Event	Termination Event
	<p>or order, as modified by any court order (if applicable); or</p> <p>(d) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Regulator in relation to the requirements of the direction, notice or order.</p>	<p>court order (if applicable); or</p> <p>(d) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Regulator in relation to the requirements of the direction, notice or order,</p> <p>and such failure continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the failure.</p>
8	<p>The Operator fails to comply with the requirements of a notice given by Aurizon Network (within the reasonable time specified in the notice) requiring the Operator to cease an Activity of the Operator in connection with this Deed which causes, or threatens to cause, serious Environmental Harm.</p>	
9	<p>The Operator fails to:</p> <p>(a) effect or maintain the insurances required under clause 26.225.2; or</p> <p>(b) provide evidence of the insurances required under clause 26.225.2 having been effected and maintained,</p> <p>and such default continues for at least five Business Days after Aurizon Network gives the Operator notice of the default.</p>	<p>The Operator fails to:</p> <p>(a) effect or maintain the insurances required under clause 26.225.2; or</p> <p>(b) provide evidence of the insurances required under clause 26.225.2 having been effected and maintained,</p> <p>and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.</p>
10	<p>The Operator purports to Assign any of its rights or interests in this Deed other than as permitted in this Deed.</p>	<p>The Operator purports to Assign any of its rights or interests in this Deed other than as permitted by this Deed.</p>

Item	Suspension Event	Termination Event
11	<p>The Operator fails to comply with:</p> <ul style="list-style-type: none"> (a) any Laws relating to rail safety relevant to the operation of Train Services; (b) Train Control Directions; (c) Safeworking Procedures; or (d) Applicable Safety Standards, <p>and Aurizon Network is of the reasonable opinion that such default has caused an increased risk to the safety of any person or a material risk to property.</p>	<ul style="list-style-type: none"> (a) Subject to paragraph (b), Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event on three or more occasions in any 12 month period. (b) If a Dispute arises as to the validity of a Suspension Notice and it is determined under clause 3029 that the Suspension Notice was invalid, the Suspension Notice must not be taken into account for the purposes of this provision.
12	<p>The Operator fails to comply with any obligation under this Deed (other than any obligation which, if not complied with by the Operator, is reasonably likely to (either of itself or if other requirements are satisfied) result in any other Suspension Event occurring), and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.</p>	
13		The Access Agreement is terminated.

Schedule 9

Interface Coordination Arrangements

1 Train Control Procedures

1.1 Train Controllers' contact details

- (a) For the benefit of the Operator's Staff who are responsible for the operation of Rollingstock used in the operation of a Train Service for a Train Service Type (**Traincrew**), contact details for the Train Controllers relevant to the Nominated Network are set out below:

Line Sections:	[insert]
Control Board:	[insert]
Phone:	[insert]
Fax:	[insert]

- (b) For the benefit of the Operator's Controller, contact details for the Train Controllers relevant to the Nominated Network are set out below:

Line Sections:	[insert]
Control Board:	[insert]
Phone:	[insert]
Fax:	[insert]

1.2 Operator's advice to Train Controller

- (a) The Operator's Controller and the Traincrew of the relevant Train must:
- (i) immediately upon becoming aware of an emergency that may affect the performance of the Operator's Train; and
 - (ii) as soon as reasonably practicable after becoming aware of any other event or circumstances that may affect the performance of the Operator's Train,

provide the Train Controller with such information as the Train Controller may reasonably require, including:

- (iii) the Train number;
- (iv) the nature of the event or circumstances; and
- (v) the likely impact on the performance of Network Train Services (including any Train Service operated by the Operator),

regardless of whether or not the Operator's Train has entered the Nominated Network.

- (b) At least 15 minutes before the departure of a Train Service, the Operator's Controller must provide the Train Controller with the following information

in relation to that Train Service:

- (i) information with respect to the Traincrew for that Train Service including the names of the Traincrew personnel and details of any mandatory Traincrew breaks;
 - (ii) if the initial Traincrew for that Train Service is rostered to be replaced by a new Traincrew before that Train Service reaches its Destination, details of the relevant rosters;
 - (iii) the location of nominated depots as specified in the Operating Plan, where Activities in relation to that Train Service such as provisioning, shunting and marshalling, will be carried out;
 - (iv) any en route locomotive provisioning requirements;
 - (v) if the Train is in “Train Order Territory” (as defined in Aurizon Network’s safety management system (as amended from time to time)) or “Direct Traffic Control Territory” (as defined in Aurizon Network’s safety management system (as amended from time to time)), the number of the leading locomotive; and
 - (vi) a document in the form required by Aurizon Network (**Train List**) which contains the following information in relation to that Train Service:
 - (A) the Train number;
 - (B) the Origin of the Train;
 - (C) the length of the Train in metres (including the locomotives);
 - (D) the number of vehicles in the Train;
 - (E) the gross mass of the Train;
 - (F) the gross trailing load of the Train in tonnes;
 - (G) the motive power employed by the Train;
 - (H) for each vehicle in the Train, in the order in which they will be placed, leading end first, the following information:
 - (1) vehicle classification;
 - (2) vehicle number;
 - (3) vehicle type;
 - (4) gross weight of the vehicle;
 - (5) a description of the goods carried in the vehicle (including details of all Dangerous Goods) by class and location on the Train;
 - (6) the destination of each vehicle; and
 - (7) any known defects, eg brakes cut out; and
 - (I) any other relevant information in relation to the operation of that Train Service.
- (c) Subject to the Traincrew complying with **item 1.2(b)(ii)** of this **schedule 9**, the Train Controller must notify the Traincrew of the most probable

location for the rostered change of Traincrew as soon as reasonably practicable after the Train Controller determines such location.

- (d) The Operator must enter the Train List into Aurizon Network’s nominated information system in accordance with the procedures specified by Aurizon Network.
- (e) The Operator must, as soon as reasonably practicable after it becomes aware of any changes to the information it has provided to Aurizon Network in relation to the Train List, update Aurizon Network’s nominated information system with respect to such changes in accordance with the procedures specified by Aurizon Network.
- (f) The Operator must, at all times, ensure that the Train List for a Train Service is accurate and includes all relevant information in relation to that Train Service.
- (g) If the weight and/or length of a Train operated by the Operator alters during the operation of a Train Service utilising that Train, the Operator's Controller must advise the Train Controller of the new weight and/or length (as applicable) of the Train.
- (h) The Operator must provide to Aurizon Network (and keep current at all times during the Term) the contact details (including a mobile phone number and after hours contact details) for the Operator’s Controller. As at the date of this Deed, the contact details for the Operator’s Controller are set out below:

Name:	[insert]
Position:	[insert]
Phone (during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile phone number:	[insert]
Fax:	[insert]

- (i) The Operator’s Controller must be contactable by the Train Controller at all times while any of the Operator’s Train Services are operating on the Nominated Network.
- (j) The Operator must provide to Aurizon Network (and keep current at all times during the Term):
 - (i) the hours during which the Operator’s Controller will not be contactable while the Operator’s Train Services are not operating on the Nominated Network; and
 - (ii) the after hours contact procedures for the Operator’s Controller.
- (k) When a Train Service is operating on a section of Track which is not within “Track Circulated Territory” (as defined in Aurizon Network’s safety management system (as amended from time to time)), the Traincrew must, when reasonably requested by the Train Controller, advise the Train Controller of the arrival and departure times, or the departure times if the Train did not stop, for each “Crossing Location” (as defined in Aurizon Network’s safety management system (as amended from time to

time)) that the Train passed through on the Nominated Network.

- (l) The Train Controller must enter the arrival and departure times referred to in **item 1.2(k)** of this **schedule 9** into Aurizon Network's nominated information system as soon as reasonably practicable after the advice is received from the Traincrew.

1.3 Train Controller's advice to the Operator

- (a) As soon as reasonably practicable after becoming aware of any event or circumstances that may affect the performance of the Operator's Train, the Train Controller must provide to the Operator's Controller such information as the Operator's Controller may reasonably require, including:
 - (i) the Train number;
 - (ii) the nature of the event or circumstances; and
 - (iii) the likely impact on the performance of Network Train Services (including any Train Service operated by the Operator).
- (b) When reasonably requested by the Operator's Controller, the Train Controller will provide to the Operator's Controller an estimated time of arrival at any location on the Nominated Network for the Operator's Train.
- (c) When reasonably requested by the Traincrew, the Train Controller will provide information to the Traincrew regarding events or circumstances that may impact on the performance of the Operator's Train.

1.4 Consultation between Train Controller and the Operator

- (a) The Operator's Controller is responsible for determining whether the initial Traincrew for a Train Service will need to be replaced by a new Traincrew before the relevant Train Service reaches its Destination where such change of Traincrew is not included in the roster provided by the Operator's Controller to the Train Controller under **item 1.2(b)(ii)** of this **schedule 9** (if any) (**Relief**).
- (b) Subject to **item 1.4(c)** of this **schedule 9** Error! Reference source not found., the Traincrew will contact the Operator's Controller to request meal breaks and personal needs breaks (**Traincrew Breaks**) and Relief.
- (c) If the Traincrew cannot establish contact with the Operator's Controller to request a Traincrew Break or Relief, the Traincrew may contact the Train Controller directly to request the relevant Traincrew Break or Relief.
- (d) If the Traincrew submits a request for a Traincrew Break or Relief directly to the Train Controller, the Train Controller must:
 - (i) record the Traincrew's request for a Traincrew Break or Relief (as applicable); and
 - (ii) advise the Operator's Controller that it has received a request for a Traincrew Break or Relief (as applicable) from the Traincrew.
- (e) Upon receiving advice from the Train Controller in accordance with **item 1.4(d)** of this **schedule 9**, the Operator's Controller must verbally acknowledge receipt of that advice from the Train Controller.
- (f) If the Operator's Train Controller or the Traincrew submits a request for a

Traincrew Break or Relief to the Train Controller, then:

- (i) the Train Controller and the Operator's Controller must consult with each other as to the most appropriate time and location for the Traincrew Break or Relief (as applicable); and
 - (ii) the Train Controller must not unreasonably refuse to agree to the time and location for the Traincrew Break or Relief (as applicable).
- (g) If the Train Controller and the Operator's Controller agree the time and location for the requested Traincrew Break or Relief (as applicable), then:
- (i) the Operator's Controller must:
 - (A) make all the necessary arrangements for the Traincrew Break or Relief (as applicable) and, subject to **item 1.4(h)** of this **schedule 9**, advise the Traincrew of such arrangements; and
 - (B) inform the Train Controller of any changes to the Traincrew's requirements for that Traincrew Break or Relief (as applicable) including any changes to the Traincrew's requirements with respect to the time for that Traincrew Break or Relief (as applicable); and
 - (ii) the Train Controller must advise the Operator's Controller if the estimated time of arrival of the Train at the location for the Traincrew Break or Relief (as applicable) varies by more than 15 minutes from the agreed time for the Traincrew Break or Relief (as applicable).
- (h) If the Operator's Controller is unable to contact the Traincrew directly to provide advice in relation to the arrangements for the Traincrew Break or Relief (as applicable) referred to in **item 1.4(g)** of this **schedule 9**, then the Train Controller may, subject to receiving a request from the Operator's Controller, advise the Traincrew of the arrangements for that Traincrew Break or Relief (as applicable).
- (i) If the Operator's Train Controller informs the Train Controller in accordance with **item 1.4(g)(i)(B)** of this **schedule 9** that the Traincrew's requirements for a Traincrew Break or Relief have changed, then the Train Controller and the Operator's Controller must consult with each other with respect to the relevant changes.

1.5 Radio procedures

- (a) The Operator's Staff must follow the general radio procedures contained in the "Observance of Signals Manual STD/0037/SWK" (as amended from time to time) when using the Train Control radio system.

- (b) The details for access to the Train Control radio system for each of the line sections that comprise the Nominated Network are set out below:

Line Section:	[insert]
Channel Number:	[insert]
Line Section:	[insert]
Channel Number:	[insert]

1.6 Procedures for entering the Nominated Network

- (a) The Operator must comply with the yard procedures at the Origin for a Train Service (if any) as advised by Aurizon Network.
- (b) The Operator will only enter the Nominated Network upon receipt of the appropriate “Proceed Authority” (as defined in Aurizon Network’s safety management system (as amended from time to time)) as advised by Aurizon Network.
- (c) The Operator's Controller must advise the Train Controller of the anticipated departure time of the Operator's Train at least two hours before the Scheduled Time for the departure of the Train or when reasonably requested by the Train Controller. If the anticipated departure time alter from that previously advised to the Train Controller, then the Operator's Controller must advise the Train Controller of the new anticipated departure time as soon as reasonably practicable after it becomes aware of the change.
- (d) The Traincrew for a Train Service must advise the Train Controller when the Train for that Train Service is ready to depart the Origin.
- (e) Prior to the departure of the Train, the Operator must supply the Train driver with the Scheduled Times for that particular Train Service for that particular day.

1.7 Procedures for shunting/entering and exiting yards

Aurizon Network will advise the Operator of the appropriate procedures for shunting, entering yards and leaving yards en route.

1.8 Procedures for leaving the Nominated Network

The Operator must comply with yard procedures at the Destination for a Train Service (if any) as advised by Aurizon Network.

1.9 Contact details for party responsible for loading Trains – clause ~~18.4(e)~~ 19.4(c)

- (a) The Operator must provide to Aurizon Network (and keep current at all times during the Term) the contact details for any party responsible for loading the Operator’s Trains.

- (b) As at the date of this Deed, the parties responsible for loading the Operator's Trains are set out below:

Name	Phone	Fax
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]

2 Train Operations Procedures

2.1 Safety Alerts and Safety Notices

(a) Safety Alerts

- (i) In this **item 2** of **schedule 9**, **Safety Alert** means a document specified as a "Safety Alert" which notifies the recipient that a serious safety incident that has affected or could affect Aurizon Network, the Operator or any other user of the Infrastructure has occurred. A Safety Alert may include:
- (A) details in relation to the serious safety incident (for information purposes); and/or
 - (B) information in relation to any immediate actions to be taken in relation to the serious safety incident.
- (ii) Aurizon Network must give a Safety Alert as soon as reasonably practicable after the occurrence of a serious safety incident.
- (iii) Aurizon Network may give the Operator a Safety Alert using the Operator's address for notices specified in **item 2** of **schedule 14**. Without limiting the method of delivery, Aurizon Network may give the Operator a Safety Alert by electronic means.
- (iv) As soon as possible after the receipt of a Safety Alert from Aurizon Network, the Operator must make the Operator's Staff aware of the contents of such Safety Alert.

(b) Safety Notices

- (i) In this **item 2** of **schedule 9**:
- (A) **Safety Change** means a temporary or permanent change to Aurizon Network's safety management system.
 - (B) **Safety Notice** means a document specified as a "Safety Notice" which is published by Aurizon Network on a weekly basis for distribution to Aurizon Network's employees and the Operator (if it contains safety information relevant to the Operator) and includes safety information about a Safety Change.
- (ii) Subject to **item 2.1(b)(iii)** of this **schedule 9**, Aurizon Network will include safety information about a Safety Change in a Safety Notice published at least seven days before the date that the Safety Change becomes effective.

- (iii) If:
 - (A) Aurizon Network considers it necessary to communicate certain safety information about a Safety Change; and
 - (B) that safety information has not been published in a Safety Notice at least seven days before the date that the relevant Safety Change will become effective;then, Aurizon Network must:
 - (C) publish that safety information in a Train Notice or a Safety Alert; and
 - (D) as soon as reasonably practicable after publication of that Train Notice or Safety Alert, publish that safety information in a Safety Notice.
- (iv) The Operator must ensure that members of the Operator's Staff who perform Safety Related Work have access to a copy of, or are notified of, any safety information in the Safety Notices relevant to their area of work.
- (v) Aurizon Network may give the Operator a Safety Notice using the Operator's address for notices specified in **item 2 of schedule 14**. Without limiting the method of delivery, Aurizon Network may give the Operator a Safety Notice by electronic means.

(c) Train Notices

- (i) In this **item 2 of schedule 9, Train Notice** means a document specified as a "Train Notice" which is published by Aurizon Network on a daily basis (or as otherwise determined by Aurizon Network) for distribution to the Operator and conveys operational instructions, information and messages about Activities on the Infrastructure.
- (ii) The Operator must ensure that all Train Notices are given to members of the Operator's Staff who:
 - (A) are responsible for the operation of Rollingstock used in the operation of a Train Service for a Train Service Type; or
 - (B) work on or near any Track.
- (iii) Aurizon Network may give the Operator a Train Notice using the Operator's address for notices specified in **item 2 of schedule 14**. Without limiting the method of delivery, Aurizon Network may give the Operator a Train Notice by email.

(d) Safeworking Forms

- (i) Aurizon Network will make available to the Operator access to electronic copies of administrative forms included in Aurizon Network's safety management system which are necessary for the Operator to operate Train Services on the Nominated Network (**Safeworking Forms**).

- (ii) The Operator may obtain a reasonable quantity of Safeworking Forms by submitting a request to the following contact at Aurizon Network:

Position:	[insert]
Phone:	[insert]
Email address:	[insert]
Fax:	[insert]

2.2 Operational meetings

- (a) The contact details for the Operator's Representative are set out below:

Position:	[insert]
Phone:	[insert]
Mobile phone:	[insert]
Email address:	[insert]
Fax:	[insert]

- (b) The contact details for the Aurizon Network Representative are set out below:

Position:	[insert]
Phone:	[insert]
Mobile phone:	[insert]
Email address:	[insert]
Fax:	[insert]

- (c) The Operator's Representative and the Aurizon Network Representative (or their nominees) must meet on a monthly basis or as agreed by the Parties for the purpose of:
- (i) reviewing the achievement of Performance Levels (as that term is defined in the Access Agreement) and other matters affecting the performance of Train Services so as to identify remedial action in relation to recurring problems and to plan action to address potential or known problems;
 - (ii) reviewing requests or proposals by the Operator or Aurizon Network to vary the procedures contained in this **schedule 9**;
 - (iii) reviewing the reliability of the Operator's Rollingstock;
 - (iv) reviewing Operational Constraints;
 - (v) investigating or reviewing breaches or suspected breaches of the Applicable Safeworking Procedures, Applicable Safety Standards or Train Control Directions by the Operator's Staff; and
 - (vi) reviewing any other matters relevant to the performance of this

Deed.

- (d) The Operator's Representative must attend other operational meetings relevant to the operation of Train Movements on the Nominated Network as required by Aurizon Network from time to time.

3 Nominated Persons

3.1 Operator's Incident Response Coordinator

The contact details for the Operator's Incident Response Coordinator are as follows:

Name:	[insert]
Position:	[insert]
Phone (during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile:	[insert]
Email:	[insert]
Fax:	[insert]

3.2 Operator's Recovery Team Leader

The contact details for the Operator's Recovery Team Leader are as follows:

Name:	[insert]
Position:	[insert]
Phone (during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile:	[insert]
Email:	[insert]
Fax:	[insert]

4 Possession Protocols

Aurizon Network must publish the the Possession Protocols (as amended from time to time) on its Website which detail the rules governing the management and scheduling of Planned Possessions and Emergency Possession on the Infrastructure.

5 Document Control Procedures

- (a) The contact details for the Operator's Document Controller are set out below:

Name:	[insert]
Position:	[insert]

Phone:	[insert]
Postal Address:	[insert]
Email Address:	[insert]

- (b) Upon execution of this Deed, Aurizon Network will give the Operator one electronic copy of each of the Applicable Safeworking Procedures and Applicable Safety Standards.
- (c) Aurizon Network will manage updates and revisions of the documents referred to in **item 5(b)** of this **schedule 9**, the Emergency Procedures and the Investigations Procedures in accordance with the provisions of the relevant Australian Standards that apply to document control at that time.
- (d) The Operator is responsible for ongoing distribution of all documents provided to it by or on behalf of Aurizon Network in respect of Aurizon Network's safety management system (including the documents referred to in **item 5(b)** of this **schedule 9**) to the relevant members of the Operator's Staff.

Schedule 10

Ancillary Services and Ancillary Services Charges

1 Ancillary Services

[Drafting note: Arrangements for the provision of Ancillary Services (if any) by Aurizon Network to the Operator will be agreed on a transaction-by-transaction basis and documented in this **schedule 10**.]

1.1 Provision of Wayside Equipment

In this **item 1.1** of **schedule 10**:

Wayside Equipment means equipment owned by Aurizon Network that is located on or adjacent to the Infrastructure which records data which, if made available to the Operator, could be used by the Operator to monitor the condition of the Operator's Rollingstock, but excludes Weighbridges and Overload Detectors.

[Drafting note: Arrangements for the provision of Wayside Equipment by Aurizon Network to the Operator will be an Ancillary Service to be agreed on a transaction-by-transaction basis and documented in this **schedule 10**.]

Schedule 11

Interface Risk Management Plan

Annexure 11 – STOD marked up against QRC
February Submission

Aurizon Network 2017 DAU Draft - 30 November 2016

Aurizon Network Pty Ltd

[Insert name of Operator]

Train Operations Deed – Coal

QRC mark-up of provisions regarding changes to payload 17 ~~February 2017~~ March 2017
(collaboration draft marked up against QRC February Submission)

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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 person specified in **item 1** of **schedule 1+ (Operator)**

Background

- A Aurizon Network must provide access to the Nominated Network in accordance with the Access Undertaking.
 - B Aurizon Network is a party to one or more access agreements under which Aurizon Network has granted Access Rights to Network Customers (as defined in the Access Agreement) for the operation of Train Services over the Nominated Network.
 - C The Access Holder has nominated the Operator in respect of all or part of the Access Holder's Access Rights as reflected in the Train Description.
 - D Aurizon Network has agreed that the Operator may operate Train Services over the Nominated Network and to provide Train Control for those Train Services on the terms and conditions of this Deed.
 - E The Parties may enter into separate agreements for the provision of services by Aurizon Network to the Operator other than the grant of the Operational Rights.
-

1 Definitions and interpretation

1.1 Definitions

In this Deed:

Access has the meaning given in the Access Undertaking.

Access Agreement means the agreement between Aurizon Network and the Access Holder identified in **schedule 1**.

Access Charges has the meaning given in the Access Agreement.

Access Holder means the access holder identified in **item 3** of **schedule 1**.

Access Holder's Staff means the employees, contractors, volunteers and agents of the Access Holder and any other person under the control or supervision of the Access Holder involved in any Activity.

Access Rights means:

- (a) the rights of access to the Infrastructure granted to the Access Holder under the Access Agreement; and
- (b) for a Train Service Type, the "Access Rights" (as defined in paragraph (a))

of this definition) granted to the Access Holder in respect of the operation of Train Services for that Train Service Type.

Access Undertaking means the access undertaking submitted by Aurizon Network to the QCA and approved by the QCA under the *Queensland Competition Authority Act 1997* (Qld) from time to time.

Accreditation means the ability to lawfully carry out railway operations under the Rail Safety Act (whether by being accredited under the Rail Safety Act or by being exempt from the requirement to be accredited under the Rail Safety Act), and **Accredited** means to have Accreditation.

Activities means any activity associated with the Train Services, including “railway operations” as defined under the Rail Safety Act.

Ad Hoc Train Service for a Train Service Type means:

- (a) a Network Train Service which is additional to the Nominated Monthly Train Services for that Train Services Type but which is otherwise in accordance with the Train Description for that Train Service Type; or
- (b) a Network Train Service which is not a Train Service for a Train Service Type but which Aurizon Network permits the Operator to operate under this Deed as if it was a Train Service for the Train Service Type (subject to any derogations to the Train Description for the Train Service Type permitted by Aurizon Network, which includes a change in the Origin and Destination for that Train Service Type provided that the changed Origin and Destination forms part of the Nominated Network).

Adjoining Network means a rail network which is not part of the Infrastructure but which connects to the Infrastructure.

Amendment Notice has the meaning given in **clause 18.1(a)**~~17.1(a)~~.

Ancillary Services means those services set out in **schedule 10** (if any) which Aurizon Network has agreed to provide to the Operator in addition to the grant of the Operational Rights.

Ancillary Services Charges means the ancillary services charges (if any) determined in accordance with **schedule 10** and any interest payable in relation to such charges under this Deed.

Applicable Safety Standards means:

- (a) in respect of the Operator, any Safety Standards identified in the IRMP as being applicable to the Operator; and
- (b) in respect of Aurizon Network, any Safety Standards identified in the IRMP as being applicable to Aurizon Network.

Applicable Safeworking Procedures means:

- (a) in respect of the Operator, any Safeworking Procedures identified in the IRMP as being applicable to the Operator; and
- (b) in respect of Aurizon Network, any Safeworking Procedures identified in the IRMP as being applicable to Aurizon Network.

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

Approved Derogation means, in respect of any Rollingstock or Rollingstock Configuration which does not comply with the Rollingstock Interface Standards, a departure from the Rollingstock Interface Standards which the IRMP identifies can be effectively managed by complying with measures specified in the IRMP in respect of such Rollingstock or Rollingstock Configuration.

Assign means to assign, novate, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber.

Aurizon Network Land means each parcel of land on, under or above which the Nominated Network is situated and which is:

- (a) land that is owned, leased or controlled by Aurizon Network; or
- (b) land in respect of which entry is required to be given by Aurizon Network as part of the definition of Access.

Aurizon Network Representative means the Aurizon Network officer for the time being appointed pursuant to **item 2.2(b) of schedule 9**.

Aurizon Network's Staff means the employees, contractors and agents of Aurizon Network and any other person under the control or supervision of Aurizon Network involved in the provision of Operational Rights.

Authorisation Request Notice has the meaning given in **clause [17.2\(a\)](#)~~16.2(a)~~**.

Authorised Parking has the meaning given in **clause ~~Error! Reference source not found.~~[Error! Reference source not found.](#)**

Authorised Rollingstock means Rollingstock which is taken to be authorised Rollingstock under **clause [17.5\(c\)\(i\)](#)~~16.5(e)(i)~~** from time to time.

Authorised Rollingstock Configurations for a Train Service Type means Rollingstock Configurations for a Train Service Type which are taken to be authorised Rollingstock Configurations for that Train Service Type under **clause [17.5\(c\)\(ii\)](#)~~16.5(e)(ii)~~** from time to time.

Authority has the meaning given in the Access Undertaking.

Average Annual Payload for a Train Service Type means, at a point in time, the average of the Payloads (expressed in tonnes) for each Train Service for that Train Service Type operated from the Origin to the Destination (as recorded by a Weighbridge or Overload Detector) during the 12 month period ending at that point in time.

Authority to Travel means an authorisation issued by Aurizon Network which authorises the Operator to operate Train Services for a Train Service Type on the Nominated Network, for a specified period, using specified Authorised Rollingstock Configurations for that Train Service Type.

Billing Period means the period of a Month, except that:

- (a) the first Billing Period starts on the Commitment Date and ends on the last day of the Month in which the Commitment Date occurs; and
- (b) the last Billing Period commences on the first day of the Month during which this Deed terminates or expires and ends on the date of termination or expiry.

Business Day means a day which is not a Saturday, Sunday or public holiday in Brisbane or, if and to the extent that this Deed expressly refers to another place, in that other place.

Category 1 Reduced Operational Rights has the meaning given in **clause ~~Error! Reference source not found.~~[Error! Reference source not found.](#)**.

Category 2 Reduced Operational Rights has the meaning given in **clause ~~Error! Reference source not found.~~[Error! Reference source not found.](#)**.

Certificate of Compliance means a certification issued by a Certifier under **clause [17.5\(a\)\(vi\)](#)~~16.5(a)(vi)~~.**

Certifier means a person that Aurizon Network is reasonably satisfied is suitably qualified, experienced and competent to assess whether or not Rollingstock and Rollingstock Configurations comply with the Rollingstock Interface Standards subject to any Approved Derogations.

Change in Access Undertaking means:

- (a) any amendment to or replacement of the Access Undertaking or any successor undertaking to the Access Undertaking; or
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of an Access Undertaking resulting from a decision of a court or other Authority.

Change in Control in relation to any entity (the first mentioned entity) means:

- (a) a change in the entity that Controls the first mentioned entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change);
- (b) an entity that Controls the first mentioned entity ceases to Control that entity (other than if the Ultimate Holding Company of the first mentioned entity remains the same following the change); or
- (c) if the first mentioned entity is not Controlled, another entity acquires Control of the first mentioned entity.

Change in Law has the meaning given in the Access Undertaking, except that the reference to “Commencing Date” is replaced with “Commencement Date” (as defined under this Deed).

Change in Relevant Taxes has the meaning given in the Access Undertaking.

Charge means:

- (a) any mortgage, charge, a general or special notarial bond, pledge, hypothec or lien; or
- (b) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property.

Chargee has the meaning given in **clause ~~Error! Reference source not found.~~[Error! Reference source not found.](#)**.

Chargor has the meaning given in **clause ~~Error! Reference source not found.~~[Error! Reference source not found.](#)**.

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

Coal System has the meaning given in the Access Undertaking.

Collateral has the meaning given in the PPS Act.

Commencement Date means the date of this Deed.

Commitment Date means the earliest Train Service Commitment Date under this Deed.

Compliance Date means the earliest Train Service Compliance Date under this Deed.

Compliance Statement has the meaning given in **clause 17.3(b)**~~16.3(b)~~.

Confidential Information means the terms of this Deed and any information, data or other matter disclosed to a Recipient by or on behalf of the Discloser in relation to this Deed where:

- (a) the disclosure of the information, data or other matter by the Recipient might reasonably be expected to affect the commercial affairs of the Discloser; or
- (b) the information, data or matter is marked confidential by the Discloser when disclosed,

but excluding any such information, data or other matter which:

- (c) is already in the public domain or becomes available to the public through means other than a breach of the confidentiality undertaking by the Parties under this Deed;
- (d) was in the Recipient's lawful possession before the disclosure by the Discloser;
- (e) is received by the Recipient independently from a Third Party who is free to disclose such information, data or other matter to the Recipient; or
- (f) has ceased to retain its confidential nature, for example, where the disclosure of the information, data or other matter by the Recipient would no longer reasonably be expected to affect the commercial affairs of the Discloser.

Consequential Loss means:

- (a) any loss of revenue, loss of profits or loss of production;
- (b) any loss of whatever nature concerning the 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) any wasted overheads or demurrage;
- (f) loss of or damage to credit rating;

- (g) in respect of a breach of this Deed, loss or damage that does not naturally, according to the usual course of things, arise from the breach; and
- (h) loss or damage suffered or incurred by a Party arising out of a Claim against that Party by a Third Party, to the extent that the loss or damage would not be recoverable by the Third Party if the Party was not liable to the Third Party for “Consequential Loss” (as defined in this definition) in respect of the Claim by the Third Party,

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

- (i) any costs or expenses incurred by the Party in connection with mitigating the effects of any breach of this Deed 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 Deed) provided that if a loss arising from the breach of this Deed is itself not recoverable because it is a Consequential Loss, the costs or expenses incurred in mitigating that loss must also be treated as (non-recoverable) Consequential Loss;
- (j) 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;
 - (ii) personal injury to or death of any person; or
- (k) 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
- (l) any fines or penalties imposed by an Authority 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 this Deed, and any costs or expenses incurred by the first Party in dealing with any actions, investigations, inquiries or proceedings by an Authority in respect of such failures or breaches.

Contaminating Materials means any material, substance, gas, liquid, chemical, biological substance, mineral or other physical matter which is toxic, flammable, harmful to the Environment (including any life form) or may cause pollution, contamination, harm to the Environment or otherwise cause damage.

Control has the meaning given in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth).

Corresponding Suspension Event in respect of a Termination Event means the Suspension Event specified in the same row as that Termination Event in **schedule 8**.

Daily Train Plan means that document detailing the scheduled times for all Network Train Services operating on the Infrastructure and any Planned Possessions, Urgent Possessions and Emergency Possessions on a particular day on a specified part of the Infrastructure, in a form that indicates the

time/distance (location) relationship of all activities on that specific part of the Infrastructure.

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

Dangerous Goods Code means the following codes (as amended or replaced from time to time) or any other codes developed to replace or supplement them (from time to time):

- (a) the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (7th Edition);
- (b) the *Australian Code for the Transport of Explosives by Road and Rail* (3rd Edition); and
- (c) the *Code of Practice for the Safe Transport of Radioactive Material* (2008 Edition).

Deed means this document, including the schedules and annexures to it.

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

- (c) 2%; and
- (d) 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 trading day of the previous Month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an Expert under **clause 30.329.3**).

Depot for a Train Service Type means a depot, as specified in the Train Description for that Train Service Type.

Destination for a Train Service Type means the destination specified as such in the Train Description for that Train Service Type.

Discloser means a Party that discloses Confidential Information to the other Party.

Discretionary System Amendment has the meaning given in **clause 18.1(a)(iii)17.1(a)(iii)**.

Dispute has the meaning given in **clause 30.129.1**.

Dispute Notice has the meaning given in **clause 30.129.1**.

Disputed Aspect has the meaning given in **clause Error! Reference source not found.Error! Reference source not found.**

Effective Date has the meaning given in the Access Agreement.

Emergency Possession has the meaning given in the Access Undertaking.

Emergency Response Plan has the meaning given in **clause 15.1(a)(i)(B)14.1(a)(i)(B)**.

Emergency Procedures means the procedures developed and advised by Aurizon Network from time to time (as varied by Aurizon Network in accordance

with this Deed) for dealing with a Network Incident including all actions to be taken to prevent, mitigate or remedy any risks to the safety of persons, to property or to the Environment.

Environment has the meaning given in the Environmental Protection Act.

Environmental Authorities means:

- (a) a “development approval” or “registration certificate” for a chapter 4 activity or an “environmental authority”, as those terms are defined under the Environmental Protection Act; or
- (b) any approval (however described) which is deemed by the Environmental Protection Act to be a “development approval”, “registration certificate” or “environmental authority” referred to in **paragraph (a)** of this definition.

Environmental Harm has the meaning given in the Access Undertaking.

Environmental Incident means any:

- (a) release, spillage or leakage of any Contaminating Materials; or
- (b) any incident which results in Environmental Harm.

Environmental Law has the meaning given in the Access Undertaking.

Environmental Management Plan has the meaning given in **clause [15.1\(g\)](#)~~14.1(g)~~**.

Environmental Protection Act means the *Environmental Protection Act 1994* (Qld).

Environmental Regulator means, in respect of an Environmental Law, the Authority administering that Environmental Law.

Environmental Risks means all risks to the Environment arising or potentially arising from the Operator’s Activities in connection with this Deed (including risks associated with the environmental management matters identified as part of an Interface Risk Assessment).

Expert has the meaning given in **clause [30.3](#)~~29.3~~**.

Expiry Date means the latest Train Service Expiry Date under this Deed.

FM Access Rights means the Access Rights for each Train Service Type which cannot be made available by Aurizon Network for the Operator to operate Train Services due to damage to, or the destruction of, a part of the Nominated Network referred to in **clause [31.6\(a\)](#)~~30.6(a)~~** (assuming that part of the Nominated Network will not be repaired or replaced).

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

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

and, provided that the requirements in paragraphs (a) and (b) of this definition are satisfied, includes:

- (c) compliance with a lawful requirement, order, demand or direction of an Authority or an order of any court having jurisdiction other than where that

requirement, order, demand or direction results from any act or omission of the affected Party;

- (d) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the affected Party is a party to such industrial action or would be able to influence or procure the settlement of such industrial action;
- (e) act of God;
- (f) war, invasion, terrorist act, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (g) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (h) malicious damage or sabotage;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (j) failure of electricity supply from the electricity grid;
- (k) delay, restraint, restriction, embargo or other material adverse effect arising from any act or omission of any Authority;
- (l) fire, flood, storm surge, cyclone, tornado, earthquake, washaway, landslide, explosion, severe weather conditions or other catastrophe or natural calamity;
- (m) epidemic or quarantine restriction; and
- (n) delay of a supplier due to any of the foregoing whether any such cause of delay exists before or after the Commencement Date.

Former Interface Risk Provisions has the meaning given in **clause ~~Error!~~ Reference source not found.**[Error! Reference source not found.](#)

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

GST has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Incident means any Network Incident involving the Activities of the Operator.

Incident Commander means a member of Aurizon Network's Staff who has been delegated responsibility for the direction and coordination of Aurizon Network's and the Operator's resources in the performance of their respective roles and tasks at the site of an Incident, recording events during the course of an Incident and liaison with Authorities.

Indicative Tonnage for a Train Service Type means the tonnage as specified as such in the Train Description for that Train Service Type.

Infrastructure has the meaning given to the term "Rail Infrastructure" in the Access Undertaking.

Infrastructure Enhancement has the meaning given in the Access Undertaking.

Infrastructure Lease means any lease or sublease to Aurizon Network of any Infrastructure which forms part of the Nominated Network.

Infrastructure Lessor means any lessor or sublessor under an Infrastructure Lease.

Infrastructure Service Providers has the meaning given in the Access Undertaking.

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

- (a) it is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to pass a resolution to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 10 Business Days or the resolution fails to pass;
- (c) an application is made to a court for it to be wound up and the application is not dismissed within 10 Business Days after it is made;
- (d) the appointment of a liquidator, provisional liquidator or controller (as defined in the Corporations Act) of any of its assets if that appointment is not revoked within 10 Business Days after it is made;
- (e) it resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement; or
- (f) any similar event occurs in respect of the Party under the laws of any jurisdiction other than Australia.

Interface Coordination Arrangements means the plan set out in **schedule 9** as updated from time to time which identifies the procedures to be followed and the responsible officers from each Party, in respect of all regular operational interfaces between the Parties that arise in the exercise by the Parties of their respective rights and the performance of their respective obligations under this Deed other than those specified in the Network Management Principles.

Interface Representative has the meaning given in **clause 24.3(a)23.3(a)**.

Interface Risk Assessment has the meaning given in the Access Undertaking.

Interface Risk Management Plan or **IRMP** has the meaning given in the Access Undertaking.

Interface Risk Provisions means:

- (a) the provisions of the Access Undertaking which include the details of:
 - (i) the Interface Risks, the Interface Risk Assessment and the IRMP (which, as at the Commencement Date, is Schedule C of the Access Undertaking); and
 - (ii) the Environmental Management Plan (which, as at the Commencement Date, is Schedule C of the Access Undertaking);

and

- (b) any other provisions of the Access Undertaking which affect or relate to the Interface Risks, the Interface Risk Assessment, the IRMP and the Environmental Management Plan.

Interface Risks means all risks to the safety of persons or property arising or potentially arising from the interaction between the Operator's Activities in connection with this Deed and:

- (a) the Infrastructure;
- (b) any Land;
- (c) Activities on the Infrastructure or any Land (including other Network Train Services); or
- (d) persons on, using or near the Infrastructure or any Land.

Investigation means an investigation conducted in accordance with the Investigation Procedures.

Investigation Procedures means the procedures in relation to investigations which are:

- (a) specified in Aurizon Network's document entitled *Incident Report and Investigations* which is published on the Website (as amended and replaced from time to time); and
- (b) as far as practicable, applied consistently for all Railway Operators operating Network Train Services in the same Coal System.

Land means any:

- (a) parcel of land on, under or above which the Infrastructure is situated;
- (b) Aurizon Network Land; and
- (c) Third Party Land.

Law has the meaning given in the Access Undertaking.

Loading Facility for a Train Service Type means the loading facility located at the ultimate origin for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Maintenance Work has the meaning given in the Access Undertaking.

Major Periodic Maintenance has the meaning given in the Access Undertaking.

Material Change means a:

- (a) Change in Law;
- (b) Change in Access Undertaking; or
- (c) matter deemed to be a Material Change under **clause [39.17\(d\)](#)~~38-17(e)~~**.

Maximum Allowable Gross Tonnage means the maximum allowable gross tonnage for a Wagon, other Rollingstock or Train as specified in an Authority to Travel or a Train Route Acceptance.

Maximum Desirable Gross Tonnage means the maximum desirable gross tonnage for a Wagon, other Rollingstock or Train as specified in an Authority to Travel or a Train Route Acceptance.

Maximum Gross Mass means the maximum gross mass for the Wagon or other Rollingstock as specified in **schedule** ~~Error! Reference source not found.~~[Error! Reference source not found.](#).

Maximum Other Dwell Times for a Train Service Type means the maximum Other Dwell Times for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Payload for a Train Service Type means the maximum Payload for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Sectional Running Time for a Section for a Train Service Type means the maximum Sectional Running Times for Train Services for that Train Service Type operating on that Section as specified as such in the Train Description for that Train Service Type.

Maximum SRT means the sum of Maximum Sectional Running Time for all relevant Sections for the relevant Train Service Type except if it is the first or last movement of the relevant Train Service where the time to start and stop the Train Service is included (as specified in **appendix A** to **schedule 2** for the relevant Train Service Type).

Maximum Time at Depot for a Train Service Type means the maximum Time at Depot for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Loading Facility for a Train Service Type means the maximum Time at Loading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Maximum Time at Unloading Facility for a Train Service Type means the maximum Time at Unloading Facility for Train Services for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Month means calendar month.

Net Financial Effect on a Party of an event or circumstance means the net effect in financial terms of the occurrence of the event or circumstance on the Party in relation to performing its obligations and exercising its rights under this Deed including any increases in costs (whether capital or operating, fixed or variable) and other detriments incurred, or to be incurred, by the Party but deducting the amount of any savings or other benefits or advantages received, or to be received, by the Party, and on the basis that the Party uses reasonable endeavours to mitigate the net effect of the event or circumstance.

Network Incident has the meaning given in the Access Undertaking.

Network Interface Point means a location at which the Infrastructure meets an Adjoining Network.

Network Management Principles has the meaning given in the Access Undertaking.

Network Train Service means the running of a Train between specified origins and destinations by a Railway Operator (including any Stowage) on the Infrastructure.

New Authorisation has the meaning given in **clause 17.616.6**.

New Interface Risk Provisions has the meaning given in **clause Error! Reference source not found.**

Noise Code means:

- (a) unless and until a code of practice, guideline or other standard in relation to the management of railway noise (however described and whether or not a Law) is published by an Authority, the *CQCN Noise Management Guideline*; or

[AN Note: the QR Code of Practice has been repealed. It is now the CQCN Noise Management Guideline]

- (b) if a code of practice, guideline or other standard referred to in **paragraph (a)** of this definition is published by an Authority, that document.

Noise Levels means the levels for railway noise specified in the Noise Code.

Nominal Payload for a Train Service Type means the nominal Payload for that Train Service Type as specified as such in the Train Description for that Train Service Type.

Nominated Monthly Operational Rights for a Train Service Type means the number of Train Services for that Train Service Type that the Operator is entitled to operate during any Month:

- (a) in the case of a Month that is 30 days, as specified in the Train Description for that Train Service Type; and
- (b) in the case of a Month that is longer or shorter than 30 days, a pro rata portion of the number of Train Services referred to in **paragraph (a)** of this definition (rounded to the nearest even number of whole Train Services provided that where the pro rata portion of the number of Train Services is a whole odd number, the number of Train Services will be rounded up to the nearest even number) to reflect the longer or shorter period,

as varied in accordance with this Deed.

Nominated Monthly Train Services has the meaning given in the Access Agreement.

Nominated Network means that part of the Infrastructure described in **item 1 of schedule 33**.

Nominated Network FM Reduction Notice has the meaning given in the Access Agreement.

Non-Charging Party has the meaning given in **clause Error! Reference source not found.**

Notice has the meaning given in **clause 38.1(a)37.1(a)**.

Notice of Intention has the meaning given in **clause 1**.

Obstruction means any circumstance relating to the whole or any part of the Infrastructure, including Rollingstock, debris or other objects on the Infrastructure, which has the potential to cause a disruption to or cancellation of Train Services or Train Movements, and includes any Network Incident but does not include an Operational Constraint imposed by Aurizon Network.

Operating Document means each of the following as in force from time to time:

- (a) this Deed;
- (b) the System Wide Requirements;
- (c) the IRMP;
- (d) the Operating Plan; and
- (e) each Authority to Travel and Train Route Acceptance issued by Aurizon Network to the Operator in respect of the operation of Train Services for a Train Service Type.

Operating Plan has the meaning given in **clause ~~15.1(a)(i)(A)~~14.1(a)(i)(A)**.

Operational Constraint has the meaning given in the Access Undertaking.

Operational Rights means the rights to operate Train Services on the Nominated Network granted to the Operator pursuant to this Deed.

Operator's Controller means the person for the time being nominated in that position pursuant to **item 1.2(h) of schedule 9**.

Operator's Incident Response Coordinator means the person appointed pursuant to **item 3.1 of schedule 9**.

Operator's Recovery Team Leader means the person appointed pursuant to **item 3.2 of schedule 9**.

Operator's Representative means the person for the time being appointed pursuant to **item 2.2(a) of schedule 9**.

Operator's Safety Management System has the meaning given in **clause ~~24.4~~23.4**.

Operator's Staff means the employees, contractors, volunteers and agents of the Operator and any other person under the control or supervision of the Operator involved in any Activity associated with the Train Services.

Origin for a Train Service Type means the origin specified as such in the Train Description for that Train Service Type.

Other Dwell Times means, for any other permitted Activity, the time period commencing when a Train Service arrives at the specified point for that Activity and ending when it is ready to depart from that point and the relevant Train Controller has been advised accordingly.

Overload Detector means a weighing mechanism other than a Weighbridge and specified in **item 5.2 of schedule 33**.

Party means a party to this Deed, and **Parties** means the parties to this Deed. For the avoidance of doubt, the Access Holder is not a party to this Deed.

Passenger Priority Obligations has the meaning given in the Access Undertaking.

Payload of a Train Service means the weight of product loaded onto any Train used by the Operator in operating that Train Service.

Performance Levels means the performance levels which apply to the performance by the respective Parties of their obligations under this Deed are set out in **schedule 5**.

Plan means a plan developed and approved in accordance with the process outlined in **clause 1514**.

Planned Dwell Times means each of Time at Loading Facility, Time at Unloading Facility, Time at Depot and Other Dwell Times specified in the Train Schedule.

Planned Possession has the meaning given in the Access Undertaking.

Possession has the meaning given in the Access Undertaking.

Possession Protocols means the protocols developed and advised by Aurizon Network from time to time (as varied in accordance with this Deed) for managing and scheduling Possessions.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Queensland Competition Authority or **QCA** means the Authority established under the *Queensland Competition Authority Act 1997* (Qld).

Rail Safety Act means the *Transport (Rail Safety) Act 2010* (Qld).

Rail Safety Regulator means the chief executive of the department administering the Rail Safety Act.

Railway Operator has the meaning given in the Access Undertaking.

Recipient means a Party that receives Confidential Information from the Discloser.

Recovery means action to be taken in respect of any derailed, malfunctioning or immobilised Rollingstock for which the Operator is responsible to enable prompt recommencement of Train Movements, but does not include the Retrieval of such Rollingstock.

Reduced Operational Rights has the meaning given in **clause 10.3(c)(iv)(A)(1)**.

Reference Tariff has the meaning given in the Access Undertaking.

Reference Tariff Provisions means:

- (a) the schedule of the Access Undertaking which includes the Reference Tariffs and the details of the application of the Reference Tariffs for a particular Reference Train Service (which, as at the Commencement Date, is Schedule F of the Access Undertaking); and
- (b) any other provisions of the Access Undertaking which affect or relate to the application or calculation of Reference Tariffs or access charges (including any TOP Charge).

Reference Train Service has the meaning given in the Access Undertaking.

Regenerative Brake means an energy recovery system installed on Rollingstock which slows the Rollingstock by converting its kinetic energy into

electrical energy, which can then be returned to the overhead electric traction system.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Collateral means Collateral which is the subject of a Security Interest granted under this Deed.

Relevant Rollingstock means any Rollingstock of the Operator with a minimum value of \$1 million and which has been specified as Relevant Rollingstock in **schedule 4**.

Required Information means any information in relation to any Operator's Staff engaged in Safety Related Work on the Infrastructure that Aurizon Network considers is reasonably required to be known by Aurizon Network to comply with its Accreditation and a Law.

Restoration means the removal of any Obstruction on the Infrastructure, the rectification of any Incident and the prompt recommencement of Train Movements including all requisite repairs to the Infrastructure, but does not include Recovery or Retrieval.

Retrieval means the subsequent removal of Rollingstock, from the Infrastructure and Land, following the Recovery of such Rollingstock.

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

Rollingstock Configuration has the meaning given in the Access Undertaking.

Rollingstock Interface Standards has the meaning given in the Access Undertaking.

Rollingstock Interface Standards Risk Assessment means, in respect of any Rollingstock or Rollingstock Configurations for a Train Service Type used, or proposed to be used, by the Operator in the operation of Train Services on the Nominated Network, means an assessment to:

- (a) for each non-compliance with the Rollingstock Interface Standards specified in a Compliance Statement for the Rollingstock or Rollingstock Configurations, identify all reasonably foreseeable Interface Risks and Environmental Risks arising from each non-compliance;
- (b) assess:
 - (i) the likelihood of those Interface Risks and Environmental Risks occurring;
 - (ii) the consequences (including commercial consequences) of those Interface Risks and Environmental Risks occurring; and
 - (iii) whether those Interface Risks and Environmental Risks can be effectively managed and, if so, any factors relevant to the effective management of those Interface Risks and Environmental Risks; and
- (c) if those Interface Risks and Environmental Risks can be effectively

managed by complying with appropriate measures, identify the measures to be complied with in respect of such Rollingstock or Rollingstock Configurations to effectively manage those Interface Risks and Environmental Risks within a risk management framework.

Safety Law means a Law relating to the safety of persons or property, including the Rail Safety Act and the *Work Health and Safety Act 2011* (Qld).

Safety Regulator means, in respect of a Safety Law, the Authority administering that Safety Law.

Safety Related Work means:

- (a) “rail safety work” as defined under the Rail Safety Act; and
- (b) any other work notified by Aurizon Network to the Operator as safety related work.

Safety Standards means the:

- (a) standards relating to safety, including work health and safety, established in published guidelines, industry practice or Aurizon Network policies specified in Aurizon Network’s document entitled *Safety Standards* notified by Aurizon Network to the Operator (as amended and replaced from time to time); and
- (b) standards relating to safety, including work health and safety, prescribed by any Law.

Safeworking Procedures means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of worksites on the Infrastructure specified in Aurizon Network’s document entitled *Safeworking Procedures* as:

- (a) notified by Aurizon Network to the Operator; or
- (b) published on the Website,

(as amended and replaced from time to time).

Scheduled Time means the time of arrival or departure for a Train Movement at specified locations on the Nominated Network as set out in the Train Schedule or as amended by Aurizon Network from time to time on the day of operation in accordance with the Network Management Principles.

Schedules means the schedules attached to this Deed.

Section means a section of Track between two locations on the Nominated Network as shown in the diagram(s) in **schedule 33**.

Sectional Running Times means the time period measured from the time a Train Service passes the signal controlling entry into a Section until the time the Train Service arrives at the signal controlling entry into the next adjoining Section or the Adjoining Network (as applicable), and does not include an allowance for Planned Dwell Times.

Security Interest has the meaning given in **clause 39.20(a)**~~38.20(a)~~.

Signalling and Telecommunications Equipment means all electronic, electrical and other equipment, including signalling systems, safety devices and communications facilities, installed on or as part of the Infrastructure or on

Rollingstock, for the purpose of compliance with Safeworking Procedures and to facilitate Train Control.

Staff means Aurizon Network's Staff or the Operator's Staff (as applicable).

State means the State of Queensland.

Stowage has the meaning given in the Access Undertaking.

Supplier has the meaning given in **clause 35.334.3**.

Supply Chain Rights has the meaning given in the Access Agreement.

Suspension Event means any event or circumstance specified as such in **schedule 8**.

Suspension Notice has the meaning given under **clause 32.131.4, 32.231.2, 32.331.3 or 32.431.4**.

System Operating Parameters has the meaning given in the Access Undertaking.

System Rules has the meaning given in the Access Undertaking.

System Wide Requirements means the Possession Protocols, the Interface Coordination Arrangements, the Rollingstock Interface Standards, the Safeworking Procedures, the Safety Standards, the Emergency Procedures and the Investigation Procedures.

Tare Weight means the tare weight for a Wagon or other Rollingstock as specified in **Schedule 4**.

Term means the term of this Deed in accordance with **clause 2.1**.

Termination Event means any event or circumstance specified as such in **schedule 8**.

Third Party means a person other than the Operator or Aurizon Network.

Third Party Land has the meaning given in **clause 39.17(a)38-17(a)**.

Through-Running Train Service Type means a Train Service Type that has a Destination and/or Origin that is a Network Interface Point that is specified as such in the Train Description for that Train Service Type.

Time at Depot means the time period commencing when a Train Service arrives at the entry signal for a Depot and ending when it is ready to depart the Depot and the relevant Train Controller has been advised accordingly.

Time at Loading Facility means the time period commencing when a Train Service arrives at the entry signal for a Loading Facility and ending when it presents at the exit signal for the Loading Facility, is ready to depart the Loading Facility and the relevant Train Controller has been advised accordingly.

Time at Unloading Facility means the time period commencing when a Train Service arrives at the entry signal for an Unloading Facility and ending when it presents at the exit signal for the Unloading Facility, is ready to depart the Unloading Facility and the relevant Train Controller has been advised accordingly.

Track has the meaning given in the Access Undertaking.

Train has the meaning given in the Access Undertaking.

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

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

Train Control Direction means any instruction or direction (whether given orally or in writing or by means of signal or other similar device) issued by or on behalf of Aurizon Network acting reasonably relating to Train Movements.

Train Controller means the person nominated by Aurizon Network from time to time as the supervisor of Train Movements on the relevant part of the Nominated Network, and whose details are initially specified in **item 1.1 of schedule 9**.

Train Description for a Train Service Type means the description of, specifications for, and constraints on, the Access Rights for that Train Service Type specified in **schedule 22**.

Train List means the information required to be supplied by the Operator in accordance with **item 1.2(b)(vi) of schedule 9** in respect of each individual Train Service to be operated on the Nominated Network.

Train Movement has the meaning given in the Access Undertaking.

Train Operator has the meaning given in the Access Undertaking.

Train Route Acceptance means an authorisation issued by Aurizon Network which authorises the Operator to operate Train Services for a Train Service Type on the Nominated Network using specified Authorised Rollingstock Configurations for that Train Service Type.

Train Schedule means the train diagrams, yard schedules, terminal schedules and any other form of train timetable prepared by Aurizon Network before the day of operation in accordance with the Network Management Principles showing the programmed times of arrival or departure for Train Movements at specified locations on the Infrastructure.

Train Service for a Train Service Type means the running by the Operator, of a Train in one direction from the Origin to the Destination, or from the Destination to the Origin, for that Train Service Type (including any Stowage) in accordance with the Train Description for that Train Service Type.

Train Service Commitment Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Compliance Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Expiry Date for a Train Service Type means the date specified as such in the Train Description for that Train Service Type.

Train Service Type means each type of train service specified as such in [schedule 22](#).

Transport Infrastructure Act means the *Transport Infrastructure Act 1994* (Qld).

Ultimate Holding Company has the meaning given in the Corporations Act.

Unloading Facility for a Train Service Type means the unloading facility located at the ultimate destination for that Train Service Type (whether located on the Nominated Network, an Adjoining Network or otherwise), as specified in the Train Description for that Train Service Type.

Unreasonable in respect of an IRMP, or any aspect of or amendment to an IRMP, determined by Aurizon Network under clause [15.1\(c\)\(iii\)](#) ~~14.1(e)(iii)~~ means no reasonable person in the position of Aurizon Network could have made that determination.

Urgent Possession has the meaning given in the Access Undertaking.

Wagon means any rollingstock (including a wagon bogie) designed to carry any load other than passengers.

Website has the meaning given in the Access Undertaking.

Weighbridge means a weighbridge or weightometer verified under the *National Measurement Act 1960* (Cth), as specified in [item 5.1](#) of [schedule 33](#).

Year means each year commencing on 1 July and ending on 30 June during the Term and, if applicable, includes:

- (a) the shorter period commencing on the first day of the Month in which the Commitment Date occurs and ending on the next 30 June; and
- (b) the shorter period commencing on the 1 July occurring prior to the date of expiration or termination of this Deed and ending on the date of expiration or termination of this Deed.

1.2 Interpretation

In this Deed, unless expressed to the contrary:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it; and
- (e) a reference to:
 - (i) a person includes a partnership, unincorporated association, corporation or other entity, government or statutory body;
 - (ii) a person includes its legal personal representative, successors and assigns;

- (iii) conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (iv) conduct includes a benefit, remedy, discretion, authority or power;
- (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (vi) the words "include", "includes" or "including" must be read as if they are followed by the words "without limitation";
- (vii) writing includes:
 - (A) any mode of representing or reproducing words in tangible and permanently visible form, including fax transmission; and
 - (B) words created or stored in any electronic medium and retrievable in perceivable form;
- (viii) time is to local time in Brisbane, Queensland;
- (ix) "A\$", "\$" or "dollars" is a reference to the lawful currency of Australia;
- (x) this or any other document or agreement includes the document or agreement as novated, amended or replaced from time to time and despite any changes in the identity of the parties;
- (xi) anything (including any amount) is a reference to the whole or part or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (xii) under a clause includes in accordance with that clause;
- (xiii) a clause or schedule is a reference to a clause or schedule (as applicable) in this Deed;
- (xiv) any legislation or any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (xv) any code, guideline, recommendation or policy, or any provision of any code, guideline, recommendation or policy, includes any modification of it, or the substitution of it or any of its provisions for others, unless otherwise specified or directed by Aurizon Network;
- (xvi) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body is transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body; and
- (xvii) access or access rights does not include rights granted by Aurizon Network to a Railway Operator under a train operations deed.

1.3 References to descriptors of Train Service Types

In this Deed, references to any descriptor of a Train Service or a Train Service Type (for example, 'Destination', 'Loading Facility', 'Nominated Monthly Train Services', 'Origin' and 'Unloading Facility') is to that descriptor as applicable to that particular Train Service or Train Service Type.

1.4 Material published on the Website

For the avoidance of doubt, material published on the Website includes material which is available to the Operator via secured, password-protected online access to the Website.

1.5 Headings

Headings do not affect the interpretation of this Deed.

1.6 Words and expressions defined in Access Undertaking

- (a) Subject to **clause 1.6(b)**, if a word or expression is defined in this Deed to have the meaning given in the Access Undertaking, then it will have the meaning given in the Access Undertaking in force as at the date of this Deed.
- (b) If a word or expression used in the Interface Risk Provisions which form part of this Deed under **clause 3** is defined in the Access Undertaking, then, it will have the meaning given in the Access Undertaking in force on the date the relevant Interface Risk Provisions commenced to form part of this Deed under **clause 3.1** or **3.2** (as applicable).

1.7 Inconsistency

- (a) If there is any inconsistency between the substantive terms of this Deed (comprising **clauses 1** to **3938**) and the schedules of this Deed, the substantive terms of this Deed prevail to the extent of the inconsistency.
- (b) If there is any inconsistency between matters contained in the Access Undertaking (as amended by any Change in Access Undertaking) and this Deed, the provisions of this Deed prevail to the extent of the inconsistency unless expressly provided to the contrary.

2 Term

2.1 Term

This Deed commences on the Commencement Date and, unless earlier terminated in accordance with its terms, continues until the Expiry Date.

3 Access Undertaking

3.1 Incorporation

- (a) The Parties agree that, for the purposes of the Access Undertaking, the Operator is considered a Train Operator or a Railway Operator (as applicable).
- (b) Subject to **clause 3.2**, the Interface Risk Provisions (as in force as at the Commencement Date) form part of this Deed as if they were set out in full under this Deed.

- (c) For the avoidance of doubt, despite any other provision in the Access Undertaking:
 - (i) **clause 28~~27~~** applies to any Claim in respect of a breach of the Interface Risk Provisions which form part of this Deed under this **clause 3**; and
 - (ii) **clause 30~~29~~** applies in respect of any Dispute between the Parties in respect of any right or obligation (or in respect of the enforcement) of Interface Risk Provisions which form part of this Deed under this **clause 3**.

3.2 Changes in Access Undertaking

- (a) If there is a Change in Access Undertaking at any time which changes the Interface Risk Provisions, then this **clause 3.2** applies.
- (b) A Party (**Notifying Party**) may, within 20 Business Days from the date of the Change in the Access Undertaking (or such longer period as the Parties may agree) notify (**Amendment Notice**) the other Party (**Receiving Party**):
 - (i) that it elects to amend this Deed to replace the Interface Risk Provisions which form part of this Deed under **clause 3.1(b)** or this **clause 3.2 (Former Interface Risk Provisions)** with the Interface Risk Provisions as changed by the Change in Access Undertaking (**New Interface Risk Provisions**);
 - (ii) of any other changes to the other terms of this Deed (if any) which the Notifying Party requires as a consequence of, or to give full effect to the replacement of the Former Interface Risk Provisions with the New Interface Risk Provisions under this **clause 3.2**; and
 - (iii) of the date from which the changes become effective (and if any changes become effective from different dates, the dates applicable to each change) which must be on or after the date on which the Change in Access Undertaking became effective (**Change Date(s)**).
- (c) An Amendment Notice must include an amended version of this Deed, with the changes referred to in **clause 3.2(b)(i)** clearly identified.
- (d) Promptly following receipt of an Amendment Notice, the Receiving Party must notify the Notifying Party the extent to which the Receiving Party accepts or does not accept the drafting of the amendments to the terms of this Deed proposed in the Amendment Notice in accordance with **clause 3.2(b)(ii)**.
- (e) If the Receiving Party does not accept the drafting of the amendments to the terms of this Deed, then the Parties must promptly meet to negotiate and attempt to agree the changes to the terms of this Deed (if any) which are necessary as a consequence of, or to give full effect to, the replacement of the Former Interface Risk Provisions with the New Interface Risk Provisions under this **clause 3.2**.
- (f) If the Parties do not agree the amendments in respect of the matters outstanding under **clause 3.2(f)** by the Change Date(s), the matter must be referred to the QCA for determination in accordance with the

provisions of the Access Undertaking which provide for determination of disputes by the QCA.

- (g) On and from the Change Date(s) (or such other time as the QCA may determine):
 - (i) the New Interface Risk Provisions will form part of this Deed as if set out in full in this Deed;
 - (ii) the Former Interface Risk Provisions will cease to form part of this Deed; and
 - (iii) amendments to the terms of this Deed:
 - (A) accepted under **clause 3.2(d)**;
 - (B) agreed under **clause 3.2(e)**; or
 - (C) determined by the QCA under **clause 3.2(f)**,become effective.
- (h) Within 10 Business Days from the date that amendments to the terms of this Deed are accepted, agreed and/or determined (as applicable) under this **clause 3.2**, Aurizon Network must prepare and send to the Operator a copy of this Deed as modified.

4 Operational Rights

4.1 Grant of Operational Rights

On and from the Train Service Commitment Date for each Train Service Type until the Train Service Expiry Date for that Train Service Type, Aurizon Network grants, and must provide, to the Operator the Operational Rights for that Train Service Type in accordance with the Train Description on the terms and conditions of this Deed.

4.2 Nature and scope of Operational Rights

- (a) The Operational Rights granted under **clause 4.1** are non-exclusive contractual rights and do not give the Operator any right, title or interest of any proprietary nature in the Nominated Network.
- (b) The Operator must not:
 - (i) operate on, or use any part of, the Infrastructure that is not specifically included in the Nominated Network; or
 - (ii) use the Nominated Network for:
 - (A) carrying out any provisioning, inspection, testing or maintenance of Rollingstock;
 - (B) any marshalling, shunting or other relocation of Rollingstock;
 - (C) storage of Rollingstock; or
 - (D) any purpose other than the operation of Train Services,unless otherwise expressly:
 - (iii) permitted or required to do so under this Deed;
 - (iv) directed to do so by Aurizon Network in accordance with this Deed;

or

- (v) expressly permitted under another agreement with Aurizon Network.

4.3 Operation of Ad Hoc Train Service

- (a) If:
 - (i) the Access Holder (or the Operator at the request of the Access Holder) notifies Aurizon Network under the Access Agreement that it wishes to have the Operator operate an Ad Hoc Train Service; and
 - (ii) the Operator notifies Aurizon Network that it is able and willing to operate an Ad Hoc Train Service for a Train Service Type at the request of the Access Holder,then, to the extent permitted by the Network Management Principles, Aurizon Network:
 - (iii) must if required in accordance with clause 5.4(c) of Schedule G of the Access Undertaking; or
 - (iv) otherwise must use reasonable endeavours to, schedule the Ad Hoc Train Service for the Train Service Type in the Daily Train Plan.
- (b) On and from the time that the Ad Hoc Train Service is scheduled in the Daily Train Plan, the terms and conditions of this Deed apply to the Ad Hoc Train Service as if the Ad Hoc Train Service is a Train Service for the Train Service Type which the Operator is entitled to operate under this Deed.

5 Ancillary Services

In consideration of the Operator paying the Ancillary Services Charge, Aurizon Network must provide the Operator with the Ancillary Services (if any) in accordance with **schedule 10**.

6 Nomination of the Operator

6.1 Nomination

If at any time the Access Holder nominates the Operator in respect of all or part of the Access Holder's Access Rights, in accordance with the Access Agreement, then Aurizon Network must promptly provide to the Operator:

- (a) if not already provided by the Access Holder, a copy of the Access Agreement;
- (b) replacement Schedules (as relevant) amended to be consistent with the Access Holder's nomination of the Operator; and
- (c) details of the date on which those replacement Schedules take effect being the date Aurizon Network notifies the Access Holder under the Access Agreement that it accepts the Operator's nomination,

and this Deed is varied in accordance with those replacement Schedules with

effect on and from the date referred to under **clause 6.1(c)**.

6.2 Multiple Access Agreements

The Operator may not be nominated under more than one Access Agreement for the purposes of this Deed.

6.3 Variation of nomination of the Operator

- (a) If at any time:
- (i) the Access Holder notifies, or is deemed to have notified, Aurizon Network of a variation to the nomination of the Operator by the Access Holder in accordance with the Access Agreement; or
 - (ii) the Access Holder withdraws, or is deemed to have withdrawn, the Access Holder's nomination of the Operator under the Access Agreement (or this Deed),
- then:
- (iii) Aurizon Network must promptly provide to the Operator:
 - (A) a copy of the Access Holder's notice or withdrawal or, if no such notice or withdrawal has been given, details of the circumstances supporting the deeming of the notice or withdrawal;
 - (B) replacement Schedules (as relevant) amended consistent with the Access Holder's notice or withdrawal or deemed notice or withdrawal; and
 - (C) the date on which those replacement Schedules take effect; and
 - (iv) this Deed is varied in accordance with those replacement Schedules with effect on and from the date referred to under **clause 6.3(a)(iii)(C)**.
- (b) The Access Holder is deemed to have withdrawn its nomination of the Operator if the Access Agreement is terminated or expires.

7 Interaction of rights

- (a) The Parties acknowledge and agree that:
- (i) the Access Holder has contracted directly with Aurizon Network under the Access Agreement for the Access Rights:
 - (A) on the basis that the Access Rights will be used by one or more persons (such as the Operator) under agreements (such as this Deed) for the benefit of the Access Holder; and
 - (B) as such, the Access Holder has no direct above rail operational responsibilities in relation to Train Services for the Access Holder (unless it is also an "Operator" as defined in the Access Agreement); and
 - (ii) the Operator will have above rail operational obligations in respect of the Train Services that will be operated by it for the Access Holder.

- (b) The Operator has no right to renew, transfer (subject to **clauses 34.233.2** and **34.333.3**), vary or relinquish to Aurizon Network any part of the Operational Rights, whether under this Deed or the Access Undertaking. The right to seek a renewal, transfer, variation or relinquishment of Access Rights is solely a right of the Access Holder.

8 Billing and payments

8.1 Charges

The Operator must pay to Aurizon Network the Ancillary Services Charges and any other charges (if any) as calculated in accordance with this Deed.

8.2 Invoicing

- (a) As soon as reasonably practicable after the end of each Billing Period, Aurizon Network must give to the Operator an invoice for:
 - (i) the Ancillary Services Charges for that Billing Period; plus
 - (ii) any amounts payable but unpaid by the Operator to Aurizon Network under this Deed, and which have not previously been invoiced, as at the end of the Billing Period.
- (b) If **clause 8.6** applies, Aurizon Network must give the Operator an invoice under **clause 8.2(a)** after the end of a Billing Period even if no amount is required to be invoiced under **clause 8.2(a)** for that Billing Period.
- (c) Each invoice given under this **clause 8.2** must be accompanied by reasonable details of Aurizon Network's calculation of the amounts claimed in the invoice, including an itemised description of any other amounts (for the amounts deducted under **clause 8.6**, particulars must include the amounts against which the deduction is applied).

8.3 Payment

Subject to **clause 8.4**, the Operator must:

- (a) pay to Aurizon Network the amount claimed in an invoice given under **clause 8.2** within 10 Business Days after the invoice is given to the Operator; and
- (b) pay all amounts payable to Aurizon Network under this Deed:
 - (i) in Australian currency; and
 - (ii) by:
 - (A) direct deposit into the one or more bank account notified by Aurizon Network to the Operator in the invoice for this purpose (whether or not those bank accounts are in the name of Aurizon Network); or
 - (B) such other payment method as Aurizon Network specifies in the invoice (acting reasonably).
- (c) Any payment by the Operator of an amount payable under this Deed in accordance with this **clause 8.3** is taken to be a payment of such amount to Aurizon Network for the purpose of this Deed (whether or not such amount is paid into a bank account in the name of Aurizon Network).

8.4 Disputes

- (a) Any Disputes in connection with an amount claimed in an invoice:
- (i) must be resolved in accordance with **clause 30.29**; and
 - (ii) which is not resolved in accordance with **clause 30.29.2**, may be referred by either Party to an Expert for determination in accordance with **clause 30.329.3**.
- (b) Despite **clause 8.4(a)**, if an amount claimed in an invoice given by Aurizon Network is Disputed, the Operator must pay to Aurizon Network:
- (i) the portion of the amount claimed in the invoice that is not in Dispute; and
 - (ii) 50% of the portion of the amount claimed in the invoice that is in Dispute,
- within the time specified in **clause 8.3(a)**.
- (c) Upon resolution of any Dispute about an amount claimed in an invoice given by Aurizon Network, if the total amount which Aurizon Network was entitled to claim in the invoice (as resolved) is:
- (i) more than the amount paid by the Operator, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.5** (from the date when the amount in Dispute would have been due and payable under **clause 8.3(a)** but for **clause 8.4(b)**, until the date on which the difference, together with any interest, has been paid in full), must be paid by the Operator to Aurizon Network within 20 Business Days after the resolution of the Dispute; or
 - (ii) less than the amount paid by the Operator, then the amount of the difference, together with interest on that amount calculated in accordance with **clause 8.5** (from the date when the amount in Dispute was paid by the Operator until the date on which the credit is applied or the amount is paid (as applicable) under this **clause 8.4(c)(ii)**), must be:
 - (A) applied by Aurizon Network as credit in favour of the Operator against the amount claimed in the next invoice to be issued by Aurizon Network to the Operator after the resolution of the Dispute (and, if necessary, to subsequent invoices issued by Aurizon Network until the amount of the difference (including any interest) has been fully credited in favour of the Operator against amounts payable under invoices issued by Aurizon Network to the Operator under **clause 8.2**); or
 - (B) if there will be no further invoices issued by Aurizon Network to the Operator after the resolution of the Dispute or the last credit referred to in **clause 8.4(c)(ii)(A)**, paid by Aurizon Network to the Operator within 20 Business Days after resolution of the Dispute or the last credit referred to in **clause 8.4(c)(ii)(A)** (as applicable).

8.5 Interest on overdue payments and Disputed amounts

- (a) Without prejudice to the rights, powers and remedies of a Party under this Deed or otherwise at Law, if for any reason a Party does not pay an amount payable under or in connection with this Deed on or before the due date for payment, then that Party must pay interest on the outstanding amount calculated in accordance with this **clause 8.5**.
- (b) Interest accrues on outstanding amounts from the due date for payment until that amount, together with the interest on that amount, has been paid in full.
- (c) Interest under **clauses 8.4(c)(i), 8.4(c)(ii) and 8.5(b)** is calculated at the Default Rate. Any interest accrued but unpaid at the end of each Month is capitalised and, once capitalised, will itself bear interest.

8.6 Right of set-off

A Party may deduct from any amounts which are due and payable by the Party to the other Party under this Deed any amounts which are due and payable by the other Party to the Party under this Deed.

9 Accreditation

- (a) The Operator must, before the commencement of the first Train Services under this Deed, provide to Aurizon Network evidence of the Operator's Accreditation (including all conditions and/or variations).
- (b) Each Party must have and maintain Accreditation to the extent required to perform its obligations and exercise its rights under this Deed and, if requested to do so in writing by the other Party, provide to the other Party copies of documentation evidencing currency, renewal or amendment of its Accreditation within five Business Days after such request.
- (c) Each Party must notify the other as soon as possible of any notice from an Authority affecting, or likely to affect, its Accreditation, and must provide a copy of that notice to the other Party on request.
- (d) If:
 - (i) schedule 2 is varied to include an additional Train Service Type; or
 - (ii) the Train Description for an existing Train Service Type is varied, then before the Operator commences or continues (as applicable) to operate any Train Services for such Train Service Type, the Operator must:
 - (iii) if the Operator's Accreditation is required to be varied to address the operation of Train Services for such additional Train Service Type or the operation of Train Services in accordance with such varied Train Description (as applicable), provide Aurizon Network evidence of the Operator's Accreditation as varied; or
 - (iv) if the Operator reasonably determines that no variations to the Operator's Accreditation are required to address the operation of such Train Services, notify Aurizon Network of that determination and the reasons for that determination.

10 Operation of Train Services

10.1 Operation of Train Services

The Operator must not operate Train Services:

- (a) which do not comply with the applicable Train Description and this Deed, unless:
 - (i) acting under a Train Control Direction; or
 - (ii) with the prior written approval of Aurizon Network (which approval may specify terms in addition to or varying the terms of this Deed in respect of the Train Services or Ad Hoc Train Services to which the approval relates);
- (b) if clause 4.4 of the Access Agreement applies to those Train Services, unless an Access Interface Deed (as defined under the Access Agreement) has been executed by the relevant Customer and Aurizon Network; and
- (c) if the Access Holder does not hold, or does not have the benefit of, Supply Chain Rights for those Train Services.

10.2 Commencement of Train Services

- (a) Without limiting any other provision of this Deed, the Operator must only operate any Train Service if:

Category 1- Requirements for Train Services generally

- (i) an Operating Plan has been approved by Aurizon Network under **clause 15.114.1**;
- (ii) the Operator has submitted an Emergency Response Plan to Aurizon Network which complies with, or is taken to comply with, the requirements of **clause 15.1(a)(i)(B)14.1(a)(i)(B)**;
- (iii) the Operator has provided evidence to Aurizon Network of the Operator's Accreditation as required by **clause 9(a)**;
- (iv) an IRMP has been agreed or determined under the Interface Risk Provisions which form part of this Deed under **clause 3**;
- (v) the Operator has developed:
 - (A) the Operator's Safety Management System under **clause 24.423.4**;
 - (B) the Environmental Management Plan under **clause 15.1(g)14.1(g)**;
- (vi) the Operator has taken out the insurances, and provided evidence of those insurances to Aurizon Network, as required under **clause 26.325.3**;
- (vii) the Operator has complied with, or implemented any aspects of, the Operating Plan, Emergency Response Plan, the Operator's Accreditation, the IRMP, the Operator's Safety Management System and the Environmental Management Plan that are required to be complied with or implemented before the commencement of Train Services;

Category 2 – Requirement for specific Train Service Types

- (viii) the Operator has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock and/or Rollingstock Configurations which the Operator proposes to use in the operation of Train Services, and such Rollingstock and/or Rollingstock Configurations is Authorised Rollingstock and/or Authorised Rollingstock Configurations for each Train Service Type; and
 - (ix) Aurizon Network has given the Operator an Authority to Travel or a Train Route Acceptance.
- (b) Aurizon Network must use reasonable endeavours to cooperate with the Operator and act promptly to facilitate the Operator's compliance with **clause 10.2(a)**.
- (c) If the Operator has not complied with each of the requirements of **clause 10.2(a)** by:
- (i) the Compliance Date and Aurizon Network has a reasonable expectation that the Operator cannot commence the operation of Train Services by the Commitment Date; or
 - (ii) the Commitment Date,
- then, provided that the Operator's failure to comply with **clause 10.2(a)** was not due to Aurizon Network's breach of **clause 10.2(b)** Aurizon Network may give a notice to the Operator and the Access Holder requiring the Operator to comply with **clause 10.2(a)** within 20 Business Days after the date the notice is given to the Operator and specifying that it is a notice given under this **clause 10.2(c)**. For clarity, the Operator is not obliged to, and Aurizon Network may not require the Operator to, comply with **clause 10.2(a)** prior to the Commitment Date.
- (d) If Aurizon Network notifies the Operator and the Access Holder under **clause 10.2(c)** and the Operator fails to comply with the requirements set out in the notice then, subject to **clause 10.2(e)**, Aurizon Network may:
- (i) by notice to the Operator and the Access Holder reduce (as applicable):
 - (A) all of the Operational Rights (**Category 1 Reduced Operational Rights**); and
 - (B) the Operational Rights in respect of the affected Train Service Types only (**Category 2 Reduced Operational Rights**); or
 - (ii) if, as a result of such reduction, there will be no remaining Operational Rights, terminate this Deed.
- (e) Aurizon Network must allow the Access Holder to nominate an alternative "Operator" (as defined in the Access Agreement) to utilise the Category 1 Reduced Operational Rights and/or the Category 2 Reduced Operational Rights (as applicable).

10.3 Commencement of Train Services for Train Service Type

- (a) Without limiting any other provision of this Deed, if:
 - (i) **schedule 2** is varied or deemed to be varied to include an

additional Train Service Type; or

- (ii) the Train Description for an existing Train Service Type is varied or deemed to be varied (including under **clause 14.2**~~13.2~~),

then the Operator must only operate or continue to operate (as applicable) any such additional or varied Train Services for that Train Service Type if:

- (iii) the Operator:
 - (A) if required under **clause 17.5**~~16.5~~, has provided a Certificate of Compliance to Aurizon Network for all of the Rollingstock or Rollingstock Configurations which the Operator proposes to use in the operation of Train Services for that Train Service Type, and such Rollingstock is Authorised Rollingstock or such Rollingstock Configurations are Authorised Rollingstock Configurations for that Train Service Type;
 - (B) has amended the Emergency Response Plan to address the operation of those Train Services, or notified Aurizon Network of its determination that no such amendments are required, under **clause 15.2(a)**~~14.2(a)~~;
 - (C) has provided evidence to Aurizon Network of the Operator's Accreditation as varied to address the operation of those Train Services, or notified Aurizon Network of its determination that no such variations are required, under **clause 9(d)**;
 - (D) and Aurizon Network have jointly conducted a further Interface Risk Assessment, and amendments to the IRMP, to the extent required, have been agreed or determined, under **clause 15.2(e)**~~14.2(e)~~;
 - (E) if required under **clause 24.4**~~23.4~~, has amended the Operator's Safety Management System to address any amendments to the IRMP and the operation of those Train Services; and
 - (F) if required under **clause 15.2**~~14.2~~, has amended the Environmental Management Plan to address any amendments to the IRMP and the operation of those Train Services; and
 - (G) has complied with or implemented any aspects of the Operating Plan, Emergency Response Plan, the Operator's Accreditation, the IRMP, the Operator's Safety Management System and the Environmental Management Plan that are required to be complied with or implemented before the commencement of those Train Services;
- (iv) amendments to the Operating Plan to address the operation of those Train Services have been approved by Aurizon Network, or the Operator notified Aurizon Network of its determination that no such amendments are required, under **clause 15.2(a)**~~14.2(a)~~; and
- (v) Aurizon Network has given the Operator an Authority to Travel or a

Train Route Acceptance authorising the Operator to operate Train Services for that Train Service Type using the Authorised Rollingstock Configurations for that Train Service Type.

- (b) Aurizon Network must use reasonable endeavours to cooperate with the Operator and act promptly to facilitate the Operator's compliance with **clause 10.3(a)**.
- (c) If **clause 10.3(a)** applies and the Operator has not complied with **clause 10.3(a)** in respect of the Train Services for a Train Service Type by:
 - (i) if **clause 10.3(a)(i)** applies:
 - (A) the Train Service Compliance Date for that Train Service Type and Aurizon Network has a reasonable expectation that the Operator cannot commence the operation of those Train Services by the Train Service Commitment Date for that Train Service Type; or
 - (B) the Train Service Commitment Date for that Train Service Type; or
 - (ii) if **clause 10.3(a)(ii)** applies, the date the variation to the Train Description for the Train Service Type takes effect,

then, provided that the Operator's failure to comply with **clause 10.3(a)** was not due to Aurizon Network's breach of **clause 10.3(b)** and subject to **clause 10.3(d)**:

- (iii) Aurizon Network may give a notice to the Operator and the Access Holder requiring the Operator to comply with **clause 10.3(a)** within 20 Business Days after the date the notice is given to the Operator and the Access Holder; and
- (iv) if Aurizon Network gives a notice to the Operator and the Access Holder under **clause 10.3(c)(iii)** and the Operator fails to comply with **clause 10.3(a)** within 20 Business Days after the date that the notice is given to the Operator and the Access Holder, then:
 - (A) if **clause 10.3(a)(i)** applies:
 - (1) Aurizon Network may, by notice to the Operator and the Access Holder, reduce the Operational Rights by the Train Services for that Train Service Type by removing the variation (**Reduced Operational Rights**);
 - (2) if the Operational Rights of the Operator are reduced in accordance with **clause 10.3(c)(iv)(A)(1)**, Aurizon Network may allow the Access Holder to nominate an alternative "Operator" (as defined in the Access Agreement) to utilise the Reduced Operational Rights in accordance with the terms of the Access Agreement;
 - (3) Aurizon Network must provide to the Operator replacement Schedules amended consistent with any notice under **clause 10.3(c)(iv)(A)(1)** and this Deed is varied in accordance with those replacement

Schedules with effect on and from the date that the notice referred to in **clause 10.3(c)(iv)(A)(1)** is given to the Operator and the Access Holder; and

- (4) if there are no Operational Rights remaining following the issuance of a notice under **clause 10.3(c)(iv)(A)(1)**, Aurizon Network may terminate this Deed (without prejudice to those provisions which are stated to survive this Deed); or

(B) if **clause 10.3(a)(ii)** applies:

- (1) Aurizon Network may give the Operator and the Access Holder a notice specifying that the variation to the Train Description for the Train Service Type will cease to be of any effect; and
- (2) if Aurizon Network gives the Operator and the Access Holder a notice referred to in **clause 10.3(c)(iv)(B)(1)**, the Train Description for the Train Service Type will be taken not to have been varied (even if the relevant variation has taken effect) and the Train Description for the Train Service Type will be taken to be the Train Description for the Train Service Type in force immediately before the variation took effect.

- (d) For clarity, the Operator is not obliged to, and Aurizon Network may not require the Operator to, comply with **clause 10.3(a)** prior to the Commitment Date.

10.4 Power

- (a) If the operation of a Train Service consumes electricity supplied by Aurizon Network, in operating Train Services the Operator must not cause Aurizon Network to breach any reasonable and lawful requirements imposed on Aurizon Network by any supplier of electricity to Aurizon Network and which are notified by Aurizon Network to the Operator.
- (b) Aurizon Network must apply the same terms in respect of the consumption of electricity to all Train Operators.

10.5 Use of Regenerative Brakes

- (a) The Operator must obtain Aurizon Network's prior written consent to use Regenerative Brakes on any Rollingstock operated on the Nominated Network.
- (b) Aurizon Network must not unreasonably withhold its consent under this clause, but such consent may be given subject to conditions provided:
 - (i) Aurizon Network acts reasonably in imposing the conditions;
 - (ii) the conditions are required for Aurizon Network to comply with Aurizon Network's obligations under its electricity connection agreements; and
 - (iii) to the extent practicable, Aurizon Network imposes the same conditions on all Railway Operators utilising Regenerative Brakes.

11 ~~Reduction of Nominated Monthly Train Services~~ if Increase in Maximum Payload ~~exceeded~~

11.1 ~~Request for increased~~Increase in Maximum Payload for a Train Service Type

- (a) The Operator acknowledges that the Access Holder may:
- ~~(a)(i)~~ (i) under clause 10 of the Access Agreement, request that Aurizon Network consider increasing the Maximum Payload for a Train Service Type ~~(or may be deemed to have given that request under clause 11 of the Access Agreement).~~; or
 - (ii) be deemed to increase the Maximum Payload for a Train Service Type under clause 11 of the Access Agreement.
- (b) If the Maximum Payload for a Train Service Type is increased under clause 10 or clause 11 of the Access Agreement, Aurizon Network will notify the Operator of any changes to:
- (i) the Nominated Monthly Operational Rights;
 - (ii) the Maximum Payload for the relevant Train Service Type; ~~and~~
 - (iii) the Nominal Payload for the relevant Train Service Type; ~~and~~
 - (iv) the Indicative Tonnage for the relevant Train Service Type,
- as a result of the increase under clause 10 or clause 11 of the Access Agreement (as applicable) and this Deed will be varied in accordance with that notice.

11.2 **No prejudice to other rights**

This **clause 11** does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Operator with the Train Description for a Train Service Type.

~~[QRC Note: Aurizon Network should only be able to require a change in Nominal Payload where approved by the QCA. We have proposed appropriate drafting to be incorporated into the Undertaking in our mark-up of the Standard Access Agreement.]~~

12 [NOT USED]

~~12.13~~ Day to day Train Movements

~~12.13.1~~ Exclusive responsibility for Train Control

Aurizon Network must provide, and has exclusive responsibility for, Train Control in respect of the Nominated Network.

~~12.213.2~~ Train Control rights and obligations - Aurizon Network

- (a) Aurizon Network must exercise Train Control by the issue of Train Control Directions to the Operator and the Operator's Staff consistent with the Network Management Principles.

- (b) In exercising Train Control, Aurizon Network must act reasonably and have regard to the safe conduct of rail operations on the Infrastructure and may, acting reasonably:
 - (i) delay, alter or add a Train Service or other Network Train Services;
 - (ii) cancel, re-route or re-schedule a Train Service or other Network Train Services;
 - (iii) alter the Scheduled Times for Train Services or other Network Train Services in the Train Schedule; and
 - (iv) impose any Operational Constraint on the Nominated Network consistent with **clause 21.220.2**.

12.313.3 Train Control rights and obligations - Operator

Without limiting the rights of the Operator, the Operator must:

- (a) comply with Train Control Directions;
- (b) ensure the Operator's Staff comply with Train Control Directions;
- (c) ensure that its Train drivers are contactable by the Train Controller to receive Train Control Directions;
- (d) notify the Train Controller as soon as reasonably possible after the Operator becomes aware that:
 - (i) it is not possible for the Operator or the Operator's Staff to comply with a Train Control Direction; or
 - (ii) the Operator or the Operator's Staff have not complied with a Train Control Direction; and
- (e) notify the Train Controller as soon as reasonably possible after the Operator becomes aware of:
 - (i) any changes or delays in Train Services; or
 - (ii) any circumstances which have affected or may affect Train Control including the ability of any Train Service to conform to its Scheduled Times.

12.413.4 Train Control communications

The Operator must ensure all Trains are equipped with or have available means of communication to permit the Operator's Staff to comply with this Deed (including the Rollingstock Interface Standards and the Applicable Safeworking Procedures).

12.513.5 Removal at the end of Authorised Parking

- (a) To the extent that Aurizon Network has allowed any Train to be Stowed or directed or otherwise allowed any items of Rollingstock to be temporarily parked on the Nominated Network (in either case, **Authorised Parking**):
 - (i) the Operator must ensure that it ceases the Stowage or the temporary parking of the relevant Rollingstock on the Nominated Network on:
 - (A) the expiry of any permitted period specified by Aurizon Network in respect of such Authorised Parking; or

- (B) if no such permitted period has been specified by Aurizon Network in respect of any such Authorised Parking, within 12 hours (or such longer period as may be specified by Aurizon Network) of notice from Aurizon Network requiring the cessation of Stowage or end to temporary parking of the relevant Rollingstock; and
- (ii) without limiting any other rights which Aurizon Network may have, Aurizon Network may, subject to Aurizon Network using reasonable efforts to first consult with the Operator:
 - (A) take such action as Aurizon Network (acting reasonably) considers necessary in relation to the cessation of Stowage or end to temporary parking of the relevant Rollingstock (including removing the Train or the relevant Rollingstock) following the expiry of the relevant period referred to in **clause 13.5(a)(i)**~~12.5(a)(i)~~; and
 - (B) recover such reasonable costs incurred by Aurizon Network in doing so and, subject to **clause 8.4**, the Operator must, within 10 Business Days after receiving such demand, pay to Aurizon Network such reasonable costs incurred by Aurizon Network.
- (iii) Aurizon Network will not be liable for any damage to or loss of freight, Train or Rollingstock caused by any action referred to in **clause 13.5(a)(ii)**~~12.5(a)(ii)~~ and the Operator is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network and its directors and Aurizon Network's Staff against all Claims of any nature suffered or incurred by, or made or brought against, Aurizon Network, its directors or Aurizon Network's Staff in respect of any exercise of Aurizon Network's rights under **clause 13.5(a)(ii)**~~12.5(a)(ii)~~.

~~13.14~~ 13.14 Compliance

~~13.14.1~~ 13.14.1 General requirements

- (a) To the extent relevant to the performance of its obligations under this Deed:
 - (i) each Party must observe and comply with:
 - (A) all applicable Laws;
 - (B) the conditions of its own Accreditation;
 - (C) the lawful requirements of relevant Authorities;
 - (D) Train Control Directions;
 - (E) the Applicable Safeworking Procedures and Applicable Safety Standards;
 - (F) the Network Management Principles;
 - (G) the Interface Coordination Arrangements;
 - (H) to the extent applicable, the Emergency Procedures;

- (I) the IRMP; and
- (J) the Access Undertaking (including, in Aurizon Network's case, its obligations in Part 3 of the Access Undertaking);
- (ii) the Operator must observe and comply with:
 - (A) the Train Description for each Train Service Type (subject to the Network Management Principles);
 - (B) the description of the relevant Reference Train Service except as otherwise permitted by this Deed;
 - (C) the Operating Plan;
 - (D) the Emergency Response Plan;
 - (E) the Environmental Management Plan;
 - (F) subject to the provision of reasonable notice from Aurizon Network specifying:
 - (1) the relevant requirements of the Environmental Authorities held by Aurizon Network from time to time and the permits, approvals and licences in respect of facilities to which access is provided by Aurizon Network to the Operator, those relevant requirements;
 - (2) relevant Approvals affecting the operations of Aurizon Network and their applicability to the Operator, those Approvals;
 - (G) the applicable requirements under the Noise Code; and
- (iii) Aurizon Network must observe and comply with:
 - (A) the conditions of its Accreditation;
 - (B) all licences and permits affecting its operations, including any licences, permits and approvals in respect of facilities relevant to this Deed; and
 - (C) any Environmental Authorities it holds from time to time.

13.214.2 Non-compliance by Operator with Train Description

- (a) If:
 - (i) Train Services operated by the Operator do not comply, in any material respect, with the Train Description for the Train Service Type, except where such non-compliance is attributable to another Railway Operator or Aurizon Network; and
 - (ii) the Operator fails to demonstrate to the reasonable satisfaction of Aurizon Network, within 20 Business Days of being requested to do so, that those Train Services will consistently comply with the applicable Train Description for the remainder of the Term,

then, if following satisfaction by Aurizon Network of the requirements of clauses 15.3(a) and 15.3(b) of the Access Agreement, Aurizon Network continues to not be reasonably satisfied that the Operator will consistently comply with the Train Description for the remainder of the Term, Aurizon

Network may, by giving the Operator and the Access Holder 20 Business Days' notice:

- (iii) vary the applicable Train Description to a level it reasonably expects to be achievable by the Operator for the remainder of the Term, having regard to the extent of previous compliance with the applicable Train Description (ignoring, for the purpose of assessing previous compliance, any non-compliance to the extent that the non-compliance was attributable to another Railway Operator or to Aurizon Network); and
 - (iv) reasonably vary any other provisions of this Deed to reflect the impact of the change in the applicable Train Description.
- (b) The Operator is entitled to dispute any variation by Aurizon Network under **clause 14.2(a)**~~13.2(a)~~ and such dispute must be referred to an Expert for resolution in accordance with **clause 30.3**~~29.3~~.
 - (c) This **clause 14.2**~~13.2~~ does not prejudice Aurizon Network's other rights and remedies in respect of any non-compliance by the Operator with the Train Description for a Train Service Type.
 - (d) If any variations under this **clause 14.2**~~13.2~~ affect the Train Description, then the commencement of those variations is subject to and conditional upon the Operator being notified by Aurizon Network that all necessary amendments (if any) to the Access Agreements have been made in respect of such matters and any relevant nomination of the Operator by the Access Holder in accordance with the Access Agreement has, if necessary, been varied.

~~13.3~~14.3 **Certain matters to apply consistently to all Railway Operators**

Aurizon Network must ensure that as far as reasonably practicable:

- (a) the Network Management Principles;
- (b) the System Operating Parameters;
- (c) the System Rules;
- (d) the Safeworking Procedures and Safety Standards;
- (e) the Emergency Procedures; and
- (f) the Investigation Procedures,

will be applied consistently for all Railway Operators operating Network Train Services to destinations located in the same Coal System.

~~13.4~~14.4 **Provision of information**

- (a) Aurizon Network must provide the Operator with:
 - (i) information relevant to the Operator's operation of Train Services if and when required to do so under the Network Management Principles; and
 - (ii) a copy of each Operating Document (which may be via publication on the Website).

15 Plans

15.1 Approval of Plans

- (a) Before the commencement of any Train Services:
- (i) the Operator must develop and submit to Aurizon Network for approval the following documents which must be, at all times during the Term, consistent with the terms of this Deed:
 - (A) a plan (**Operating Plan**) which:
 - (1) specifies reasonable details of the Operator's planned operations of Train Services; and
 - (2) without limiting **clause 15.1(a)(i)(A)**~~14.1(a)(i)(A)~~, addresses the matters required under Schedule C of the Access Undertaking;
 - (B) a plan (**Emergency Response Plan**) which:
 - (1) contains the set procedures adequate for dealing with an Incident, including all actions to be taken to minimise or alleviate any threat or danger to any person or property or the environment;
 - (2) is compatible with the Emergency Procedures; and
 - (ii) the Parties must in accordance with the Interface Risk Provisions which form part of this Deed under **clause 3**:
 - (A) jointly with the Access Holder conduct an Interface Risk Assessment; and
 - (B) as soon as reasonably practicable after the completion of the Interface Risk Assessment (and in any event by not later than 20 Business Days after the completion), negotiate diligently and in good faith an IRMP, including any amendment to it.
- (b) As soon as possible and in any event by no later than 20 Business Days from the date of receipt of the Operating Plan or the Emergency Response Plan (as applicable), Aurizon Network must:
- (i) notify the Operator whether or not it approves the Plan; and
 - (ii) if not, provide reasonable details of its reasons for withholding its approval.
- (c) Aurizon Network:
- (i) may withhold its approval of the Operating Plan if it is not reasonably satisfied that the Operating Plan complies with **clause 15.1(a)(i)(A)**~~14.1(a)(i)(A)~~;
 - (ii) must notify the Operator if it is not reasonably satisfied that the Emergency Response Plan complies with **clause 15.1(a)(i)(B)**~~14.1(a)(i)(B)~~ and the parties must meet to agree on a mutually acceptable course of action to address Aurizon Network's concerns within 10 Business Days after the notice is given;
 - (iii) must promptly determine, acting reasonably, the IRMP (including any amendment to it) and notify the Operator of its determination if

the Parties are unable to agree an IRMP or any amendments to it under **clause 15.1(a)(ii)~~14.1(a)(ii)~~**.

- (d) If a dispute arises as a result of:
- (i) Aurizon Network withholding its approval of the Operating Plan under **clause 15.1(c)(i)~~14.1(e)(i)~~**;
 - (ii) the Parties failing to comply with the timeframe in **clause 15.1(c)(ii)~~14.1(e)(ii)~~**; or
 - (iii) the IRMP, or any aspect of or amendment to the IRMP, determined by Aurizon Network under **clause 15.1(c)(iii)~~14.1(e)(iii)~~** (**Disputed Aspect**) being Unreasonable,
- it must be resolved under **clause 30.2~~29.2~~**, failing which **clause 30.3~~29.3~~** applies.
- (e) If a dispute is referred to an Expert, then:
- (i) the Expert is required to determine whether or not the Operating Plan or the Emergency Response Plan (as applicable) complies with the **clause 15.1(a)(i)~~14.1(a)(i)~~**; and
 - (ii) if the Expert determines (as applicable):
 - (A) the Operating Plan does not comply with **clause 15.1(a)(i)(A)~~14.1(a)(i)(A)~~**;
 - (B) the Emergency Response Plan is not compatible with the Emergency Procedures and otherwise complies with **clause 15.1(a)(i)(B)~~14.1(a)(i)(B)~~**; or
 - (C) that the Disputed Aspect of the IRMP is Unreasonable,then the Expert must determine (and specify in the report of its determination of the Dispute):
 - (D) if **clause 15.1(e)(ii)(A)~~14.1(e)(ii)(A)~~** or **clause 15.1(e)(ii)(B)~~14.1(e)(ii)(B)~~** applies, how the non-compliance should be rectified and the Operator must rectify the Operating Plan or the Emergency Response Plan (as applicable) accordingly; or
 - (E) if **clause 15.1(e)(ii)(C)~~14.1(e)(ii)(C)~~** applies, the amendments to the IRMP which the Expert reasonably considers, if made, would result in the Disputed Aspect ceasing to be Unreasonable.
- (f) A Plan is effective only from the date:
- (i) in respect of an Operating Plan or Emergency Response Plan, Aurizon Network notifies the Operator that it approves the Operating Plan or the Emergency Response Plan (as applicable);
 - (ii) in respect of an IRMP (including any amendments to it):
 - (A) the Parties agree in writing on the terms of the IRMP or the amendments to it; or
 - (B) if the Parties cannot agree, Aurizon Network determines the IRMP or the amendment to it and notifies the Operator;

- (iii) if **clause 15.1(d)14.1(d)** applies in respect of any Plan, it is agreed or determined that the Plan complies with the relevant requirements under **clause 15.1(a)(i)14.1(a)(i)** (as applicable).
- (g) If it is agreed or determined through the Dispute resolution process that the Disputed Aspect of the IRMP is Unreasonable, then (unless otherwise agreed between the Parties through the Dispute resolution process):
 - (i) despite the Dispute, the IRMP, or the aspect of it or amendment to it, determined by Aurizon Network under **clause 15.1(c)(iii)14.1(c)(iii)** or **15.1(g)(ii)14.1(g)(ii)** (as applicable) is taken to be valid and binding; but
 - (ii) as soon as reasonably practicable (and in any event within 20 Business Days) after such agreement or determination, Aurizon Network must:
 - (A) determine, acting reasonably, the amendments to the IRMP (in the case of an Expert determination, having regard to the reasons for the Expert's determination and the amendments to the IRMP specified in the Expert's report of the determination of the Dispute) which result in the Disputed Aspect ceasing to be Unreasonable; and
 - (B) notify the Operator of the amendments to the IRMP determined by Aurizon Network;
 - (C) the amendments to the IRMP, as determined by Aurizon Network, will take effect on the date notified to the Operator under **clause 15.1(g)(ii)(B)14.1(g)(ii)(B)**; and
 - (D) if Aurizon Network does not notify the Operator of amendments to the IRMP by the time referred to in **clause 15.1(g)(ii)14.1(g)(ii)**, then the IRMP will be taken to be amended as specified in the Expert's report of the determination of the Dispute with effect immediately after the end of the time referred to in **clause 15.1(g)(ii)14.1(g)(ii)**.
- (h) The Operator must develop, implement and maintain a plan to address Environmental Risks (**Environmental Management Plan**) in accordance with the Interface Risk Provisions which form part of this Deed under **clause 3**.

14.215.2 Amendments to Plans

- (a) The Operator:
 - (i) may amend the Operating Plan or the Emergency Response Plan (as applicable) from time to time provided it complies with this **clause 15.214.2**;
 - (ii) must, to the extent reasonably required, amend:
 - (A) the Operating Plan and/or the Emergency Response Plan if:
 - (1) **Schedule 2** is varied to include an additional Train Service Type or the Train Description for an existing Train Service Type is varied, to address the operation of the Train Services before the Operator commences

- or continues (as applicable) to operate the Train Services for that Train Service Type; or
- (2) they cease to be consistent with the terms of this Deed or any document that the Operator is required under this Deed to comply with, to address the inconsistency;
- (B) the Operating Plan if at any time **clause 17.2(a)(ii)**~~16.2(a)(ii)~~ applies, to address the proposal under the Authorisation Request Notice (assuming that the Rollingstock Configurations become Authorised Rollingstock Configurations for the Train Service Type); and
- (iii) must notify Aurizon Network if it reasonably determines that no amendments to the Operating Plan and the Emergency Response Plan are required as a result of a variation to **Schedule 2**, including the reasons for that determination.
- (b) If Aurizon Network becomes aware of an inconsistency between the Operating Plan or the Emergency Response Plan and this Deed or any document that the Operator is required under this Deed to comply with, Aurizon Network must notify the Operator.
- (c) If the Operator intends or is required to amend the Operating Plan or the Emergency Response Plan (as applicable), it must submit to Aurizon Network for approval full details of each proposed amendment, including its reasons for the amendment.
- (d) **Clauses 15.1(b)**~~14.1(b)~~ to **15.1(e)**~~14.1(e)~~ apply to any amendments to a Plan the Operator submits to Aurizon Network for approval.
- (e) If, at any time during the Term:
- (i) a Party notifies the other Party that it believes that:
- (A) the IRMP is no longer effective in managing an Interface Risk or Environmental Risk addressed in the IRMP; or
- (B) an additional or varied Interface Risk or Environmental Risk exists, or is likely to exist, that is not addressed in the IRMP;
- (ii) **Schedule 2** is varied to include an additional Train Service Type or the Train Description for a Train Service Type is varied; or
- (iii) Aurizon Network notifies the Operator that the Rollingstock Interface Standards are varied and Aurizon Network considers that a further Interface Risk Assessment is required; or
- (iv) a Certifier gives Aurizon Network a Compliance Statement,
- then:
- (v) as soon as reasonably practicable after:
- (A) a Party notifies the other Party under **clause 15.2(e)(i)(A)**~~14.2(e)(i)(A)~~ or **15.2(e)(i)(B)**~~14.2(e)(i)(B)~~; or
- (B) Aurizon Network notifies the Operator under **clause 15.2(e)(iii)**~~14.2(e)(iii)~~; or
- (C) the Certifier gives Aurizon Network the Compliance

Statement; or

- (vi) before the Operator commences or continues (as applicable) to operate any Train Services for a Train Service Type referred to in **clause 15.2(e)(ii)**~~14.2(e)(ii)~~;

the Parties must undertake a further Interface Risk Assessment and agree on amendments to the IRMP in accordance with **clauses 15.1(a)(ii)**~~14.1(a)(ii)~~ and **15.1(c)(iii)**~~14.1(e)(iii)~~.

~~15~~**16** Train operations

~~15.1~~**16.1** Compliance with Scheduled Time

- (a) The Operator must use reasonable endeavours to:
 - (i) operate Train Services in accordance with the relevant Daily Train Plan unless:
 - (A) otherwise permitted by the Network Management Principles;
 - (B) varied in the circumstances specified in this Deed;
 - (C) otherwise directed in a Train Control Direction; or
 - (D) otherwise agreed between the Parties (such agreement not to be unreasonably withheld); and
 - (ii) otherwise comply with all other Scheduled Times.
- (b) A Train Service is deemed to operate in accordance with its Scheduled Time if it is operated within three minutes before or after the Scheduled Time.

~~15.2~~**16.2** Alterations to Train Services

- (a) Without limiting the rights of the Operator, Aurizon Network must give the Operator a Train Control Direction as soon as reasonably practicable after it becomes aware that it is unable to make the Infrastructure available for the operation of a Train Service which is scheduled in the Daily Train Plan.
- (b) Unless Aurizon Network has already given the Operator a Train Control Direction under **clause 16.2(a)**~~15.2(a)~~, the Operator must notify Aurizon Network as soon as reasonably practicable after it decides not to, or becomes aware that it will be unable to, operate a Train Service which is scheduled in the Daily Train Plan and specify the Access Holder for that Train Service.
- (c) If clause **16.2(a)**~~15.2(a)~~ or **16.2(b)**~~15.2(b)~~ applies, Aurizon Network must reschedule the relevant Train Service in accordance with the Network Management Principles.

~~15.3~~**16.3** Authorisation of other Train Movements

If:

- (a) the Operator gives Aurizon Network a notice in accordance with **clause 16.2(b)**~~15.2(b)~~;
- (b) Aurizon Network gives the Operator a Train Control Direction in accordance with **clause 16.2(a)**~~15.2(a)~~; or

- (c) for any reason, the Operator does not operate a Train Service at its Scheduled Time in the Train Schedule (including a revised Scheduled Time for that Train Service),

then Aurizon Network may authorise the operation of another Train Movement at that Scheduled Time.

15.416.4 Notification

- (a) Without limiting its obligations under **clause 1.3 of Schedule 9**, Aurizon Network must notify the Operator's Controller (such notification to include, where relevant, the anticipated effect on the relevant Train Service) as soon as reasonably practicable after Aurizon Network becomes aware of any circumstances (including Obstructions) which:
 - (i) have materially affected, or could potentially materially affect, the ability of the Operator to operate any Train Service in accordance with its Scheduled Time; or
 - (ii) have affected, or could potentially affect, the security or safety of a Train Service or the Operator's Staff.
- (b) Aurizon Network must, as soon as reasonably practicable after becoming aware of the relevant changes, advise the Operator's Controller from time to time of changes to notices previously provided under **clause 16.4(a)15.4(a)**.
- (c) A Party must inform the other Party if it becomes aware of any failure by the Operator to comply with:
 - (i) any requirement specified in **clause 14.113.1**; or
 - (ii) the Authorised Rollingstock and Authorised Rollingstock Configurations for each Train Service Type.

15.516.5 Operator to supply information

- (a) The Operator must provide to Aurizon Network:
 - (i) and at all times maintain operable software, hardware and associated communication links to establish (to Aurizon Network's reasonable satisfaction) an interface with Aurizon Network's information systems; and
 - (ii) information in relation to each Train Service in accordance with **item 1.2 of Schedule 9** before the operation of that Train Service.
- (b) The Operator's interface with Aurizon Network's information systems are subject to any reasonable controls specified by Aurizon Network to protect the integrity and confidentiality of Aurizon Network's information systems and the information contained in them.
- (c) Aurizon Network must cooperate with the Operator to establish the Operator's interface with Aurizon Network's information systems.

15.616.6 Operation of Trains and Rollingstock

The Operator is responsible for the safe operation of its Rollingstock and must ensure that at all times the operation of such Rollingstock (including all loading and unloading of such Rollingstock) is undertaken in a manner that:

- (a) is consistent with the Rollingstock Interface Standards (subject to any Approved Derogations);
- (b) does not affect the safe operation of the Rollingstock or any other Train Movements; and
- (c) ensures that all items on or in the Operator's Rollingstock remain secured in position during transit.

~~16.1~~ 17 Authorisation of Rollingstock and Rollingstock Configurations

~~16.1~~ 17.1 Use of Rollingstock and Rollingstock Configuration

- (a) The Operator must only operate Train Services using Rollingstock or Rollingstock Configurations which:
 - (i) comply with the Rollingstock Interface Standards (subject to any Approved Derogations);
 - (ii) are Authorised Rollingstock;
 - (iii) are Authorised Rollingstock Configuration for that Train Service Type; and
 - (iv) comply with all applicable Laws.

~~16.2~~ 17.2 Authorisation Request Notice

- (a) Subject to **clause 17.2(b)**~~16.2(b)~~, if, at any time during the Term, the Operator proposes to operate:
 - (i) Train Services using Rollingstock which are not Authorised Rollingstock; or
 - (ii) Train Services for a Train Service Type using Rollingstock Configurations which are not Authorised Rollingstock Configurations for that Train Service Type,

then the Operator may give Aurizon Network a notice (**Authorisation Request Notice**) of its proposal, specifying reasonable details of the proposed Rollingstock or Rollingstock Configurations (as applicable).

- (b) The Operator must not give Aurizon Network an Authorisation Request Notice in respect of a proposal to operate Train Services using Rollingstock Configurations which are not Authorised Rollingstock Configurations for the Train Service Type unless the proposed Rollingstock Configurations are only comprised of Rollingstock which, at the time of the notice, are Authorised Rollingstock.

~~16.3~~ 17.3 Compliance Statement

If the Operator gives Aurizon Network an Authorisation Request Notice, then the Operator must procure a Certifier to:

- (a) assess whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice comply with the Rollingstock Interface Standards; and

- (b) provide a statement (**Compliance Statement**) to Aurizon Network which specifies whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards and, if not, reasonable details of each non-compliance.

16.417.4 Rollingstock Interface Standards Risk Assessment

If the Operator gives Aurizon Network an Authorisation Request Notice, the Interface Risk Assessment required to be conducted under **clause 15.2(e)14.2(e)** will, unless otherwise required by Aurizon Network, be limited to a Rollingstock Interface Standards Risk Assessment in respect of the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice.

16.517.5 Certificate of Compliance

- (a) If:
 - (i) the Operator gives Aurizon Network an Authorisation Request Notice; and
 - (ii) a Certifier provides Aurizon Network with a Compliance Statement in respect of the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Authorisation Request Notice,

then promptly after:

- (iii) the Parties have conducted an Interface Risk Assessment under **clause 17.416.4** in respect of such Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable); and
- (iv) any amendments to the IRMP have been agreed or determined in accordance with **clause 2423** following such Interface Risk Assessment,

the Operator must procure a Certifier to:

- (v) assess whether or not the proposed Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations); and
- (vi) if the assessment is positive, certify that such Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) comply with the Rollingstock Interface Standards (subject to any Approved Derogations).

- (b) If a Certifier provides a Certificate of Compliance under **clause 17.516.5**, the Operator must promptly (and in any event, within 10 Business Days) after being requested to do so by Aurizon Network provide (or procure the Certifier to provide) to Aurizon Network:
 - (i) the Certificate of Compliance; and
 - (ii) any information or documentation (including reports on trials and/or commissioning tests) in relation to the Rollingstock or Rollingstock Configurations for a Train Service Type (as applicable) specified in that Certificate of Compliance;

- (c) If the Operator complies with **clause ~~17.5(b)~~16.5(b)**, then 20 Business Days after the date the Operator complies with **clause ~~17.5(b)~~16.5(b)**:
- (i) the Rollingstock specified in the Certificate of Compliance is taken to be Authorised Rollingstock; and/or
 - (ii) the Rollingstock Configurations for the Train Service Type specified in the Certificate of Compliance is taken to be Authorised Rollingstock Configurations for that Train Service Type,
- unless within 20 Business Days of the date the Operator complied with **clause ~~17.5(b)~~16.5(b)**, Aurizon Network notifies the Operator that it is not satisfied that the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance complies with the Rollingstock Interface Standards (subject to any Approved Derogations), and provide reasonable details of any non-compliance.

~~16.6~~17.6 Disputes

- (a) If Aurizon Network gives the Operator a notice under **clause ~~17.5(c)~~16.5(c)** and the Operator disputes that notice, then the Operator may give a Dispute Notice to Aurizon Network under **clause ~~30.1~~29.1**.
- (b) If a Dispute referred to in **clause ~~17.6(a)~~16.6(a)** is not resolved in accordance with **clause ~~30.2~~29.2**, then the Operator may refer the Dispute to an Expert under **clause ~~30.3~~29.3** to determine whether or not the Rollingstock or Rollingstock Configurations for the Train Service Type (as applicable) specified in the Certificate of Compliance comply with the Rollingstock Interface Standards (subject to any Approved Derogations).

~~16.7~~17.7 Update of schedule 4 ~~Error! Reference source not found.~~ ~~Error! Reference source not found.~~ as a consequence of New Authorisations

If, at any time during the Term, any Rollingstock is taken to be Authorised Rollingstock (**New Authorisation**), then **item 1 of Schedule 4** is deemed to be amended to include:

- (a) the maximum gross mass for any Wagon or other Rollingstock for that New Authorisation; and
- (b) the tare weight for any Wagon or other Rollingstock for that New Authorisation,

at the time the Rollingstock is taken to be Authorised Rollingstock.

~~16.8~~17.8 Issue of Train Route Acceptance or Authority to Travel

Within five Business Days after Rollingstock Configurations for a Train Service Type become Authorised Rollingstock Configuration for the Train Service Type, Aurizon Network must give the Operator a Train Route Acceptance or Authority to Travel (as applicable) for the Train Service Type.

~~47~~18 Amendments to System Wide Requirements

~~47.1~~18.1 Amendment Notice

- (a) Aurizon Network may, acting reasonably, amend a System Wide Requirement by the issue of a notice (**Amendment Notice**) to the Operator:
 - (i) at any time to ensure the ongoing safe operation of the Nominated Network, provided it consults with the Operator before its implementation;
 - (ii) if required pursuant to a Material Change; or
 - (iii) in any other circumstance (**Discretionary System Amendment**), subject to:
 - (A) the Operator's agreement to such proposed amendment (such agreement not to be unreasonably withheld or delayed); or
 - (B) the other provisions of this **clause 18**~~17~~.
- (b) An Amendment Notice must be reasonably in advance of the proposed implementation date for the proposed amendments and specify:
 - (i) such details of the proposed amendments as reasonably necessary to:
 - (A) properly inform the Operator of the terms of the proposed amendments; and
 - (B) enable the Operator to assess the consequences for the Operator of the proposed amendments;
 - (ii) whether the Amendment Notice is issued on the ground referred to in **clause 18.1(a)(i)**~~17.1(a)(i)~~, **18.1(a)(ii)**~~17.1(a)(ii)~~ or **18.1(a)(iii)**~~17.1(a)(iii)~~; and
 - (iii) details of the proposed implementation date for the proposed amendments.

~~47.2~~18.2 Response to a Discretionary System Amendment

- (a) Within 20 Business Days (or such longer period as may be agreed between the Parties, such agreement not to be unreasonably withheld or delayed) after receiving an Amendment Notice in accordance with **clause 18.1(b)**~~17.1(b)~~ which proposes a Discretionary System Amendment, the Operator must notify Aurizon Network whether:
 - (i) irrespective of any financial arrangements agreed or determined under **clause 18.4(c)**~~17.4(e)~~, the proposed amendments will materially impact the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Deed over a sustained period of time; and/or
 - (ii) the Net Financial Effect on the Operator of the Discretionary System Amendment is equivalent to one percent or greater of the annual Access Charges payable by the Access Holder under the Access Agreement.

17.318.3 Discretionary System Amendment which frustrate operations

- (a) If the Operator notifies Aurizon Network under **clause 18.2(a)(i)17.2(a)(i)**, Aurizon Network must, acting reasonably, assess the Operator's response and notify the Operator if it agrees or disagrees with the Operator's notice within 20 Business Days after receipt of that notice (or such longer period as may be agreed between the Parties).
- (b) If Aurizon Network agrees with the Operator's notice under **clause 18.2(a)(i)17.2(a)(i)**, then Aurizon Network must:
 - (i) amend the proposed amendments to ensure that such amendments will not materially impact the Operator's operations to such an extent as to fundamentally frustrate the Operator's operation of Train Services under this Deed over a sustained period of time; and
 - (ii) within 5 Business Days of making the amendments under **clause 18.3(b)(i)17.3(b)(i)** give the Operator a copy of its amendments to the proposed amendments.
- (c) If Aurizon Network disagrees with the Operator's notice under **clause 18.2(a)(i)17.2(a)(i)**, Aurizon Network may implement the proposed amendments from the later of:
 - (i) the date Aurizon Network notifies the Operator of its determination; and
 - (ii) if the Operator has notified Aurizon Network within the required timeframe under **clause 18.2(a)(ii)17.2(a)(ii)**, the date that the Parties comply with **clause 18.417.4**.
- (d) If the Operator disputes Aurizon Network's determination under **clause 18.3(b)17.3(b)**, then either Party may refer the dispute for determination by an Expert in accordance with **clause 30.329.3** and Aurizon Network must not implement the proposed amendments pending the Expert's determination.

17.418.4 Discretionary System Amendment with negative financial impact

- (a) If the Operator notifies Aurizon Network under **clause 18.2(a)(ii)17.2(a)(ii)**, the Operator must, within 20 Business Days after providing such notice (or such longer period as may be agreed between the Parties), provide to Aurizon Network details of such Net Financial Effect reasonably required by Aurizon Network to assess such Net Financial Effect, including estimates of any additional costs, savings, benefits or detriments to be obtained or suffered, or reasonably expected to be obtained or suffered, by the Operator as a direct result of Aurizon Network implementing the proposed amendments.
- (b) The Operator warrants that any estimates given by it under **clause 18.4(a)17.4(a)** are to its knowledge accurate on the basis of the information reasonably available to it.
- (c) Promptly after the Operator complies with **clause 18.4(a)17.4(a)**, the Parties must negotiate in good faith to seek to agree appropriate financial arrangements between them with respect to such Net Financial Effect

and, failing agreement within a further 20 Business Days after the Operator provides the relevant details under **clause 18.4(a)**~~17.4(a)~~, either Party may refer the matter to an Expert in accordance with **clause 30.3**~~29.3~~ to determine an appropriate financial arrangement to compensate the Operator for the Net Financial Effect on the Operator of the Discretionary System Amendment. Aurizon Network must not implement the proposed amendments pending the Expert's determination.

~~17.5~~18.5 **Expert must have regard to certain matters**

In making a determination referred to in **clause 18.3(d)**~~17.3(e)~~ or **18.4(c)**~~17.4(e)~~, the Expert must have regard to, except in circumstances where consequences are otherwise provided under this Deed, the reasonable costs and benefits accruing to the Operator.

~~17.6~~18.6 **Costs of implementing amendments to a System Wide Requirement**

- (a) The Operator must use all reasonable endeavours to minimise the Net Financial Effect on the Operator of any proposed amendments to a System Wide Requirement.
- (b) Despite **clause 18.4**~~17.4~~, where any System Wide Requirement is varied to ensure the ongoing safe operation of the Network, each Party must fund its own costs of implementing the proposed amendments including the equipping of Rollingstock with new or additional equipment such as Signalling and Telecommunications Equipment or making any other modification to Rollingstock.
- (c) At any time before Aurizon Network implements any proposed amendments, Aurizon Network may elect not to proceed with the proposed amendments provided it notifies the Operator within 1 Business Day of making such election.
- (d) The Parties must account to each other in respect of the contributions agreed or determined under **clause 18.4(c)**~~17.4(e)~~ after completion of the implementation of the proposed amendments and subsequent modifications to the Operator's systems, equipment or Rollingstock as required by the amendments.

~~17.7~~18.7 **Implementation of amendments to System Wide Requirements**

- (a) Where Aurizon Network implements the proposed amendments in accordance with this **clause 18**~~17~~, the relevant System Wide Requirement will be altered as contemplated in the Amendment Notice following completion of the implementation of the proposed amendments.
- (b) The Parties must take all necessary action and make all necessary amendments to the IRMP, Environmental Management Plan, the Operating Plan and/or the Emergency Response Plan in response to the relevant amendments to the System Wide Requirements (including providing Aurizon Network with a further Certificate of Compliance where the Authorised Rollingstock or Rollingstock Configurations require modification as a result of a change to a System Wide Requirement).
- (c) Aurizon Network must allow a reasonable period for the Operator to amend its procedures and plans to comply with any such amended

System Wide Requirement, except in the case of emergency circumstances for safety reasons where Aurizon Network may require immediate compliance.

48.19 Weighbridges and Overload Detectors

48.19.1 General

- (a) Where a Weighbridge or Overload Detector is located en route between an Origin and Destination for a Train Service Type:
 - (i) the Party responsible for that Weighbridge or Overload Detector (as specified in **item 5 of Schedule 3**) must use reasonable endeavours to ensure that such Weighbridge or Overload Detector is operational, calibrated and available to weigh Trains operated over such Weighbridge or Overload Detector; and
 - (ii) the Operator must use reasonable endeavours to operate its Trains over such Weighbridge or Overload Detector in a manner so that the Weighbridge or Overload Detector weighs the Operator's Trains.
- (b) Aurizon Network may vary at any time the numbers and locations of Weighbridges and Overload Detectors, subject to providing reasonable notice to the Operator.

48.219.2 Exceeding Maximum Allowable Gross Tonnage

- (a) The Operator must use reasonable endeavours to ensure that the gross mass of any Wagon or Train operated by it under this Deed does not exceed the relevant Maximum Allowable Gross Tonnage.
- (b) If any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Allowable Gross Tonnage, then the Operator must reduce the gross mass to a level below the relevant Maximum Allowable Gross Tonnage:
 - (i) unless otherwise directed by Aurizon Network, if the Train has not entered the mainline, before the Train enters the mainline; and
 - (ii) if directed by Aurizon Network, at a specific siding or location directed by Aurizon Network.

48.319.3 Exceeding Maximum Desirable Gross Tonnage

If any Wagon or Train operated by the Operator is determined by a Weighbridge or Overload Detector to be in excess of the relevant Maximum Desirable Gross Tonnage, then Aurizon Network may impose any Operational Constraints which Aurizon Network considers to be reasonable in the circumstances.

48.419.4 Record keeping

Where the Operator's Trains or Wagons are weighed by a Weighbridge or Overload Detector, the Party responsible for the Weighbridge or Overload Detector as specified in **item 5 of Schedule 33** must use reasonable endeavours to ensure that:

- (a) if it is not the owner or operator of the Weighbridge or Overload Detector, it obtains all relevant records from the Weighbridge or Overload Detector including records of the gross mass of each loaded Wagon and Train;
- (b) whether or not it is the owner or operator of the Weighbridge or Overload Detector, it keeps a record of the gross mass of each loaded Wagon and Train;
- (c) the records referred to in **clauses 19.4(a)18.4(a)** and **19.4(b)18.4(b)** (as applicable) are provided to:
 - (i) the Party or other person loading the Trains; and
 - (ii) the other Party within 10 Business Days after the end of each Month.

18.519.5 Verification

- (a) If the Party that is not responsible for the Weighbridge or Overload Detector reasonably believes that any Weighbridge or Overload Detector may be inaccurate, that Party may by notice to the other Party require the other Party to procure the testing of the accuracy of such Weighbridge or Overload Detector.
- (b) As soon as reasonably practicable after being given a notice under **clause 19.5(a)18.5(a)**, the Party responsible for the Weighbridge or Overload Detector must use reasonable endeavours to procure a suitably qualified person to:
 - (i) test the calibration of the relevant Weighbridge or Overload Detector (as applicable); and
 - (ii) make any adjustments required to correct the calibration of the Weighbridge or Overload Detector (as applicable).
- (c) Subject to **clause 19.5(e)18.5(e)**, the relevant Weighbridge or Overload Detector (as applicable) is deemed to have malfunctioned from the date the notice is given under **clause 19.5(a)18.5(a)** until the testing referred to in **clause 19.5(b)18.5(b)** has been carried out and, if required, the Weighbridge or Overload Detector has been recalibrated. Until such testing has been carried out and the Weighbridge or Overload Detector has been recalibrated, the mass of the relevant Train or Wagon which would otherwise have been measured by that Weighbridge or Overload Detector is the Maximum Desirable Gross Tonnage for the Train or Wagon, as applicable.
- (d) Except in the case of manifest error or fraud, the determination of the person conducting the test in accordance with **clause 19.5(b)18.5(b)** is final and binding on the Parties.
- (e) Where the person conducting the test in accordance with **clause 19.5(b)18.5(b)** determines that the Weighbridge or the Overload Detector is measuring within the tolerances specified in **item 5 of Schedule 33**, the Weighbridge or the Overload Detector (as applicable) will be treated as having been measuring accurately from the date on which the relevant notice was given under **clause 19.5(a)18.5(a)**.
- (f) The cost of conducting the test and making adjustments in accordance with **clause 19.5(b)18.5(b)** must be borne by:

- (i) the Party responsible for the Weighbridge or Overload Detector as specified in **item 5 of Schedule 33** if the Weighbridge or Overload Detector is determined to be not measuring within the tolerances specified in **item 5 of Schedule 33**; or
- (ii) the Party giving notice under **clause 19.5(a)**~~18.5(a)~~ if the Weighbridge or Overload Detector is determined to be measuring within the tolerances specified in **item 5 of Schedule 33** (and, to the extent that the Party responsible for the Weighbridge or Overload Detector has paid any costs of conducting the test, subject to **clause 8.4**, the Party giving the notice must reimburse the Party responsible for the Weighbridge or Overload Detector such reasonable costs of conducting the test).

~~18.6~~19.6 **No Claim**

- (a) Despite any other provision in this Deed, neither Party (**first Party**) is liable to the other Party for any damage, loss, cost or expense that the other Party may suffer or incur as a result of the first Party, in good faith, acting on the basis of any mass determined in accordance with this Deed.
- (b) Despite any other provision in this Deed, neither Party has any Claim against the other Party as a result of, or arising from, any delay to or cancellation of Train Services as a result of the operation of this **clause 19.6**.

~~19.20~~ **Performance Levels**

~~19.120.1~~ **Consequences of failure to comply with Performance Levels**

- (a) A failure by either Party to achieve the relevant Performance Level does not constitute a breach of this Deed and the only consequences of such failure as between the Parties are the consequences set out in this **clause 20.1**.

~~19.220.2~~ **Review of Performance Levels**

- (a) The Parties must, if requested by either Party, meet to review the Performance Levels subject to such review not occurring within six Months after the Commitment Date or any previous review of the Performance Levels.
- (b) If either Party notifies the other that it considers that the Performance Levels are no longer appropriate, the Parties must use reasonable endeavours to agree, but only with the written consent of the Access Holder, on varied Performance Levels and any associated variations to this Deed (including the applicable Train Descriptions).
- (c) If the Parties and the Access Holder are unable to agree to such variations then the existing Performance Levels will continue to apply unless varied by Aurizon Network in accordance with **clause 14.2(a)(iv)**~~13.2(a)(iv)~~.

2021 Infrastructure management

20.121.1 Management and control of the Nominated Network

Aurizon Network is responsible for the management of the Nominated Network and retains control over all activities on the Nominated Network.

20.221.2 Maintenance of the Nominated Network

- (a) Aurizon Network must carry out Maintenance Work on the Nominated Network such that, subject to any criteria or derogations for the Nominated Network specified in the IRMP and the Network Management Principles:
 - (i) the Infrastructure is consistent with the Rollingstock Interface Standards; and
 - (ii) the Operator can operate Train Services in accordance with their Scheduled Times.
- (b) Aurizon Network may impose (either temporarily or permanently) such Operational Constraints as it considers necessary, acting reasonably, for the protection of any person or any property (including the Infrastructure) or to facilitate the carrying out of Maintenance Work or Infrastructure Enhancements provided that, in exercising its rights under this **clause 21.2(b)**~~20.2(b)~~, Aurizon Network must:
 - (i) use its reasonable endeavours to minimise disruption to Train Services (including giving as much notice as possible and, where possible, providing alternative Scheduled Times having regard to the reasonable requirements of the Operator); and
 - (ii) comply with the relevant procedures specified in the Interface Coordination Arrangements.
- (c) The Operator must notify Aurizon Network as soon as is reasonably practicable of any damage to, or disrepair or failure in operation or function of, any part of the Infrastructure of which the Operator becomes aware.
- (d) The Operator must provide reasonable cooperation to Aurizon Network in relation to the timetabling of Planned Possessions provided that any such Planned Possessions are consistent with the Network Management Principles and implemented in accordance with the Possession Protocols.
- (e) Subject to the Possession Protocols, Aurizon Network must use its reasonable endeavours to carry out:
 - (i) Emergency Possessions within seven days after the detection of the fault giving rise to the need for the Emergency Possession; and
 - (ii) Urgent Possessions within between seven days and three Months after the detection of the fault giving rise to the need for the Urgent Possession.

2122 Incident management

21.122.1 Compliance

- (a) If requested by Aurizon Network from time to time, the Operator must demonstrate to Aurizon Network's reasonable satisfaction that:

- (i) procedures are in place which ensure compliance by the Operator with any reporting requirements in the Emergency Response Plan and, to the extent relevant, the Emergency Procedures; and
 - (ii) the Operator is complying with such procedures and reporting requirements.
- (b) The Operator must ensure that, at all times:
- (i) sufficient members of the Operator's Staff are appropriately qualified to participate in Investigations; and
 - (ii) the names and positions of those members of the Operator's Staff are maintained in the Emergency Response Plan.

21.222.2 Obstructions

- (a) Unless permitted under this Deed or authorised by Aurizon Network, the Operator must not cause any Obstruction or permit any Obstruction caused by the Operator to continue.

21.322.3 Notification

- (a) The Operator must notify the Train Controller as soon as reasonably practicable after the Operator or the Operator's Staff discover or become aware of:
 - (i) any Obstruction (including all Incidents) or any breach or suspected breach of Safeworking Procedures;
 - (ii) anything which the Operator or the Operator's Staff observe which may reasonably be considered to cause or contribute to the occurrence of an Incident or Obstruction; or
 - (iii) any harm to the Environment caused or contributed to by the Operator's operation of Train Services on the Nominated Network, which the Operator knows would result in a breach by Aurizon Network of the terms of any environmental authority it holds in connection with the Nominated Network.
- (b) Aurizon Network must notify the Operator of all Incidents involving the Operator's Rollingstock.

21.422.4 Management of Incident response

- (a) Aurizon Network is responsible for the overall coordination and management of the response to an Incident (including notifying all relevant emergency services) so that Restoration and Recovery are effected as soon as practicable.
- (b) If an Incident occurs
 - (i) the Operator:
 - (A) is, subject to **clause 22.4(c)**~~21.4(e)~~, responsible for effecting Recovery and Retrieval;
 - (B) must:
 - (1) make arrangements to effect Recovery and Retrieval within three hours after the Incident occurred;
 - (2) cooperate with and assist Aurizon Network in

Restoration;

- (3) effect timely Recovery and Retrieval within 12 hours after the Incident occurred (or within such other period as the Parties may agree) in accordance with the Emergency Response Plan;
 - (4) as soon as reasonably practicable, notify Aurizon Network;
 - (5) take action as soon as reasonably practicable in respect of an Incident to prevent or minimise injury to any person or damage to any property (including harm to the Environment) where there is an imminent risk of such injury or damage, but otherwise take no action without the prior approval of Aurizon Network (not to be unreasonably withheld); and
 - (6) comply with the directions of Aurizon Network in respect of the coordination and management of Recovery, Retrieval and Restoration.
- (c) If an Incident occurs and Aurizon Network reasonably believes that it will be able to effect Recovery more quickly than the Operator, then Aurizon Network may, subject to using reasonable efforts to consult with the Operator:
- (i) take such action as is reasonably necessary (including the use of a Railway Operator's Rollingstock to clear the Operator's Rollingstock) to effect Recovery; and
 - (ii) recover such reasonable costs incurred by Aurizon Network in doing so. Subject to **clause 8.4**, the Operator must, within 10 Business Days after receiving such demand, pay to Aurizon Network such reasonable costs incurred by Aurizon Network.
- (d) Subject to **clause 22.4(e)21.4(e)**, each Party must use all reasonable endeavours to ensure that any property damage, actual or potential harm to the Environment or delays to the recommencement of Train Movements arising from Restoration or Recovery are minimised.
- (e) Aurizon Network may, subject to Aurizon Network using its best efforts to first consult with the Operator about such action, take such action (including to give directions to the Operator and the Operator's Staff and to remove or require the Operator to remove any of its Rollingstock from the Nominated Network) as Aurizon Network considers reasonably necessary to recommence Train Movements as soon as practicable and, subject to **clause 22.4(k)(i)21.4(k)(i)**, Aurizon Network will not be liable for any damage to or loss of freight or Rollingstock caused by such action.
- (f) Where:
- (i) Aurizon Network seeks to remove, or require the Operator to remove, any Relevant Rollingstock from the Nominated Network under **clause 22.4(e)21.4(e)**; and
 - (ii) such removal would reasonably be expected to cause material damage to or materially increase the damage to the Relevant

Rollingstock,

then Aurizon Network and the Operator must:

- (iii) use reasonable endeavours to consult and agree on the removal of the Relevant Rollingstock as soon as reasonably practicable and, in any event, within six hours after the occurrence of the Incident or such longer period as the Parties may agree; and
 - (iv) if the Parties do not consult or reach agreement within the period referred to in **clause 22.4(f)(iii)21.4(f)(iii)**, then the Parties must refer the decision to their representatives with authority to make the necessary decisions who must in good faith seek to agree a course of action within two hours of the referral to them or such longer period as the Parties may agree.
- (g) If Aurizon Network's and the Operator's representatives with authority to make the necessary decisions do not consult or do not agree within the specified period in **clause 22.4(f)(iv)21.4(f)(iv)**, then Aurizon Network must refer its proposed course of action with respect to the removal of the Relevant Rollingstock to an Expert who must determine in accordance with **clause 30.329.3** whether or not, having regard to:
- (i) the potential to further damage the Relevant Rollingstock or cause damage to any property (including harm to the Environment);
 - (ii) the impact on Aurizon Network's ability to effect Restoration; and
 - (iii) the time critical nature of the decision,
- the course of action proposed by Aurizon Network is reasonable.
- (h) Following completion of the process set out in **clauses 22.4(f)21.4(f)** and **22.4(g)21.4(g)** (as applicable), Aurizon Network may progress with the proposed course of action unless the Expert determines that Aurizon Network's proposed course of action is not reasonable.
- (i) Aurizon Network may, where it is reasonable and practicable in the circumstances to do so, issue a Train Control Direction to the Operator to provide assistance with clearing any Network Incident including providing Rollingstock, where appropriate, for use by or under the direction of Aurizon Network and undertaking any variation in the operation of a Train Service (including coupling its Rollingstock with Rollingstock of Aurizon Network or another Railway Operator). The Operator must comply with any such Train Control Direction. The Operator may recover from Aurizon Network such reasonable costs incurred in complying with this **clause 22.4(j)21.4(i)** as agreed or, failing agreement within 20 Business Days after notice by the Operator to Aurizon Network, as determined by an Expert in accordance with **clause 30.329.3**.
- (j) The assessment of the costs to be recovered under **clause 22.4(c)21.4(e)** or **clause 22.4(j)21.4(i)** for the use of Rollingstock must have regard to any industry or other agreement covering such costs and any payments facilitated by such agreement.
- (k) Except as otherwise provided in this Deed, Aurizon Network is not liable to the Operator and the Operator must not make any Claim against Aurizon Network, Aurizon Network's director and/or Aurizon Network's Staff for:

- (i) any damage to or loss of freight or Rollingstock caused by a course of action permitted in accordance with **clause ~~22.4(e)~~21.4(e)**, except to the extent:
 - (A) such damage or loss is caused by the negligent act or omission or wilful default or misconduct of Aurizon Network or Aurizon Network's Staff; or
 - (B) the Expert determines that Aurizon Network's course of action is not reasonable; and
- (ii) any delays, cancellation of Train Services or Claims suffered or incurred by, or made or brought by or against, the Operator as a result of complying with a request by Aurizon Network pursuant to **clause ~~22.4(i)~~21.4(i)**.
- (l) The Operator is solely liable for, and releases, indemnifies and will keep indemnified Aurizon Network and its directors and Aurizon Network's Staff against all Claims of any nature suffered or incurred by, or made or brought against, Aurizon Network, its directors or Aurizon Network's Staff in respect of any course of action permitted in accordance with clause **~~22.4(h)~~21.4(h)**.

~~21.5~~22.5 Investigations

- (a) If an Incident occurs, an Investigation into the Incident must be:
 - (i) commenced as soon as practicable unless otherwise agreed between the Parties; and
 - (ii) conducted in accordance with the Investigation Procedures.
- (b) Each Party must cooperate, and ensure that Aurizon Network's Staff or the Operator's Staff (as applicable) cooperate, fully with any Investigation.
- (c) The Parties must consult in good faith in relation to the implementation of any recommendations arising from an Investigation in accordance with the Investigation Procedures.

~~21.6~~22.6 Management of Environmental Incidents

- (a) If:
 - (i) the Operator's Activities in connection with this Deed have caused or contributed to an actual or potential Environmental Incident and Aurizon Network reasonably considers that action is required to prevent, mitigate or remedy that Environmental Incident; or
 - (ii) Aurizon Network is given a direction, notice or order by an Environmental Regulator that some action is required to prevent, mitigate or remedy any actual or potential Environmental Incident caused or contributed to, or likely to be caused or contributed to, by the Operator's Activities in connection with this Deed,
 then:
 - (iii) Aurizon Network may notify the Operator of the actions which are required; and

- (iv) the Operator must, at its cost and as soon as reasonably practicable after receiving such notice from Aurizon Network, ensure such actions are implemented.
- (b) If **clause 22.6(a)(ii)**~~21.6(a)(ii)~~ applies, a notice given under **clause 22.6(a)(iii)**~~21.6(a)(iii)~~ must be accompanied by a copy of the direction, notice or order given by the Environmental Regulator (if given in writing) provided that Aurizon Network can redact from the copy of the document any information which relates to the Activities of a person other than the Operator or Aurizon Network.
- (c) If any actions which Aurizon Network could require the Operator to implement under **clause 22.6(a)**~~21.6(a)~~ ought best be undertaken by Aurizon Network, then Aurizon Network may elect to undertake such actions and the Operator must pay to Aurizon Network the reasonable costs and expenses incurred by Aurizon Network in doing so.
- (d) If the Operator disputes any actions taken by Aurizon Network under this **clause 22.6**~~21.6~~, either Party may refer the dispute to an Expert in accordance with **clause 30.3**~~29.3~~ and if the Expert determines the dispute in favour of the Operator, then Aurizon Network must reimburse the Operator for the costs incurred by the Operator as a result of the actions implemented by the Operator at Aurizon Network's request (or, if applicable, Aurizon Network must bear the costs and expenses incurred by Aurizon Network in accordance with **clause 22.6(b)**~~21.6(b)~~ and is not entitled to recover those costs from the Operator) to the extent determined by the Expert.

21.722.7 Environmental Incident reporting

- (a) The Operator must notify:
 - (i) Aurizon Network as soon as reasonably practicable after becoming aware of the occurrence of an Environmental Incident occurring on the Nominated Network caused, or contributed to, by the Operator.
 - (ii) all relevant Environmental Regulators of the occurrence of any Environmental Incident which is caused, or contributed to, by the Operator in accordance with the Operator's obligations under Environmental Laws.
- (b) Aurizon Network may report the occurrence of the Environmental Incident to any relevant Environmental Regulator provided it first consults with the Operator about the proposed content of any such report.
- (c) In the event that an Environment Regulator requires information, or undertakes an investigation, in relation to an Environmental Incident, the Operator and Aurizon Network must cooperate with the Environmental Regulator and provide appropriate resources to comply with any lawful requirements of the Environmental Regulator in relation to the Environmental Incident.

22.23 Operator's staff

22.123.1 Safety of Operator's Staff

The Operator is fully responsible and liable for the health and safety of the Operator's Staff and the personal property of the Operator's Staff, and, subject to **clause 27.26**, indemnifies and releases Aurizon Network to the extent permitted by Law from any liability in relation to the Operator's Staff except to the extent that such liability is caused or contributed to by the breach of this Deed by Aurizon Network or any negligent act or omission of Aurizon Network or Aurizon Network's Staff.

22.223.2 Qualifications of Operator's Staff

The Operator must:

- (a) ensure that:
 - (i) all risks associated with Safety Related Work (including the competence of all Operator's Staff to safely and properly discharge their duties related to the exercise of the Operator's rights or performance of its obligations under this Deed) are addressed in the Interface Risk Assessment;
 - (ii) all Operator's Staff:
 - (A) hold and keep current all qualifications and accreditations required under any Law and as specified in the IRMP; and
 - (B) undertake any additional training from time to time in order to keep current such qualifications and accreditations;
- (b) meet all costs of any training and/or testing required to meet the requirements of this **clause 23.222.2**; and
- (c) keep Aurizon Network advised of any Required Information in relation to all of the Operator's Staff engaged in Safety Related Work on the Nominated Network and ensure that all Safety Related Work is performed only by those Operator's Staff whose details have been provided to Aurizon Network in accordance with this **clause 23.222.2** and who satisfy the requirements of this **clause 23.222.2**.

22.323.3 Entry onto Aurizon Network Land

The Operator must ensure that the Operator's Staff do not enter upon the Aurizon Network Land in a manner inconsistent with the Interface Coordination Arrangements, the IRMP or the Emergency Response Plan without the prior written approval of Aurizon Network and that, in the event such approval is given, the relevant Operator's Staff comply with all conditions of the approval and hold the necessary qualifications and accreditations.

23.24 Interface and environmental risk management

23.124.1 Compliance with Interface Risk Management Plan

Each Party must advise the other Party of any failure to comply with the IRMP as soon as reasonably practicable after the Party becomes aware of such non-compliance, including details of the nature of the non-compliance and how the Party has rectified or intends to rectify the non-compliance.

23.224.2 Environmental consultant

The Parties must, at the Operator's cost (unless otherwise agreed between the Parties), engage suitably qualified persons (reasonably acceptable to both Parties) to undertake any specialist assessments required for the purpose of identifying and assessing Environmental Risks as part of an Interface Risk Assessment.

23.324.3 Interface representative

- (a) Prior to the commencement of any Train Services, each Party must nominate one or more appropriately qualified representatives (by identifying the name, title, experience (including length of experience) and qualifications of each representative) (**Interface Representative**) who is or are (as applicable) to be responsible for:
- (i) making decisions in relation to interface and environmental issues that arise in connection with this Deed;
 - (ii) liaising and cooperating with representatives of the other Party on those interface and environmental issues; and
 - (iii) meeting with representatives of the other Party at locations, times and by means (including in person) specified by Aurizon Network from time to time.
- (b) Each Party must ensure that any representative it nominates under this **clause 24.3~~23.3~~** is available to efficiently and effectively perform the responsibilities of the Interface Representative specified in **clause 24.3(a)~~23.3(a)~~** and that it has nominated an Interface Representative under this **clause 24.3~~23.3~~** at all times during the Term.

23.424.4 Operator's Safety Management System

The Operator must develop, implement and maintain a safety management system (**Operator's Safety Management System**) which must specify (as a minimum):

- (a) the Interface Risks identified in the IRMP from time to time and the measures for managing those Interface Risks specified in the IRMP from time to time which the Operator is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of; and
- (b) processes for ensuring that the Operator, its Rollingstock, Rollingstock Configurations and Train Services at all times comply with the requirements of this Deed, including the IRMP from time to time.

23.524.5 Aurizon Network's Safety Management System

Before the commencement of any Train Services, Aurizon Network must incorporate into its safety management system any measures for managing Interface Risks specified in the IRMP from time to time which Aurizon Network is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of.

23.624.6 Aurizon Network's environmental management system

Before the commencement of any Train Services, Aurizon Network must incorporate into its environmental management system any measures for

managing Environmental Risks specified in the IRMP from time to time which Aurizon Network is responsible for implementing, complying with, ensuring compliance with and/or ensuring the ongoing effectiveness of.

23.724.7 Carriage of Dangerous Goods on Train Services

- (a) If Dangerous Goods are to be carried on a Train Service, the Operator must ensure that:
 - (i) all requirements of the Dangerous Goods Code in relation to the Train Service are fully complied with (including placement of relevant, accurate and current documentation on Trains);
 - (ii) Aurizon Network is advised of the details of the Dangerous Goods (including a description of them and the applicable Dangerous Goods United Nations (UN) Number) as part of the Train List before the operation of the Train Service; and
 - (iii) any authorisation or prior approvals required under the Dangerous Goods Code in relation to the Train Service have been obtained and are available for inspection by Aurizon Network (if requested).
- (b) Before any Dangerous Goods can be carried on a Train Service, the Operator must ensure that the Emergency Response Plan prepared in accordance with **clause 15.1(a)(i)(B)**~~14.1(a)(i)(B)~~ includes procedures for responding to an Incident involving Dangerous Goods of the type to be carried on the Train Service.

23.824.8 Noise management during Train Services

- (a) In addition to any noise attenuation or noise management measures which may form part of or be identified in the IRMP or the Environmental Management Plan, the Operator must contribute to the reasonable costs, as reasonably determined by Aurizon Network, incurred by Aurizon Network in undertaking reasonable noise abatement measures on or adjacent to the Nominated Network where the Noise Levels are (or, but for the taking of these measures by Aurizon Network, would be) exceeded during the Term.
- (b) If, during the Term, the Noise Levels are varied (reduced) such that noise from the Nominated Network exceeds the reduced Noise Levels, then Aurizon Network may elect, acting reasonably, to implement reasonable noise abatement measures on the Nominated Network to ensure compliance with the reduced Noise Levels. The Operator must contribute to Aurizon Network's reasonable costs of those noise abatement measures as reasonably determined by Aurizon Network.
- (c) If the Operator disputes any determination made by Aurizon Network under this **clause 24.8**~~23.8~~ regarding the contribution of costs, then the Operator may refer that dispute to an Expert for determination in accordance with **clause 30.3**~~29.3~~.

23.924.9 Community liaison and environmental complaint procedures

- (a) Before the commencement of any Train Services the Operator must take all steps necessary to comply with all relevant community liaison

requirements required by Law, any Authority or reasonably required by Aurizon Network.

- (b) The Operator must invite Aurizon Network to be represented at any community meetings related to the operation of the Train Services under this Deed organised by the Operator.
- (c) If Aurizon Network or the Operator receives noise complaints or other complaints dealing with Environmental issues in relation to the Nominated Network, then both Aurizon Network and the Operator must:
 - (i) inform each other of those complaints as soon as reasonably practicable; and
 - (ii) cooperate in investigating and responding to those complaints.

~~23.10~~24.10 **Audit and review**

- (a) The Operator must, if requested by Aurizon Network, promptly provide to Aurizon Network copies of those parts of any environmental audits undertaken by or on behalf of the Operator in respect of its Train Services operated on the Nominated Network.
- (b) Aurizon Network must provide the Operator with copies of those parts of Aurizon Network's environmental audits that are relevant to the operation of the Operator's Train Services operated on the Nominated Network.
- (c) Without limiting **clause 15.2**~~14.2~~, if Aurizon Network becomes aware of any inadequacy of the IRMP or the Operator's Environmental Management Plan due to:
 - (i) any change in Environmental Laws of relevance to the operation of Train Services on the Nominated Network; or
 - (ii) any Activities of the Operator in connection with this Deed which cause or contribute to, or are to likely cause or contribute to, an Environmental Incident,

then Aurizon Network can give the Operator a notice under **clause 15.2**~~14.2~~ notifying the Operator that it requests that the IRMP be reviewed.

~~23.11~~24.11 **Notification**

- (a) The Operator must notify Aurizon Network of any failure by the Operator to comply with the Environmental Management Plan or its obligations under any Safety Law or Environmental Law which are directly relevant to the Operator's Activities under this Deed as soon as reasonably practicable after the Operator becomes aware of such failure and provide details of how it intends to address the non-compliance.
- (b) Without limiting any other provisions of this Deed, the Operator must remedy such non-compliance as soon as reasonably practicable having regard to, without limitation, the nature of the non-compliance and any action required by any Safety Regulator or any Environmental Regulator.
- (c) The Operator must comply with all notices given by Aurizon Network requiring the Operator to cease conduct which is causing or threatening to cause:

- (i) a risk to the safety of persons or property; or
 - (ii) harm to the Environment.
- (d) A Party must promptly provide to the other Party any notices, directions or orders relating to the operation of Train Services under this Deed that it receives from any Safety Regulator or Environmental Regulator.
- (e) Aurizon Network must notify the Operator of any changes to any Environmental Authorities held by Aurizon Network or variations to any other environmental information provided by Aurizon Network to the Operator relevant to the operation of Train Services.

24.25 Inspection and audit rights

24.125.1 Right of inspection by Operator

- (a) Subject to **clause 25.1(b)**~~24.1(b)~~, the Operator may, before the initial commencement of Train Services for any Train Service Type, at its cost and risk, inspect the Infrastructure comprising the Nominated Network, including fencing and level crossing protection, in order to satisfy itself as to the standard of the Infrastructure and assess the operational, environmental and safety risks associated with the operation of Train Services on the Nominated Network.
- (b) Any inspection by the Operator under **clause 25.1(a)**~~24.1(a)~~:
- (i) is subject to:
 - (A) the Operator providing reasonable notice to Aurizon Network of its requirement to inspect the Infrastructure and conducting that inspection at reasonable times;
 - (B) any such inspection being conducted in the presence of a representative of Aurizon Network; and
 - (C) such other reasonable conditions as may be imposed by Aurizon Network on such inspection, including compliance with any Safeworking Procedures and Safety Standards; and
 - (ii) must be conducted by the Operator in a manner which does not cause any disruption to any Train Movements or to the carrying out of Maintenance Work or Infrastructure Enhancements.

24.225.2 Right of inspection of Trains and Rollingstock by Aurizon Network

- (a) If Aurizon Network reasonably believes that Rollingstock or Rollingstock Configurations for a Train Service Type used in the operation of Train Services do not comply with:
- (i) the Authorised Rollingstock or the Authorised Rollingstock Configurations for the Train Service Type;
 - (ii) the Rollingstock Interface Standards (subject to any Approved Derogations);
 - (iii) the IRMP; or
 - (iv) any applicable Laws relevant to the Operator's Train Services,

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

- (b) Subject to Aurizon Network notifying the Operator, if required, under **clause 25.2(a)24.2(a)**, Aurizon Network may require any of the Operator's Rollingstock (either loaded or empty) to be available at such location as Aurizon Network may reasonably require, including locations on the Infrastructure but not on the Nominated Network, for weighing, measurement or other inspection at any reasonable time specified by Aurizon Network. The Operator must comply with any of Aurizon Network's requirements under this **clause 25.2(b)24.2(b)**.
- (c) Any inspection by Aurizon Network under **clause 25.2(b)24.2(b)** is subject to:
 - (i) Aurizon Network providing reasonable notice to the Operator of its requirement to inspect the Rollingstock and conducting that inspection at reasonable times; and
 - (ii) any such inspection being conducted in the presence of a representative of the Operator.
- (d) Despite **clause 19.18**, if any of the Operator's Rollingstock is loaded in excess of the limits specified in an Authority to Travel or a Train Route Acceptance or reasonably considered by Aurizon Network to be loaded in an unsafe or insecure manner, then Aurizon Network may at any time:
 - (i) require the Operator to discontinue the Train Service until such time that the Rollingstock is loaded in accordance with this Deed and Aurizon Network gives the Operator a Train Control Direction authorising it to recommence the operation of the Train Service; and/or
 - (ii) after notifying the Operator, require the Operator to remove the excess or adjust the load at the Operator's expense.
- (e) If the Operator fails to remove the excess or adjust the load as soon as reasonably practicable after Aurizon Network notifies the Operator under **clause 25.2(d)(ii)24.2(d)(ii)**, then Aurizon Network may arrange for its removal or adjustment and the Operator must, within 10 Business Days after receiving such demand, reimburse to Aurizon Network all reasonable costs incurred by Aurizon Network. The Operator must comply with any of Aurizon Network's requirements under this **clause 25.224.2(e)**.

24.325.3 Parties' obligations

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

25.26 Insurance by Operator

25.26.1 Maintain insurance policies

Before the commencement of Train Services under this Deed, the Operator must, at its expense, take out and subsequently maintain current at all times during the Term insurance with a corporation (as defined in the Corporations Act) licensed to conduct insurance business in Australia (or otherwise reasonably acceptable to Aurizon Network) those policies of insurance required by this Deed.

25.26.2 Required insurance policies

The Operator must effect and maintain insurance for the risks and on the terms specified in **schedule 7**.

25.26.3 Disclosure of insurance policies

The Operator must provide to Aurizon Network evidence of the insurance policies effected and maintained pursuant to this **clause 26.25** (including evidence that the cover provided under those insurance policies complies with this **clause 26.25** and of the currency of those insurance policies) to Aurizon Network's reasonable satisfaction:

- (a) at least 10 Business Days before the commencement of Train Services under this Deed;
- (b) within 10 Business Days after renewal of each insurance policy during the Term; and
- (c) within 10 Business Days after being requested to do so in writing by Aurizon Network.

25.26.4 Failure to disclose insurance policies

Without prejudice to Aurizon Network's other rights and remedies in respect of such default, if the Operator, whenever required to do so under this Deed, fails to produce to Aurizon Network evidence to the reasonable satisfaction of Aurizon Network of insurances that have been effected or maintained by it and does not remedy that default within 10 Business Days after Aurizon Network gives notice to the Operator requiring that default to be remedied, Aurizon Network may effect and maintain the insurance and pay the premiums and any amount so paid will be a debt due from the Operator to Aurizon Network.

25.26.5 Minimum terms of policies

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

- (a) note the interests of the Operator, any contractor of the Operator engaged by the Operator in relation to the performance of the Operator's obligations under this Deed and Aurizon Network;
- (b) not contain any exclusions, endorsements or alterations to the accepted policy wording that adversely amends the cover provided without the written consent of Aurizon Network (not to be unreasonably withheld or delayed); and
- (c) include the terms and be for the amounts referred to in **schedule 7**.

25.626.6 Operator not to render policy void

The Operator must not render any of the insurances effected in accordance with this **clause 2625** void or voidable or liable to refusal of any claim.

25.726.7 Compliance

The Operator must at all times comply with the terms and conditions of all insurance policies effected pursuant to this **clause 2625**.

25.826.8 Notice of potential claims

In addition to any other obligation on the Operator under this Deed, the Operator must:

- (a) notify Aurizon Network as soon as practicable after the making of any Claim under any insurance policy required by this Deed;
- (b) notify Aurizon Network of the Claim in reasonable detail; and
- (c) keep Aurizon Network informed of subsequent developments concerning any Claim,

to the extent that such Claim is in connection with this Deed.

25.926.9 Operator to pay all excess/deductibles

- (a) The Operator must in respect of any Claims by it or any other insured for which it is responsible, pay and bear all excesses/deductibles provided for in any insurances effected in accordance with this **clause 2625**.
- (b) If the Operator fails to pay any excesses/deductibles provided for in any insurances effected in accordance with this **clause 2625**, Aurizon Network may pay the relevant excesses/deductibles and any amount so paid will be a debt due from the Operator to Aurizon Network.

25.1026.10 Settlement of claims

If:

- (a) Aurizon Network makes a Claim against the Operator for damage to the Infrastructure;
- (b) the Claim is in respect of the same matter as the Operator claims under a policy required by this Deed for damage to Infrastructure; and
- (c) the Operator has not disputed Aurizon Network's Claim,

then upon settlement of the Operator's claim, under such policy, the portion of monies owed by the Operator to Aurizon Network must be paid to Aurizon Network from the monies received by the Operator under the policy against which the Operator made a claim.

2627 Indemnities

26.127.1 Indemnity for personal injury and property damage

Subject to **clause 2827**, each Party is solely liable for, and releases, indemnifies and will keep indemnified the other Party, its directors and Staff against, all Claims of any nature suffered or incurred by, or made or brought against, the other Party, its directors or Staff in respect of:

- (a) any loss of, damage to or destruction of property (including property of the other Party); or
 - (b) personal injury to or death of any person,
- in each case caused by or contributed to (to the extent of the contribution) by:
- (c) any breach of this Deed by the Party; or
 - (d) any negligent act or omission of, the Party or the Party's Staff in connection with this Deed.

26.227.2 Indemnity by Operator for certain liabilities to Third Parties

Subject to **clause 28.27**, the Operator is solely liable for, and releases, indemnifies and must keep indemnified Aurizon Network, Aurizon Network's directors and Aurizon Network's Staff against, all Claims of any nature made or brought against, Aurizon Network, Aurizon Network's directors or Aurizon Network's Staff by a Third Party in respect of:

- (a) any loss of, damage to or destruction of real or personal property; or
- (b) personal injury to or death of any person,

where such person or property is being transported on a Train Service except to the extent that such damage, loss, injury or death is caused by or contributed to (to the extent of the contribution) by:

- (c) any breach of this Deed by Aurizon Network; or
- (d) any negligent act or omission of Aurizon Network or Aurizon Network's Staff.

26.327.3 Duty to mitigate

Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Deed applies.

26.427.4 General provisions regarding indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties and survives the expiry or termination of this Deed.
- (b) It is not necessary for a Party to incur expense or make a payment before enforcing any indemnity in this Deed.

27.28 Limitations and exclusions of liability

27.128.1 Exclusion of Consequential Loss

Except as expressly provided otherwise in **clause 32.6(c)**~~31.6(e)~~ or the Interface Risk Provisions which form part of this Deed under **clause 3**, neither Party is liable to the other under or in connection with this Deed (including under an indemnity) for any Consequential Loss however caused (including any breach of this Deed or negligent act or omission of a Party).

27.228.2 Time limit and minimum threshold on Claims

Neither Party (**first Party**) is liable for, and the other Party must not make any Claim against the first Party under or in connection with this Deed unless:

- (a) notice of the Claim has been given to the first Party within 12 Months after the other Party becomes aware of the occurrence of the event or circumstance giving rise to the Claim; and
- (b) the amount of the Claim exceeds \$100,000 in respect of any one event or cause of action or series of related events or causes of action, provided that if this condition is satisfied then the other Party may proceed for the full amount of the Claim and not only the amount in excess of \$100,000.

27.328.3 Claims and exclusions in respect of Infrastructure standard

Despite any other provision of this Deed, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Operator for any Claim, and the Operator must not make any Claim against Aurizon Network, its directors and/or Aurizon Network's Staff, in respect of any:

- (a) loss of or damage to real or personal property, including property of the Operator;
- (b) personal injury to or death of any person; or
- (c) any other damage, expense, injury, cost or loss whatsoever,

arising out of or in connection with the standard of the Infrastructure or any failure of or defect in the Infrastructure, except to the extent that such loss, damage, injury or death, cost or expense results directly from the failure of Aurizon Network to perform its obligations under **clause 21.2(a)**~~20.2(a)~~ or Aurizon Network's negligence in performing those obligations.

27.428.4 Claims and exclusions in respect of non-provision of Operational Rights

- (a) Subject to **clause 28.4(b)(i)**~~27.4(b)(i)~~ only and despite any other provision of this Deed, Aurizon Network, its directors and Aurizon Network's Staff are not liable to the Operator for any Claim, and the Operator must not make any Claim against Aurizon Network, Aurizon Network's directors and/or Aurizon Network's Staff, in respect of any failure by Aurizon Network to provide the Operational Rights by making the Infrastructure available for the Operator to operate a Train Service at the Scheduled Time in the Train Schedule.
- (b) Aurizon Network is liable to the Operator in respect of any failure by Aurizon Network to provide the Operational Rights by making the Infrastructure available to enable the Operator to operate a Train Service at the Scheduled Time in the Train Schedule if (and then only to the extent that):
 - (i) Aurizon Network did not reschedule the relevant Train Service in accordance with **clause 16.2**~~15.2~~ or **16.3**~~15.3~~ if required to do so under **clause 16.2**~~15.2~~ or **16.3**~~15.3~~; and
 - (ii) the failure by Aurizon Network to make the Infrastructure available was caused by or was the result of an Operational Constraint, that Operational Constraint resulted from a breach of this Deed by Aurizon Network or the negligence of Aurizon Network; and
 - (iii) the failure by Aurizon Network to make the Infrastructure available was not permitted under the Access Agreement or this Deed or was

attributable to a breach of this Deed by, or negligent act or omission of, Aurizon Network; and

- (iv) the failure by Aurizon Network to make the Infrastructure available was not attributable to:
 - (A) the Operator or the Operator's Staff;
 - (B) the Access Holder or the Access Holder's Staff;
 - (C) another Railway Operator (other than Aurizon Network) or any employees, contractors, volunteers or agents of another Railway Operator (other than Aurizon Network);
 - (D) a Force Majeure Event;
 - (E) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles;
 - (F) the circumstances described in clause 21.4(b)(iv)(F) of the Access Agreement existing;
 - (G) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
 - (H) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (v) either:
 - (A) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of **clause 20~~19~~** and the total number of Train Services (expressed as a percentage) cancelled in a Billing Period as a result of a failure by Aurizon Network to make the Infrastructure available (other than any failure by Aurizon Network to make the Infrastructure available which is attributable to an event or circumstance specified in **clauses 28.4(b)(iv)(A)~~27.4(b)(iv)(A)~~** to **28.4(b)(iv)(H)~~27.4(b)(iv)(H)~~**) exceeds five percent of the total number of Train Services scheduled in the Daily Train Plan for that Billing Period; or
 - (B) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of **clause 20~~19~~**, but the failure to make the Infrastructure available is of a magnitude which is beyond the scope of that performance and adjustment regime.

27.528.5 Claims and exclusions in respect of delays to Train Movements

Despite any other provision of this Deed, a Party (**Defaulting Party**) is not liable to the other Party (**Affected Party**) for any Claim, and the Affected Party must not make any Claim against the Defaulting Party, in respect of delays to Train Movements unless (and then only to the extent that):

- (a) the delay was a result of a breach of this Deed by the Defaulting Party, or negligent act or omission on the part of the Defaulting Party; and

- (b) if the delay was caused by or the result of an Operational Constraint:
 - (i) where Aurizon Network is the Affected Party, the Operational Constraint resulted from a breach of this Deed by the Operator; or
 - (ii) where the Operator is the Affected Party, the Operational Constraint was not permitted under the Access Agreement or this Deed or resulted from a breach of this Deed by, or negligent act or omission of, Aurizon Network; and
- (c) the delay is not attributable to:
 - (i) the Affected Party or where the Affected Party is:
 - (A) Aurizon Network - Aurizon Network's Staff; or
 - (B) the Operator - the Operator's Staff, the Access Holder or the Access Holder's Staff;
 - (ii) another Railway Operator (other than the Defaulting Party) or any employees, contractors, volunteers or agents of another Railway Operator (other than the Defaulting Party);
 - (iii) a Force Majeure Event;
 - (iv) Major Periodic Maintenance of, or Infrastructure Enhancements to, the Infrastructure scheduled in a manner consistent with the Network Management Principles;
 - (v) a breach of an Infrastructure Lease by an Infrastructure Lessor or any negligent act or omission of an Infrastructure Lessor; or
 - (vi) any action taken by Aurizon Network, acting reasonably, in response to an emergency or a genuine safety risk; and
- (d) either:
 - (i) the Parties have not agreed upon and implemented a performance and adjustment regime for the purposes of **clause 2019**; or
 - (ii) the Parties have agreed upon and implemented a performance and adjustment regime for the purposes of **clause 2019**, but the delays are of a magnitude which is beyond the scope of that performance and adjustment regime.

27.628.6 Defence of Claims by Third Parties

- (a) Each Party must provide such reasonable assistance as requested by the other Party in the defence of any Claim made against the other Party by a Third Party arising out of any Incident or other event giving rise to the Claim.
- (b) The Party that requested assistance under **clause 28.6(a)**~~27.6(a)~~ must, within five Business Days after a demand is made, pay to the other Party any costs and expenses reasonably incurred by the other Party in providing the assistance requested under **clause 28.6(a)**~~27.6(a)~~.

28.29 Determination of liability and loss adjustment

28.129.1 Determination of liability

In the event of an Incident involving the Operator or any other event which results or could result in a Claim by or against the Operator or Aurizon Network, liability as between the Operator and Aurizon Network is determined, for the purposes of **clauses 27.26** and **28.327.3**:

- (a) as agreed between the Parties;
- (b) subject to **clause 29.1(c)28.1(e)**, failing such agreement within one Month of either Party giving notice to the other requiring agreement on liability, by a loss adjuster appointed under **clause 29.228.2**; or
- (c) where the amount of the Claim exceeds \$200,000 and either Party is dissatisfied with the report of the loss adjuster, by a court of competent jurisdiction.

28.229.2 Loss Adjuster

Subject to **clause 37.36**, where a matter is to be referred to a loss adjuster in accordance with **clause 29.128.1**:

- (a) the loss adjuster:
 - (i) must be appointed by the Parties; or
 - (ii) in default of such appointment within 10 Business Days after the need to appoint a loss adjuster, is to be nominated at either Party's request by the President of The Australasian Institute of Chartered Loss Adjusters;
- (b) if the loss adjuster is to be nominated under **clause 29.2(a)(ii)28.2(a)(ii)** and the President of The Australasian Institute of Chartered Loss Adjusters declines to nominate a person as the loss adjuster but provides a list of people that could be appointed as the loss adjuster, then:
 - (i) the first person specified in that list will be taken to be nominated as the loss adjuster;
 - (ii) if the first person specified in that list does not accept the appointment as the loss adjuster, 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 loss adjuster; and
 - (iii) the process specified in **clause 29.2(b)(ii)28.2(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 loss adjuster accepts the appointment as the loss adjuster;
- (c) 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 loss adjuster (including providing relevant indemnities and paying any charges or fees (which charges or fees must be borne equally by the Parties)) that must be satisfied or complied with as a condition of the President of The Australasian Institute of Chartered Loss Adjusters agreeing to nominate a loss adjuster;
- (d) the loss adjuster must:

- (i) be a Fellow of the Australasian Institute of Chartered Loss Adjusters or have equivalent qualifications and experience;
 - (ii) have no interest or duty which conflicts or may conflict with the loss adjuster's function as a loss adjuster (the loss adjuster being required to fully disclose any such interest or duty before their appointment); and
 - (iii) not be, or have been in the last five years, an employee of the Access Holder, the Operator, any other contracted operator of the Access Holder utilising the Access Rights or Aurizon Network or of a Related Body Corporate of any of them;
- (e) the loss adjuster appointed under this **clause 29.2~~28-2~~**:
- (i) is not permitted to act until the loss adjuster has given written notice of the acceptance of the appointment to both Parties;
 - (ii) is required to undertake to keep confidential all matters coming to the loss adjuster's knowledge by reason of their appointment and the performance of their duties; and
 - (iii) is deemed to be and act as an expert and not an arbitrator, and the Law relating to arbitration, including the *Commercial Arbitration Act 2013* (Qld), does not apply to the loss adjuster or their determination or the procedures by which they may reach a determination.

~~28-3~~29.3 Parties to assist loss adjuster

- (a) Each Party must ensure to the best of its ability that the loss adjuster appointed under **clause 29.2~~28-2~~** is given the opportunity to interview any employee, agent or contractor involved in, or with knowledge of, the Incident or event giving rise to the Claim or with any other relevant information that may be of use to the loss adjuster.
- (b) Each Party must make available to the loss adjuster appointed under **clause 29.2~~28-2~~** any files, documents, data, recordings or other information in the possession or control of the Party that may be of use to, or is requested by, the loss adjuster for the purposes of their investigation.

~~28-4~~29.4 Decision of the loss adjuster

- (a) The loss adjuster appointed under **clause 29.2~~28-2~~** must determine the quantum of the relevant Claim and the liability of the Operator and/or Aurizon Network in respect of such Claim and must provide a copy of their report on such matters to each of the Parties within a reasonable time after their appointment.
- (b) In the absence of manifest error, the decision of the loss adjuster is final and binding upon the Parties where the total claims arising from the Incident or event giving rise to the Claim are equal to or less than \$200,000.

~~28-5~~29.5 Costs of the loss adjuster

The costs of the loss adjuster must be borne by the Parties in such proportions as liability is determined by the loss adjuster, or where the liability is ultimately determined by a court of competent jurisdiction, in such proportions as liability is determined by the court.

29.30 Disputes

29.130.1 Method

If any claim, dispute or question (**Dispute**) arises under this Deed, then unless otherwise expressly provided to the contrary in this Deed, such Dispute must be resolved in accordance with this **clause 30.29** and either Party may give to the other Party a notice in writing (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with in accordance with this **clause 30.29**.

29.230.2 Authorised representative resolution

- (a) Except as otherwise provided in this Deed, within five Business Days after a Dispute Notice is given, the Dispute must be referred for resolution to an authorised representative of each of the Parties with authority to settle the Dispute on behalf of the relevant Party.
- (b) Within 10 Business Days after a Dispute Notice is given, the officers referred to in **clause 30.2(a)29.2(a)** must meet to resolve the Dispute.
- (c) Meetings referred to in **clause 30.2(b)29.2(b)** may be held in person or by telephone, video conference or other means of instantaneous communication.
- (d) If the Dispute is not resolved within 10 Business Days (**Resolution Period**) after:
 - (i) the date that authorised representatives first meet to resolve the Dispute in accordance with **clause 30.2(b)29.2(b)**; or
 - (ii) if the authorised representatives do not meet within the time required under **clause 30.2(b)29.2(b)**, the date the Dispute Notice is given,then the relevant Dispute may, by agreement between the Parties within 10 Business Days of expiration of the Resolution Period, be referred for determination by an Expert in accordance with **clause 30.329.3** or by arbitration in accordance with **clause 30.429.4**.
- (e) If the Parties fail to agree, within 10 Business Days of expiration of the Resolution Period, whether to refer the Dispute to an Expert or to arbitration, either Party may refer the Dispute to the courts of the State in accordance with **clause 30.629.6**.

29.330.3 Expert

Subject to **clause 37.36**, where any matter may be referred to an expert (**Expert**) pursuant to **clause 30.2(d)29.2(d)**, or is expressly required by this Deed to be referred to an Expert, then except as otherwise provided for in this Deed:

- (a) an Expert must be appointed by agreement between the Parties, or in default of such appointment within 10 Business Days of the requirement or right (as applicable) to refer the matter to an Expert, then that person is to be nominated at either Party's request by:
 - (i) if the Parties agree the Dispute is purely of:
 - (A) a financial or accounting nature; or
 - (B) a technical nature,

- the President (for the time being) of the Resolution Institute in Australia; or
- (ii) in any other case, the President (for the time being) of the Queensland Law Society Inc;
- (b) if the Expert is to be nominated by a person referred to in **clause 30.3(a)29.3(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, then:
- (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, then the next person specified in that list will be taken to be nominated as the Expert; and
 - (iii) the process specified in **clause 30.3(b)(ii)29.3(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 30.3(b)29.3(b)**, if the Expert is to be nominated by a person referred to in **clause 30.3(a)29.3(a)** and the person nominated as the Expert does not accept 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 30.3(a)29.3(a)**;
- (d) if the Expert is to be nominated by a person referred to in **clause 30.3(a)29.3(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 must 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 must 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, the Expert 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 the Operator, any other contracted operator of the Access Holder utilising the Access Rights or the Access Holder in respect of the Access Rights which are the subject matter of the Dispute, or

- Aurizon Network or of a Related Body Corporate of any of them;
- (iv) not be permitted to act until the Expert has given notice to the Parties that the Expert is willing and able to accept the appointment;
 - (v) have regard to the provisions of this Deed and consider all submissions (including oral submissions by either Party provided that such oral submissions are made in the presence of the other Party), supporting documentation, information and data with respect to the matter provided to the Expert by the Parties;
 - (vi) provide both Parties with a copy of the Expert's 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; and
 - (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);
- (g) the Expert is deemed to be and must act as an expert and not an arbitrator and the Law relating to arbitration (including the *Commercial Arbitration Act 2013* (Qld)) will not apply to the Expert or the determination or the procedures by which the Expert may reach a determination;
 - (h) in the absence of manifest error, the decision of the Expert is final and binding upon the Parties;
 - (i) the costs of the Expert (and the costs of any advisers to the Expert) must be borne, severally (and not jointly and severally), by the Parties in equal shares, with each Party bearing its own costs of participating in the dispute resolution process (unless otherwise agreed by the Parties);
 - (j) the expert determination must be conducted in accordance with the expert determination rules adopted by the Resolution Institute from time to time, except that to the extent of any inconsistency between those rules and this Deed, the terms of this Deed prevail;
 - (k) any determination made by an Expert must be consistent with the provisions of this Deed; and
 - (l) the Parties must:
 - (i) procure the Expert to use reasonable endeavours to make its determination or finding in respect of the Dispute within 2 Months from the date the initial statement regarding the Dispute is submitted by the claimant to the Expert; and
 - (ii) do everything reasonably requested by the Expert to assist the Expert in determining the Dispute, including providing or making available to the Expert, as soon as reasonably practicable, all information and materials in their possession or control requested by the Expert and attending any hearing convened by the Expert.

29.430.4 Arbitration

- (a) Subject to **clause 3736**, the Parties may agree to refer any Dispute to arbitration by a single arbitrator sitting in Brisbane agreed upon between

the Parties and, failing agreement upon such arbitrator within 10 Business Days after the date of notice from one Party to the other requiring the appointment of an arbitrator, by an arbitrator appointed by the President of the Resolution Institute. Every such reference will be an arbitration within the meaning of the *Commercial Arbitration Act 2013* (Qld), and subject to the provisions relating to arbitration contained in that Act.

- (b) If the Resolution Institute declines to nominate a person as the arbitrator but provides a list of people that could be appointed as the arbitrator, then:
 - (i) the first person specified in that list will be taken to be nominated as the arbitrator;
 - (ii) if the first person specified in that list does not accept the appointment as the arbitrator, then the next person specified in that list will be taken to be nominated as the arbitrator; and
 - (iii) the process specified in **clause 30.4(b)(ii)**~~29.4(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 arbitrator accepts the appointment as the arbitrator;
- (c) subject to **clause 30.4(b)**~~29.4(b)~~, if the person nominated as the arbitrator under **clause 30.4(a)**~~29.4(a)~~ does not accept appointment as the arbitrator, then either Party may request that the Resolution Institute appoints an alternative person as the arbitrator.

~~29.5~~**30.5** Queensland Competition Authority (QCA)

Subject to **clause 37**~~36~~ the Parties may agree to refer, and where required by this Deed must refer, any Dispute to the QCA.

~~29.6~~**30.6** Determination by Court

If any Dispute is not:

- (a) resolved in accordance with **clause 30.2**~~29.2~~;
- (b) referred to an Expert in accordance with **clause 30.3**~~29.3~~; nor
- (c) referred to the QCA in accordance with **clause 30.5**~~29.5~~,

then either Party may refer the Dispute to the courts of the State.

~~30~~**31** Force Majeure

~~30.1~~**31.1** Notice of Force Majeure

- (a) If, by reason of a Force Majeure Event affecting a Party, that Party (**Affected Party**) is prevented or hindered (or likely to be prevented or hindered) from carrying out, whether wholly or in part, its obligations under this Deed (other than an obligation to pay money), then:
 - (i) if the Affected Party is Aurizon Network and the Force Majeure Event also affects the Access Agreement, Aurizon Network must provide a copy of each notice it gives to the Access Holder in respect of that Force Majeure Event to the Operator; and
 - (ii) if **clause 31.1(a)**~~30.1(a)~~ does not apply, that Party must, as soon as reasonably practicable after it becomes aware of the Force Majeure

Event, give to the other Party and the Access Holder prompt (and in any event within 5 Business Days after it becomes aware of the event or circumstance causing the Force Majeure Event) notice (which may be provided in electronic form) of the Force Majeure Event including:

- (A) details of the Force Majeure Event and (if applicable) that part of the Nominated Network affected or likely to be affected; and
 - (B) details of the obligations affected or likely to be affected.
- (b) The Affected Party must provide the other Party with a further notice as soon as reasonably practicable but in any event within 2 Business Days of the notice provided under clause 29.1(a) if the notice provided in **clause 31.1(a)30.1(a)** is either in electronic form or does not include the following information:
- (i) the information in **clause 31.1(a)30.1(a)**; and
 - (ii) full particulars of all relevant matters including:
 - (A) details of the action that the Affected Party has taken to remedy the situation and details of the action that the Affected Party proposes to take to remedy the situation (to the extent they are known); and
 - (B) a reasonable estimate of the time during which the Affected Party will be (or is likely to be) prevented or hindered from carrying out, whether wholly or in part, its obligations under this Deed due to the Force Majeure Event.
- (c) Without prejudice to its rights under this **clause 31.130.1**, the Affected Party may issue further notices in respect of the Force Majeure Event as the Affected Party considers reasonably necessary to update the other Party and the Access Holder as to each of the matters set out in this **clause 31.130.1**.
- (d) Aurizon Network must:
- (i) include the Operator (and the Access Holder or Customer, if any) in any meeting which Aurizon Network may have in respect of the Force Majeure Event; and
 - (ii) provide a copy of any notice given to the Operator to the Access Holder or Customer, if any.

30.231.2 Suspension of obligations

- (a) Subject to compliance with the requirements of **clause 31.130.1**, the obligations of the Affected Party under this Deed are suspended during the time and to the extent that the Affected Party's performance of its obligations is prevented or hindered by the Force Majeure Event.
- (b) If the notice is not provided in accordance with **clause 31.1(a)30.1(a)** or **31.1(b)30.1(b)**, then the obligations of the Affected Party under this Deed will be suspended on and from the later of the time the notice requirements of **clauses 31.1(a)30.1(a)** and **31.1(b)30.1(b)** are satisfied.

30.331.3 **Duty to mitigate**

- (a) Subject to **clause 31.3(b)**~~30.3(b)~~, a Party must use all reasonable endeavours to remedy or overcome the effect of the Force Majeure Event affecting the Party's obligations under this Deed as soon as possible and must attempt to:
 - (i) mitigate the effect of the Force Majeure Event; and
 - (ii) in the case of a Force Majeure Event affecting Aurizon Network, identify alternative viable means of providing the Operational Rights affected (if applicable).
- (b) The Affected Party is not obliged to settle any strike, lockout or other labour dispute other than on terms acceptable to it.

30.431.4 **End of period of Force Majeure**

Subject to **clauses 31.6**~~30.6~~ and **31.7**~~30.7~~, the suspension of the obligations of the Parties due to a Force Majeure Event ends when, but only to the extent that, the Affected Party is able to resume performance of its obligations under this Deed, at which time it must promptly:

- (a) notify the other Party and the Access Holder advising the extent to which it is recommencing the performance of its obligations; and
- (b) recommence the performance of its obligations to the extent outlined in the notice.

30.531.5 **Reduction of Access Rights**

- (a) If:
 - (i) any part of the Nominated Network specified in item 2 of Schedule 3 is damaged or destroyed by a Force Majeure Event; and
 - (ii) in Aurizon Network's reasonable opinion the cost of repairing such damage or destruction or replacing that part of the Nominated Network is not economic on the basis of the then and committed future utilisation of that part of the Nominated Network,

then Aurizon Network may, by notice, advise the Operator, the Access Holder (and its Customer, if applicable), other affected Access Holders, each affected Railway Operator and the QCA of:
 - (iii) the estimated cost of effecting the necessary repairs or replacement;
 - (iv) the level of insurance available to effect the necessary repairs and replacement;
 - (v) a detailed explanation as to why the cost of repairing or replacing is not economic; and
 - (vi) Aurizon Network's intention to not repair or replace the relevant part of the Nominated Network unless the Operator (or the Access Holder or its Customer, as applicable) using that part of the Nominated Network pay the difference between the amount of insurance available to effect the necessary repairs or replacement and the actual anticipated cost to effect those repairs or replacements.

- (b) If the Operator (or the Access Holder or its Customer, as applicable) notifies Aurizon Network that:
 - (i) it agrees to bear the whole incremental cost of necessary repairs or replacement (after the amount of insurance available has been applied); or
 - (ii) it agrees to bear that part requested by Aurizon Network of the incremental cost of necessary repairs or replacement (and subject to Aurizon Network being satisfied that all other relevant Access Holders (or their Customers or Railway Operators, as applicable) have also agreed to bear their respective part of such costs) (after the amount of insurance available has been applied),

then Aurizon Network will proceed with the repairs or replacement within a reasonable time after:

- (iii) if **clause 31.5(b)(i)**~~30.5(b)(i)~~ applies, receipt by Aurizon Network from the Operator (or the Access Holder or its Customer) of payment of the relevant amount; and
 - (iv) if **clause 31.5(b)(ii)**~~30.5(b)(ii)~~ applies, receipt by Aurizon Network from the Operator (or the Access Holder or its Customer) of the last payment of the relevant amount.
- (c) If the Operator (or the Access Holder or its Customer, as applicable) pays to Aurizon Network any of the costs under **clause 31.5(b)**~~30.5(b)~~, on completion of the necessary repairs or replacement:
 - (i) Aurizon Network must, within a reasonable time, refund to the party who made such payment any amount by which the amount paid that party exceeds the actual cost; or
 - (ii) the Operator (or the Access Holder or its Customer, if applicable) must, within a reasonable time, pay to Aurizon Network the amount by which the actual cost exceeds proportionately the amount agreed to be paid by that party (as applicable).

If, within 40 Business Days after receipt of a notice from Aurizon Network under **clause 31.5(a)**~~30.5(a)~~, the Operator (or Access Holder or Customer, as applicable) has not given notice to Aurizon Network under **clause 31.5(b)**~~30.5(b)~~, then Aurizon Network may, by giving not less than 20 Business Days' notice to the Access Holder (**Nominated Network FM Reduction Notice**), reduce the FM Access Rights, in which case, the FM Access Rights will cease to form part of the Access Rights of the Access Holder on and from the date specified in the Nominated Network FM Reduction Notice (which must be at least 20 Business Days from the date of the Nominated Network FM Reduction Notice).

30.631.6 Effect of Nominated Network FM Reduction Notice on Operator nomination

- (a) If a Nominated Network FM Reduction Notice is given under the Access Agreement, then the FM Access Rights will cease to form part of the Access Rights on and from the date specified in the notice (which must be at least 20 Business Days from the date of the notice).

- (b) As soon as practicable after the expiry of the period set out in clause 25.4(a) of the Access Agreement, Aurizon Network must issue a notice to the Operator summarising, in respect of each Train Service Type affected by the FM Access Rights, the changes to the “Nominated Monthly Operational Rights (for a 30 day Month)” in **Schedule 2**.

30.731.7 Termination after extended Force Majeure Event

If the Affected Party is wholly prevented or hindered from carrying out its obligations under this Deed (other than an obligation to pay money) for a period of more than three consecutive Months, then:

- (a) the Parties must meet to endeavour to identify any alternative viable means to perform the suspended obligations; and
- (b) failing any alternative means being agreed within one Month after the end of the three Month period, the other Party may terminate this Deed by 20 Business Days notice to the Affected Party and the Access Holder and **clauses 31.430.4 and 31.530.5** apply without prejudice to any of the rights of the Parties which accrued before the date of such termination.

31.32 Suspension

31.132.1 Suspension of Train Services for a Train Service Type

If a Suspension Event specified in **part A of schedule 8** occurs in respect of a Train Service Type, Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (**Suspension Notice**), suspend the right of the Operator to operate some or all of the Train Services for that Train Service Type on the Nominated Network.

31.232.2 Suspension of Train Services generally

If a Suspension Event specified in **part B of schedule 8** occurs, Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate some or all of the Train Services (for any one or more Train Service Types) on the Nominated Network.

31.332.3 Suspension of certain Rollingstock or Rollingstock Configurations

- (a) If:
 - (i) Rollingstock or Rollingstock Configurations used by the Operator in the operation of Train Services:
 - (A) are not Authorised Rollingstock or Authorised Rollingstock Configurations for that Train Service Type; or
 - (B) do not comply with:
 - (1) applicable Laws; or
 - (2) the Rollingstock Interface Standards (subject to any Approved Derogations); or
 - (ii) the Operator otherwise fails to comply with the Rollingstock Interface Standards,

and

- (iii) the Operator fails to rectify such non-compliance within a reasonable period of time (being at least 20 Business Days) notified by Aurizon Network to the Operator; or
- (iv) such non-compliance creates a risk to the safety of any person or a material risk to property,

then Aurizon Network may, by notice in writing to the Operator and the Access Holder (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate Train Services using such Rollingstock or Rollingstock Configurations.

31.432.4 **Suspension due to suspension under Access Agreement**

If any of the Access Holder's rights under the Access Agreement are suspended under the Access Agreement for any reason, then Aurizon Network may, by notice in writing to the Operator (which must be given before or immediately after the suspension) (also a **Suspension Notice**), suspend the right of the Operator to operate Train Services for a Train Service Type, which would otherwise be operated utilising the Access Holder's Access Rights which have been suspended.

31.532.5 **Details of suspension**

A Suspension Notice given by Aurizon Network to the Operator and the Access Holder under **clause 32.131.4, 32.231.2, 32.331.3 or 32.431.4** must set out:

- (a) the rights of the Operator which are affected by the suspension; and
- (b) the reason for the suspension; and
- (c) except for a suspension under **clause 32.431.4**, the actions the Operator must take to have the suspension lifted.

31.632.6 **Effect of suspension**

- (a) If Aurizon Network exercises a right of suspension under this **clause 3231**, then the Operator and the relevant Operator's Staff must immediately cease to operate:

- (i) the relevant Train Services; or
- (ii) the Train Services using the relevant Rollingstock or Rollingstock Configurations,

as applicable, until such time as the suspension is lifted by Aurizon Network.

- (b) The suspension of any rights under this **clause 3231** does not affect or suspend any other obligation of the Operator under this Deed, and is without prejudice to Aurizon Network's other rights and remedies in respect of that or any other default.
- (c) Where Aurizon Network suspends the Operator's right to operate some or all of the Train Services:
 - (i) Aurizon Network will only be liable to the Operator in respect of loss or damage (including damages for Consequential Loss) arising from the suspension if, and only if, no reasonable person in Aurizon

Network's position could have formed the view that the stated grounds for the suspension existed, provided that the Operator must use all reasonable endeavours to mitigate the loss or damage arising from the suspension; and

- (ii) Aurizon Network bears the burden of establishing that a reasonable person in Aurizon Network's position could have formed that view.
- (d) Notwithstanding **clause 32.631.6(c)**, Aurizon Network will not be liable to the Operator for any Third Party claim (including a claim for Consequential Loss), made against the Operator in relation to a suspension where the Third Party is the Access Holder and the Access Holder has a direct contractual relationship with Aurizon Network in respect to the Access Rights to which the suspension relates.

31.732.7 Duration of suspension

- (a) The suspension of any rights under **clause 32.131.1, 32.231.2 or 32.331.3** continues until such time as the Operator has remedied the relevant default or non-compliance notified in the Suspension Notice.
- (b) The suspension of any rights under **clause 32.431.4** continues until such time as the relevant suspension of the Access Holder's rights under the Access Agreement is lifted.

3233 Termination

32.133.1 Termination of Train Services for a Train Service Type by Aurizon Network

- (a) Subject to **clause 33.1(b)32.1(b)** and without limiting any rights of termination contained elsewhere in this Deed, Aurizon Network may, by notice in writing to the Operator and the Access Holder, reduce the Operational Rights by the Train Services for a Train Service Type if a Termination Event specified in **part A of schedule 8** occurs in relation to that Train Service Type.
- (b) If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 33.1(a)32.1(a)**, then Aurizon Network may only exercise its rights under **clause 33.1(a)32.1(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 3234**.

32.233.2 Termination of Agreement

- (a) Subject to **clause 31.2(b)** and without limiting any rights of termination contained elsewhere in this Deed, Aurizon Network may, by notice in writing to the Operator and the Access Holder, terminate this Deed if a Termination Event specified in **part B of schedule 8** occurs.

If there is a Corresponding Suspension Event in respect of the Termination Event referred to in **clause 33.2(a)32.2(a)**, then Aurizon Network may only exercise its rights under **clause 33.2(a)32.2(a)** if it has first exercised its right of suspension in respect of the Corresponding Suspension Event under **clause 3234**.

32.333.3 Termination by the Operator

Without limiting any rights of termination contained elsewhere in this Deed, the Operator may, by notice in writing to Aurizon Network and the Access Holder, terminate this Deed if any of the following occurs:

- (a) an Insolvency Event in relation to Aurizon Network occurs and continues for a period of 40 Business Days;
- (b) Aurizon Network's Accreditation is suspended, cancelled or amended such that it cannot perform its obligations generally under this Deed, and such default continues for at least 20 Business Days after the Operator gives Aurizon Network notice of the default;
- (c) Aurizon Network fails to pay when due any amount payable under this Deed, and such default continues for at least 20 Business Days after the Operator gives Aurizon Network notice of the default; or
- (d) Aurizon Network is in default of the due performance of any other obligation under this Deed, and such default continues for at least 40 Business Days after the Operator gives Aurizon Network notice of the default.

32.433.4 Grounds for termination to be specified

A notice given under **clause 33.132.1, 33.232.2 or 33.332.3** must set out the grounds for the termination.

32.533.5 Obligations and other rights upon termination or expiry

- (a) Neither termination of this Deed by a Party under this **clause 3332** nor expiry of this Deed prejudices:
 - (i) a Party's right to make a Claim, recover damages or avail itself of other remedies under this Deed or at law; or
 - (ii) either Party's rights to recover money due to it under this Deed.
- (b) On termination of this Deed, Aurizon Network and the Operator are released from all further obligations or liabilities under this Deed, except for:
 - (i) rights which accrued on or before termination, including for any breach of this Deed which occurred before termination. Any liability in respect of such prior breach will be limited in the manner provided in this Deed; or
 - (ii) any provisions which are expressed as surviving the expiry or termination of this Deed.

32.633.6 Removal of Rollingstock following termination

- (a) Immediately on expiry of the Term, and within 12 hours (or such other period as the Parties may agree) after termination of this Deed for any other reason, the Operator must, at the Operator's cost, remove all of the Operator's Rollingstock operated under this Deed from the Nominated Network.
- (b) If the Operator fails to remove the Operator's Rollingstock from the Nominated Network, then Aurizon Network may give a notice to the Operator demanding the removal of the Rollingstock within a further 12

hours (or such longer period as the Parties may agree).

- (c) If the Operator fails to remove any of the Operator's Rollingstock from the Nominated Network the subject of the notice under **clause 33.6(b)**~~32.6(b)~~ within the time required under **clause 33.6(b)**~~32.6(b)~~, then Aurizon Network is entitled to remove the Rollingstock and recover the reasonable costs of removal from the Operator, provided it notifies the Operator reasonably in advance of its intention to exercise the rights under this clause.
- (d) Subject to **clause 28.1**~~27.1~~, the Operator is liable for, and indemnifies Aurizon Network against, any costs reasonably incurred by Aurizon Network in relation to any damage or obstruction caused to the Infrastructure or the Nominated Network by the Operator in removing any Rollingstock in accordance with this **clause 33.6**~~32.6~~.
- (e) The Operator must comply with all reasonable directions issued by Aurizon Network in relation to the removal of the Rollingstock in accordance with this **clause 33.6**~~32.6~~.

~~33.34~~ Assignment

~~33.134.1~~ Assignment by Aurizon Network

- (a) Aurizon Network may Assign the whole or any part of its rights or obligations under this Deed without the prior consent of the Operator, provided that:
 - (i) the Assignee is Accredited; and
 - (ii) Aurizon Network procures that the Assignee covenants with the Operator by deed to be bound by and to perform the obligations of Aurizon Network under this Deed to the extent of the rights and obligations Assigned to the Assignee.
- (b) On the Assignee entering into the deed referred to in **clause 34.1(a)**~~33.1(a)~~, Aurizon Network is released and discharged from further liability under this Deed in respect of the obligations which the Assignee has undertaken under that deed to be bound by and to perform.

~~33.234.2~~ Assignment by the Operator

- (a) The Operator may not Assign its rights or obligations under this Deed other than in accordance with this **clause 34.2**~~33.2~~.
- (b) The Operator may, provided it is not in default in the performance or observance of any of its obligations under this Deed, Assign the whole of its rights and obligations under this Deed to:
 - (i) a Related Body Corporate of the Operator which is Accredited to operate Train Services and is otherwise capable of performing the obligations of the Operator under this Deed, provided that:
 - (A) the Operator remains liable for the performance of the duties, responsibilities and obligations assumed by the Assignee; and
 - (B) the performance by the Assignee will (to the extent of such performance) discharge the Operator's liability for the

performance of the duties, responsibilities and obligations Assigned; or

- (ii) a person other than a Related Body Corporate of the Operator with the prior written consent of Aurizon Network which must not be unreasonably withheld if Aurizon Network is satisfied that such person is:
 - (A) financially sound;
 - (B) Accredited to operate Train Services; and
 - (C) otherwise capable of performing the obligations of the Operator under this Deed.
- (c) Any Assignment by the Operator of its rights and obligations under this Deed is conditional on and will not take effect until:
 - (i) Aurizon Network has been provided with written evidence of the Access Holder's consent to the Assignment;
 - (ii) the Assignee covenants with Aurizon Network by deed, in such terms as Aurizon Network may reasonably require, to be bound by and to perform the obligations of the Operator under this Deed.
- (d) Subject to **clause 34.2(e)**~~33.2(e)~~, if a Change in Control of the Operator occurs without Aurizon Network's prior written consent, the occurrence of the Change in Control will be taken to be an Assignment of the Operator's rights and obligations under this Deed which is not permitted under this **clause 34.2**~~33.2~~.
- (e) **Clause 34.2(d)**~~33.2(d)~~ does not apply to a Change in Control where:
 - (i) the Operator or its Ultimate Holding Company is listed on a recognised stock exchange;
 - (ii) the Change in Control is a result of a Change in Control of that listed entity; and
 - (iii) that listed entity remains listed on that recognised stock exchange both before and after that Change in Control.

33.334.3 Charging

A Party (**Chargor**) may create a Charge over all of its rights under this Deed in favour of a recognised financial institution (**Chargee**) to secure financial accommodation provided to the Chargor in relation to its obligations under this Deed, provided that the Chargee must first covenant in writing in favour of the other Party (**Non-Charging Party**), pursuant to a deed in such terms as the Non-Charging Party may reasonably require, that in relation to the exercise of any power of sale or other right or remedy under the Charge granted to the Chargee, the Chargee and any person (including any receiver or receiver and manager or agent) claiming through the Chargee must comply with the provisions of this **clause 34**~~33~~ as if it were originally a party to this Deed, and must not exercise any power of sale of the rights and/or obligations of the Chargor under this Deed except in accordance with this **clause 34**~~33~~.

34.35 GST

34.135.1 Construction

In this **clause 35.34**:

- (a) words and expressions which are not defined in this Deed 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*; 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.

34.235.2 Consideration GST exclusive

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

34.335.3 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 Deed, the recipient must pay to the Supplier an amount equal to the GST payable on the supply.

34.435.4 Timing of GST payment

The recipient must pay the amount referred to in **clause 35.334.3** in addition to, and at the same time that, the consideration for the supply is to be provided under this Deed.

34.535.5 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 35.334.3**. The recipient can withhold payment of the amount until the Supplier provides a tax invoice or an adjustment note, as appropriate.

34.635.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a Supplier under this Deed, the amount payable by the recipient under **clause 35.334.3** must be recalculated to reflect the adjustment event and a payment must be made by the recipient to the Supplier, or by the Supplier to the recipient, as the case requires.

34.735.7 Reimbursements

Where a Party is required under this Deed 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.

3536 Confidentiality

35.136.1 Confidentiality

Subject to **clause 36.235.2**, the Recipient must:

- (a) keep confidential, and must not disclose to any Third Party, any Confidential Information disclosed to the Recipient by the Discloser; and
- (b) not use the Confidential Information for any purpose other than for the purposes of this Deed or, if Aurizon Network is the Recipient, for the purposes of:
 - (i) capacity assessment and capacity modelling;
 - (ii) investigation and planning of Maintenance Work;
 - (iii) planning Infrastructure Enhancements; and
 - (iv) complying with its obligations under the Access Undertaking.

35.236.2 Permitted disclosures

The Recipient may disclose Confidential Information disclosed to it by the Discloser to a Third Party where:

- (a) the Recipient has obtained the prior written approval of the Discloser to such disclosure. The Discloser must not unreasonably withhold such approval if the Recipient has procured a confidentiality undertaking in respect of the information from such Third Party in favour of both Parties on terms and conditions satisfactory to both Parties, acting reasonably; or
- (b) disclosure is:
 - (i) required or compelled by any order of a court of competent jurisdiction;
 - (ii) required or compelled by any Law;
 - (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings, including any dispute resolution process under this Deed;
 - (v) reasonably required for the performance of Train Control functions;
 - (vi) required under any stock exchange listing requirement or rule;
 - (vii) required by the Rail Safety Regulator or an Environmental Regulator;
 - (viii) to the Access Holder provided that:
 - (A) the Disclosure is:
 - (1) required by the terms of this Deed;
 - (2) reasonably necessary for the performance of obligations or the exercise of rights under this Deed or the Access Agreement; or
 - (3) reasonably necessary in connection with the safe operation of the Nominated Network; and
 - (B) the Discloser must ensure that the Access Holder keeps the

Confidential Information confidential on terms no less onerous than this ~~clause 36~~**35**;

- (ix) to the Recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (x) to an expert for the purposes of a dispute resolution process, or an auditor for the purposes of an audit, under a "User Funding Agreement" (as defined in the Access Undertaking), if such expert or auditor has executed a legally enforceable confidentiality deed in favour of the Discloser;
- (xi) to legal practitioners and accountants of the Recipient or a Related Body Corporate of it:
 - (A) whose duties in relation to the Recipient or the Related Body Corporate require the disclosure;
 - (B) who are under a duty of confidentiality to the Recipient; and
 - (C) who have been advised of the confidential nature of the Confidential Information; or
- (xii) otherwise permitted or required in accordance with this Deed or the Access Undertaking (as amended by any Change in Access Undertaking).

~~35.336.3~~ **35.336.3** Discloser may give certain directions

On expiry or termination of this Deed, the Discloser may direct the Recipient to do any combination of the following in respect of some or all of the Confidential Information disclosed by the Discloser to the Recipient:

- (a) subject to the lawful requirements of the Recipient to retain copies of Confidential Information for business records and document control registers, to immediately deliver to the Discloser the Confidential Information specified by the Discloser;
- (b) to immediately destroy the Confidential Information specified by the Discloser; and
- (c) where the Recipient has disclosed the Confidential Information to any Third Party, to procure the compliance by that Third Party with the requirements of this ~~clause 36.335.3~~ **35.335.3** as if that Third Party were the Recipient.

~~35.436.4~~ **35.436.4** PPS Act

In addition to the obligations imposed under this ~~clause 36~~**35**, each Party agrees to not disclose any information of the kind described in section 275(1) of the PPS Act, including:

- (a) information about this Deed including a copy of it;
- (b) information about the amount or the obligation secured by any Security Interest created by or under this Deed and the terms of such payment or performance at any time; or

- (c) information about Relevant Collateral at any time.

~~35.5~~36.5 **Survival**

Without limiting ~~clause 39.1~~~~38.4~~, this ~~clause 36~~~~35~~ survives the destruction or return of Confidential Information in accordance with this Deed.

~~35.6~~36.6 **Injunctive relief**

The Recipient acknowledges and agrees that a breach of this ~~clause 36~~~~35~~ would be harmful to the business interests of the Discloser and that, as a result, the Discloser may seek urgent injunctive relief, specific performance or a similar remedy to prevent the occurrence or continuance of any breach or suspected breach of this ~~clause 36~~~~35~~ in addition to any other remedies available at law or in equity under or independently of this Deed.

~~36~~37 **Relationship with Access Agreements**

- (a) Prior to any referral of a matter to a loss adjuster, expert, arbitrator or the QCA (**Adjudicator**) in accordance with ~~clause 29.1~~~~28.4~~ or ~~30~~~~29~~, either Party may notify the other Party that the Access Holder should be a party to that referral and, if such a notice is given, then the Party which has given the notice must:
- (i) notify the Access Holder of the matter to be referred to the Adjudicator; and
 - (ii) provide the Access Holder with a copy of the provisions of this Deed governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, the Adjudicator.
- (b) If the Access Holder is given a notice under ~~clause 37~~~~36(a)~~, then:
- (i) where the Adjudicator is to be a loss adjuster, expert or arbitrator, the Parties are deemed not to have agreed the appointment of the loss adjuster, expert or arbitrator unless the Access Holder has also agreed to the appointment of that loss adjuster, expert or arbitrator;
 - (ii) the Parties must comply with ~~clause 29.1~~~~28.4~~~~27.1~~ or ~~28~~, as applicable, in respect of the Access Holder as though the Access Holder was a Party to this Deed for the purposes of the matter referred to the Adjudicator; and
 - (iii) the Adjudicator in addition to determining the matter between the Parties must also determine any claim, dispute, question or liability involving the Access Holder and the Access Agreement arising in connection with any of the events or facts the subject of the matter referred to the Adjudicator (unless that claim, dispute, question or liability has already been agreed by Aurizon Network and the Access Holder or otherwise determined).
- (c) If the Operator is notified of a matter to be referred to an Adjudicator in accordance with the Access Agreement, then the Operator:
- (i) must comply with the provisions of that agreement governing the referral of a matter to, the determination of a matter by, and the payment of the costs of, an Adjudicator;

- (ii) must provide the Adjudicator with a copy of this Deed;
- (iii) agrees that **clauses 29.1**~~28.1~~ and **30**~~29~~ do not apply to any claim, dispute, question or liability involving the Operator and this Deed arising in connection with the matter referred to the Adjudicator; and
- (iv) agrees that, for the avoidance of doubt, the decision of the Adjudicator, in the absence of manifest error, will be final and binding upon the Operator.

37.38 Notices

37.138.1 Form of Notice

- (a) Any notice, demand, invoice, certification, process or other communication authorised or required to be given by a Party to another under this Deed (other than a Train Control Direction or a direction from the Incident Commander) (**Notice**) must be in writing and signed by an authorised officer of that Party and may, if agreed by the Parties, be in electronic form.
- (b) If a Party gives a Notice under this Deed, that Party must promptly notify the Access Holder. Such notification may be in electronic form.

37.238.2 Method of service

Subject to **clause 38.5**~~37.5~~, a Notice may be given by being:

- (a) personally delivered to a Party;
- (b) left at the Party's current address for service;
- (c) sent to the Party's current address for service by pre-paid ordinary mail;
- (d) sent by facsimile transmission to the Party's current facsimile number for service; or
- (e) if agreed by the Parties, sent by email to the Party's current email address for service.

37.338.3 Deemed Notice

Subject to **clause 38.5**~~37.5~~, a Notice given in accordance with this **clause 38**~~37~~ is deemed to be given if:

- (a) personally delivered, upon delivery;
- (b) posted to an address in Australia, three Business Days after posting;
- (c) posted to an address outside Australia, 10 Business Days after posting;
- (d) sent by facsimile, on the next Business Day after being sent if following transmission the sender receives a transmission report indicating that the facsimile was sent to the addressee's facsimile number; or
- (e) sent by email, on the next Business Day after being sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

37.438.4 Addresses for notices

- (a) Each Party's address for notices is as set out in **item 2** of **schedule 14**.

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

37-538.5 Train Control Direction or Incident Commander's direction

- (a) A Train Control Direction is deemed to have been given at the time the direction is given, issued or made.
- (b) A direction from the Incident Commander is deemed to have been given at the time the direction is communicated by the Incident Commander.

3839 General

38.139.1 Survival

This **clause 3938** and **clauses 7, 19.618.6, 2625, 2827, 2928, 3029, 3332, 3534, 3635** and **3837** survive the expiration or termination of this Deed.

38.239.2 Amendment

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

38.339.3 Entire agreement

- (a) This Deed, the Schedules and other documents referred to in the Schedules constitute the entire understanding and agreement between the Parties as to the subject matter of this Deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Deed are merged in and superseded by this Deed and are of no force or effect whatever, and no Party is liable to any other Party in respect of those matters.
- (c) Neither Party has relied on any representations made by the other Party relating to the subject matter of this Deed or otherwise.
- (d) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this Deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the Parties.

38.439.4 Counterparts

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

38.539.5 Non-merger

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

38.639.6 Authority to enter into agreement

- (a) Each Party warrants to the other Party that, in respect of itself, it has full power to enter into and perform its obligations under this Deed, and that this Deed constitutes valid and binding obligations on it, enforceable in accordance with its terms.
- (b) If this Deed is executed by an attorney, the attorney states, by such execution, that as at the time of such execution the attorney has received no notice of the revocation of the power of attorney pursuant to which the attorney has executed this Deed.

38.739.7 Consents and approvals

Unless otherwise stated in this Deed, if a Party has a right to accept, reject, decide, determine, consent or make any decision or exercise any discretion or decide to give any notice under this Deed, the Party may do so conditionally or unconditionally at its discretion.

38.839.8 Relationship

The relationship between the Parties is entirely contractual. Nothing in this Deed creates, or is to be taken to create, any partnership, joint venture or relationship of employer and employee between the Parties or any of them.

38.939.9 Certificate

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

38.1039.10 Costs

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

38.1139.11 Duty

- (a) The Operator is, as between the Parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Deed and any document executed under or in connection with it.
- (b) If Aurizon Network pays any stamp duty (including any fine or penalty) on or relating to this Deed, or any document executed under or in connection with it, the Operator must, within 10 Business Days after receiving such demand, reimburse Aurizon Network the amount paid.

38.1239.12 Waiver and exercise of rights

- (a) A single or partial exercise or waiver of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.
- (b) No failure or delay by either Party to exercise any right or remedy under this Deed may be construed or operate as a waiver or be evidence of

delay, laches or acquiescence in equity or at law in respect of such right or remedy.

- (c) A waiver or consent by any Party of any default or breach of any term of this Deed does not constitute a waiver of later defaults or breaches of the same or any other term.
- (d) A Party's election not to exercise any rights under this Deed does not prejudice any other rights which that Party may have against the other Party arising out of any failure by the other Party to comply with this Deed.

~~38.13~~39.13 **Computation of time**

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

~~38.14~~39.14 **Severance of invalid or illegal terms**

- (a) If any term of this Deed, or its application to any Party, person or circumstance, is or becomes invalid, void, voidable or otherwise unenforceable for any reason whatever, then:
 - (i) that term, or its application to such Party, person or circumstance, is severed from this Deed;
 - (ii) the remainder of this Deed, excluding the severed part, remains in force, and any term which includes the severed part applies to such Party, person or circumstance without reliance on the part severed; and
 - (iii) to the extent permissible by Law, the Parties must agree to replace the severed term, effective from the date of severance, with a valid and enforceable term which so far as possible achieves the same purpose, object or effect as the invalid, void, voidable or otherwise unenforceable term was intended to achieve and does not cause any substantial reduction in the benefits of either Party or material re-allocation of risks between the Parties.
- (b) The Parties must act reasonably and in good faith in seeking an agreement under this **clause ~~38.14~~39.14** as to a replacement term.
- (c) If the Parties cannot agree upon a replacement term, this Deed is continued in accordance with **clauses ~~38.14(a)(i)~~39.14(a)(i)** and **~~38.14(a)(ii)~~39.14(a)(ii)**.

~~38.15~~39.15 **Rights cumulative**

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

~~38.16~~39.16 **Approvals and consents**

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

~~38.17~~39.17 **Third Party Land**

The Operator acknowledges that:

- (a) the land specified in **item 4 of Schedule 33 (Third Party Land)** is not owned or controlled by Aurizon Network; and
- (b) entry onto that Third Party Land is not included within the definition of Access,

and agrees that in respect of that Third Party Land:

- (c) the Operator must comply with the requirements of the person that owns or controls that Third Party Land (**Landowner**) in relation to that Third Party Land as notified to the Operator by Aurizon Network from time to time;
- (d) if, after the Commencement Date, there is a change in the costs incurred by Aurizon Network due to the requirements of the Landowner in respect of that Third Party Land, then that change is deemed to be a Material Change for the purposes of the Access Agreement; and
- (e) if Aurizon Network's rights in respect of that Third Party Land are terminated for any reason other than the default of Aurizon Network of any agreement that affects Aurizon Network's use of that Third Party Land or other than by agreement with the Landowner, then Aurizon Network may, by notice to the Operator, suspend and/or terminate the Access Rights insofar as they relate to that part of the Nominated Network which is situated on that Third Party Land.

38.1839.18 Implementation of agreement

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

38.1939.19 Governing law and jurisdiction

- (a) This Deed is governed by, and is to be construed in accordance with, the law in force in the State.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State, and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

38.2039.20 PPS Act

- (a) If a Party (**first party**) reasonably determines that this Deed contains a "Security Interest" for the purposes of the PPS Act (**Security Interest**), the other Party (**second party**) agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the first party (after consultation with the second party) reasonably asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the first party to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the first party; or
 - (iii) enabling the first party to exercise rights in connection with the

Security Interest.

- (b) A Party is not required to give any notice under the PPS Act to the other Party or any other person and each Party waives the right to receive any such notice (including a notice of Verification Statement) unless the notice is required by the PPS Act and that obligation cannot be excluded.
- (c) To the extent that this Deed gives rise to a Security Interest, the Parties agree that for the purposes of section 115 of the PPS Act, the following sections of the PPS Act will not apply to any Relevant Collateral:
 - (i) section 95 (notice by Secured Party of removal of Accession);
 - (ii) section 121(4) (notice by Secured Party of enforcement of Security Interest in liquid assets);
 - (iii) section 125 (obligation of Secured Party to dispose of or retain Collateral after seizure);
 - (iv) section 130, to the extent that it requires a party to give any notice to the other party (notice by Secured Party of disposal of Collateral);
 - (v) section 132(3)(d) (obligation of Secured Party to show amounts paid to other Secured Parties in statement of account);
 - (vi) section 132(4) (statement of account by Secured Party if it does not dispose of Collateral within prescribed period);
 - (vii) section 135 (notice by Secured Party of retention of Collateral);
 - (viii) section 142 (redemption of Collateral); and
 - (ix) section 143 (reinstatement of Security Agreement).

Execution

Executed as a deed and delivered on the date shown on the first page.

Executed by Aurizon Network Pty Ltd)
ABN 78 132 181 116:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Executed by [the Operator] ABN)
[insert]:)
)

.....
Company Secretary/Director

.....
Director

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

.....
Name of Director (print)

Date

Schedule 1

Reference schedule

Item	Description	Details
Operator details		
1	Operator	Name: [insert] ABN: [insert]
Particulars for Notices		
2	Address for Notices	Aurizon Network Address: [insert] Facsimile: [insert] Email: [insert] Attention: [insert] Operator Address: [insert] Facsimile: [insert] Email: [insert] Attention: [insert]
Access Agreement		
3	Access Holder	Name: [insert] ABN: [insert]
4	Date of Access Agreement	[insert]

Schedule 2

Train Descriptions

Part A – Matters applicable to specific Train Service Types

1 Train Service Type #1

1.1 Key characteristics of Train Service Type

Details of dates	
Train Service Compliance Date	[insert]
Train Service Commitment Date	[insert]
Train Service Expiry Date	[insert]
General details	
Commodity	Coal
Coal System	[insert]
Reference Train Service	[yes /no]
Details of route and facilities	
Origin	[insert]
Destination	[insert]
Loaded distance from Origin to Destination (km)	[insert]
Empty distance from Destination to Origin (km)	[insert]
Loading Facility	[insert]
Unloading Facility	[insert]
Depot	[insert]
Though-Running Train Service Type	[yes /no]
Details of maximum dwell times	
Maximum Time at Loading Facility (hours)	[insert]
Maximum Time at Unloading Facility (hours)	[insert]
Maximum Time at Depot (hours)	[insert]
Maximum Other Dwell Times (hours)	[insert]

Maximum Sectional Running Times

Maximum Sectional Running Times	The Maximum Sectional Running Time for a Section for the Train Service Type are set out in appendix A to this schedule 22 .
---------------------------------	---

Nominated Monthly Operational Rights

Nominated Monthly Operational Rights	The Nominated Monthly Operational Rights for the Train Service Type is set out in appendix B to this schedule 22 .
--------------------------------------	--

Maximum Payload

Maximum Payload	The Maximum Payload for the Train Service Type is set out in appendix B to this schedule 22 .
-----------------	---

1.2 Special operating restrictions

Without limiting the special operating restrictions which are specified in **item 1.2** of **Part B** of **schedule 22** as being applicable to all Train Service Types, in scheduling Train Services for the Train Service Type in accordance with the Network Management Principles, Aurizon Network must comply with the following special operating restrictions (if any):

Item	Special operating restriction
1	[insert]
2	[insert]

1.3 Cycle description

Subject to:

- (a) any Train Control Direction given to the Operator in respect of a Train Service;
- (b) any exceptions which are specified in **part B** of this **schedule 22** as being applicable to all Train Service Types; and
- (c) any exceptions specified in the table below,

the Operator must operate Train Services for the Train Services Type over the most direct route on the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

Where there is duplicated Track or multiple roads (eg yards), Aurizon Network must have the ability to schedule the Train Service over any of the Tracks or roads.

1.4 Permitted Train Movements on the Nominated Network

Item	Permitted Movements
1	[Insert any permitted Train Movements by the Operator on the Nominated Network other than direct corridor travel of the Train Service in accordance with the specified Sectional Running Times and Dwell Times.]
2	[insert]

Part B – Matters applicable to all Train Service Types

1 Matters applicable to all Train Service Types

1.1 Overview

The matters set out in this **part B** of **schedule 22** are applicable to all Train Service Types and form part of the Train Description for all Train Service Types.

1.2 Special operating restrictions

Without limiting the special operating restrictions for a Train Service Type which are specified in **item 1.2** of **Part A** of **schedule 22** (if any), in scheduling Train Services in accordance with the Network Management Principles, Aurizon Network must comply with the following special operating restrictions:

Item	Special operating restriction
1	[insert]
2	[insert]

1.3 Cycle description

Subject to the exceptions set out in the table below, Train Services cycle description is the most direct route over the Nominated Network between the Origin and Destination and Destination and Origin (as applicable).

Item	Exceptions
1	[insert]
2	[insert]

1.4 Stowage

Item	Stowage requirements
1	[Insert short term Stowage requirements additional to that provided in the relevant Reference Tariff Provisions (as defined in the Access Agreement).]
2	[insert]

Appendix A to Schedule 2

Sectional Running Times

1 Train Services that are Reference Train Services

[Drafting note: This item will set out the Maximum Sectional Running Times for Train Services that a Reference Train Services.]

Maximum Sectional Running Times: Reference Train Services

		Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Reference Train Services

		Empty (mins)			Loaded (mins)		
		Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

2 Train Services that are not Reference Train Services

[Drafting note: If a Train Service for a Train Service Type is a not a Reference Train Service, the Maximum Sectional Running Times for Train Services for that Train Service Type for each Section will be specifically set out in this item.]

Maximum Sectional Running Times: Non- Reference Train Services

		Empty (mins)	Loaded (mins)

Standard Sectional Running Times: Non-Reference Train Services

		Empty (mins)			Loaded (mins)		
		Pass to Stop	Start to Pass	Start to Stop	Pass to Stop	Start to Pass	Start to Stop

Appendix B to Schedule 2

Nominated Monthly Operational Rights

1 Train Service Type #1

Nominated Monthly Operational Rights (for a 30 day Month)	[insert]
Maximum Payload	[insert] tonnes
Nominal Payload	[insert] tonnes
Indicative Tonnage (for a 30 day Month)	[insert] tonnes

Note for information purposes only: The Nominated Monthly Operational Rights (for a 30 day Month) for a Train Service Type is the number of Train Services calculated in accordance with the following formula:

$$\text{NMTS} = 2 \times \text{Loaded Train Services}$$

where:

NMTS = the Nominated Monthly Operational Rights (for a 30 day Month) for the Train Service Type

Loaded Train Services = IT/AAP (rounded to the nearest whole Train Service on the basis that where the first decimal place is greater than three, the number of Train Services is to be rounded up to the nearest number of whole Train Services and, where the first decimal place is three or less, the number of Train Services is to be rounded down to the nearest number of whole Train Services)

IT = the Indicative Tonnage (for a 30 day Month) for the Train Service Type

AAP = the Nominal Payload for the Train Service Type as specified in the relevant Notice of Intention to Increase Nominal Payload

Schedule 3

Nominated Network

1 Nominated Network

The Nominated Network is that part of the Infrastructure described by reference to the diagrams and/or tables set out below, but does not include any freight terminals, railway stations, passenger facilities, workshops or maintenance depots (including provisioning facilities).

[Insert line diagram(s) depicting the Nominated Network]

2 Parts of Nominated Network subject to clause

~~31.5~~30.5

For the purpose of **clause ~~31.5~~30.5**, the specified parts of the Nominated Network are those parts of the Nominated Network described by reference the diagrams and/or tables set out below:

[Insert line diagram(s) depicting the Nominated Network]

[Drafting note: Aurizon Network may specify parts of the Nominated Network for the purpose of **clause ~~31.5~~30.5** which are life expired, obsolete and/or only used by a single user.]

3 Train Control centres and signal cabins

The movement of the Operator's Trains while on the Nominated Network will be controlled by the Train Control centres and signal cabins at locations to be notified by Aurizon Network from time to time.

4 Third Party Land

[Insert diagram(s)/table(s) (if applicable)]

5 Weighbridges and Overload Detectors

5.1 Weighbridges

Location	Party responsible for Weighbridge	Tolerance
[insert]	[insert]	[The tolerances required to achieve verification under the <i>National Measurement Act 1960</i> (Cth)]

5.2 Overload Detectors

Location	Party responsible for Overload Detector	Tolerance
[insert]	[insert]	+/- [insert] %

Schedule 4

Rollingstock and Rollingstock Configurations

[Operator to include all of its Rollingstock]

1 Maximum Gross Mass and Tare Weight

Rollingstock	Maximum Gross Mass (tonnes)	Tare Weight (tonnes)
Wagons		
[Wagon type]	[insert]	[insert]
Other Rollingstock		
[Rollingstock type]	[insert]	[insert]

2 Relevant Rollingstock

[To be inserted as applicable]

Schedule 5

Performance Levels

1 Development of Performance Levels

- 1.1 The Parties must meet as soon as practicable after the Commencement Date to negotiate in good faith to endeavour to agree the Aurizon Network Performance Level (other than the Aurizon Network Performance Levels set out in **item 2.1** of this **schedule 5** which are already agreed between the Parties) and the Operator Performance Level within twelve Months (or such longer period as the Parties may agree) after the Commencement Date.
- 1.2 The Performance Levels may involve financially based incentives and sanctions and, unless otherwise agreed, will be applicable for the Term.
- 1.3 A failure to agree the Performance Levels is not a Dispute for the purposes of **clause 30~~29~~**.
- 1.4 On and from the date the Performance Levels are implemented by the Parties, the Parties must monitor, record and assess the performance of their respective obligations under this Deed against the Performance Levels. Each Party must comply with the reporting and assessment requirements (if any) set out in this **schedule 5**.

2 Aurizon Network Performance Levels

2.1 Average Below Rail Transit Time Threshold

The Average Below Rail Transit Time Factor for a Train Service Type for a Year must not exceed the Average Below Rail Transit Time Threshold for that Train Service Type specified in the table below:

Train Service Type	Average Below Rail Transit Time Threshold (%)
[insert]	[insert]
[insert]	[insert]

3 Operator Performance Levels

[To be inserted when agreed]

Appendix to Schedule 5

Calculation of Below Rail Transit Time

The **Below Rail Transit Time** (as defined in the Access Undertaking) for a Train Service for Train Service Type which has been operated is calculated in accordance with the following formula:

BRTT = SRT – Non BR Start Stop Time + BR Delays

where:

SRT = The lesser of Actual SRT and Standard SRT for the relevant Train Service

Actual SRT = The actual time it takes the relevant Train Service to traverse all relevant Sections for the relevant Train Service

Standard SRT = The sum of:

- (a) the Maximum SRT for all relevant Sections for the relevant Train Service Type; and
- (b) where a movement of the relevant Train Service over a relevant Section requires time to start or stop for a dwell, stop at the Destination or start at the Origin, the sum, for each relevant Section, of the additional time, taken to start or stop (as specified in **appendix A of schedule 22** for the relevant Train Service Type)

Non BR Start Stop Time = The time it takes the relevant Train Service to start after a non-below rail dwell or stop for a non-below rail dwell for all non-below rail delays incurred for all relevant Sections for that Train Service

BR Delay

Delays to the relevant Train Service from its scheduled time in the Daily Train Plan, where that delay can be attributed directly to Aurizon Network including:

- (a) the time taken in crossing other Trains (to the extent that such time is not contributed to by a Railway Operator or a Force Majeure Event and is not otherwise included in the Maximum Sectional Running Times for all relevant Section for the relevant Train Service Type); and
- (b) delays due to Operational Constraints caused or contributed to by Aurizon Network (to the extent of such contribution) or due to a fault or deficiency in the Infrastructure provided such delays are not contributed to by a Railway Operator or Force Majeure Events and are not otherwise included in paragraphs (d), (e) or (f) specified below,

but excluding:

- (c) cancellations;
- (d) delays resulting from compliance with a Passenger Priority Obligation;
- (e) delays due to a Possession and Major Periodic Maintenance where, the Possession Protocols have been followed;
- (f) delays resulting from a Force Majeure Event; and
- (g) delays to the relevant Train Service from its scheduled time in the Daily Train Plan, where that delay can be attributed the Access Holder (including delays attributable to a failure to load the Train at the Loading Facility for the relevant Train Service Type within the Maximum Time at Loading Facility, or to unload the Train at the Unloading Facility for the relevant Train Service Type within the Maximum Time at Unloading Facility, as specified in the Train Description for the relevant Train Service Type).

Schedule 6

High visibility clothing and Emergency Procedures

1 High visibility clothing

1.1 High visibility clothing

- (a) The Operator may specify the form of high visibility clothing that the Operator's Staff and the Operator's visitors may adopt, having regard to the requirements of Aurizon Network's safety standard for High Visibility Clothing (SAF/STD/0032/SWK/NET) as amended from time to time and provided to the Operator in the manner specified in **item 5 of schedule 9**.
- (b) The colour and materials for the high visibility clothing referred to in **item 1.1(a)** of this **schedule 6** must conform to the requirements of AS/NZS 1906.4:2010 *Retroreflective materials and devices for road traffic control purposes: Part 4: High-visibility material for safety garments and AS/NZS4602:2011 High Visibility Safety Garments* (as amended from time to time).

1.2 Compliance

Without limiting the Operator's obligations under this Deed, the Operator must ensure that the Operator's Staff and the Operator's visitors are instructed in relation to, and comply with, the provisions of this **item 1 of schedule 6**, the Applicable Safeworking Procedures and Aurizon Network's safety management system.

2 Emergency Procedures

Aurizon Network must provide the Operator with a copy of the Emergency Procedures from time to time in the manner specified in **item 5 of schedule 9**.

Schedule 7

Insurance

1 Public liability insurance

The Operator must effect and maintain public liability insurance:

- (a) to cover the legal liability of the insured arising out of or in connection with the activities of the Operator under this Deed whether in respect of injury to or death of any person other than the insured or an employee of the insured or loss of or damage to any property other than property owned by the insured in a sum insured of not less than THREE HUNDRED AND FIFTY MILLION DOLLARS (\$350,000,000) for any one occurrence;
- (b) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date; and
- (c) to cover the Operator's rail operations and associated activities on the Nominated Network.

2 Workers compensation insurance

The Operator must effect and maintain insurance covering such liability as may arise at common law or by virtue of any relevant Workers Compensation legislation in respect of any Operator's Staff.

3 Carrier liability insurance

The Operator must effect and maintain carrier liability insurance in relation to the legal liability of the insured arising out of the transport of goods by Train Services to a sum insured of not less than TEN MILLION DOLLARS (\$10,000,000).

4 Motor Vehicle (non-Act) insurance

The Operator must effect and maintain motor vehicle (non-Act) insurance to cover the legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of this Deed by the Operator or Operator's Staff and must include:

- (a) third party liability to a sum insured of not less than TWENTY MILLION DOLLARS (\$20,000,000); and

- (b) a Dangerous Goods extension with a maximum sum insured as required by statute.

5 Motor Vehicle insurance

The Operator must effect and maintain motor vehicle insurance to cover the statutory liability in respect of personal injury arising out of or in connection with the use by the Operator or the Operator's Staff of all vehicles in the performance of their obligations under this Deed.

6 Required terms

Insurances effected pursuant to **items 1 and 4** of this **schedule 7**~~Error!~~
~~Reference source not found.~~[Error! Reference source not found.](#) must:

- (a) include a principal's indemnity endorsement specifically noting Aurizon Network as an interested party in respect of its interest arising out of or under this Deed;
- (b) include a cross liability clause;
- (c) provide that a notice of claim given to the insurer by one insured party will be accepted by the insurer as a notice of claim given by each of the insured parties; and
- (d) provide that a breach of or failure to observe and fulfil the terms of the policy by any party comprising the insured must not prejudice the rights of the remaining parties comprising the insured.

Schedule 8

Part A – Suspension Events and Termination Events applicable to specific Train Service Types

Item	Suspension Event	Termination Event
1	<p>The Operator materially fails to provide, before the operation of a Train Service for a Train Service Type in a material respect, information that is required to be provided to Aurizon Network in relation to the Train Service under clause 16.515.5.</p>	
2	<p>(a) The Operator operates Train Services for a Train Service Type which materially do not comply, in a material respect, with the Train Description for that Train Service Type; and</p> <p>(b) such default:</p> <p>(i) adversely affects the entitlements of any Access Holder (other than the Access Holder under the Access Agreement) or other users of the Infrastructure (including Infrastructure Service Providers) of the Infrastructure, provided that:</p> <p>(A) Aurizon Network has sought to minimise the impact of such default by applying the Network Management Principles; and</p> <p>(B) Aurizon Network is not obliged to take any such action that may cause any additional cost or risk to Aurizon Network or an adverse impact on any Access Holder</p>	

Item	Suspension Event	Termination Event
	<p>(other than the Access Holder under the Access Agreement); or</p> <p>(ii) has caused an increased risk to the safety of any person or material risk to property, unless the Operator operated the Train Service in accordance with Train Control Directions in which case the default will not be considered a Suspension Event.</p>	
3	<p>The Operator fails, in a material respect, to comply with any obligation under this Deed which is specific to a Train Service Type (other than any obligation which, if not complied with by the Operator, may (either of itself or if other requirements are satisfied) result in any other Suspension Event referred to in part A of this schedule 8Error! Reference source not found.Error! Reference source not found. occurring) and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.</p>	<p>The Operator fails, in a material respect, to comply with any obligation under this Deed which is specific to a Train Service Type (other than any obligation which, if not complied with by the Operator, may (either of itself or if other requirements are satisfied) result in any other Termination Event referred to in part A of this schedule 8 occurring) and such default continues for at least 40 Business Days after Aurizon Network gives the Operator notice of the default.</p>

Part B – Suspension Events and Termination Events applicable to all Train Services Types

Item	Suspension Event	Termination Event
1	The Operator fails to pay by the due date any amount payable under this Deed, and such default continues for at least 10 Business Days after Aurizon Network gives the Operator notice of the default (and always subject to clause 8.4).	The Operator fails to pay by the due date any amount payable under this Deed, and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default (and always subject to clause 8.4).
2	<p>The Operator fails, in a material respect, to comply with any of its obligations under clause 1413, 2224 or 2423 (other than clauses 22.321.3 or 24.923.9) and Aurizon Network is of the reasonable opinion that such failure:</p> <p>(a) adversely affects the entitlements of any Access Holder (other than the Operator under this Deed) or other users of the Infrastructure (including Infrastructure Service Providers); or</p> <p>(b) has caused an increased risk to the safety of any person or material risk to property.</p>	The Operator fails, in a material respect, to comply with any obligations under clause 1413, 2224 or 2423 (other than clause 22.321.3 or 24.923.9) and such default continues for, or the Operator has failed to take reasonable action to prevent recurrence of the default, within 20 Business Days after Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event.
3	<p>The Operator fails in a material respect, to comply with:</p> <p>(a) any Train Control Direction given to the Operator; or</p> <p>(b) any Applicable Safeworking Procedures or Applicable Safety Standard.</p>	<p>The Operator fails, in a material respect, to comply with:</p> <p>(a) any Train Control Direction given to the Operator; or</p> <p>(b) any Applicable Safeworking Procedures or Applicable Safety Standard,</p> <p>and such default continues for, or the Operator has failed to take reasonable action to prevent recurrence of the default, within 20 Business Days after Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event.</p>
4	An Insolvency Event occurs in respect of the Operator.	An Insolvency Event occurs in respect of the Operator and continues for a period of at least 40 Business Days.
5	The Operator's Accreditation is	The Operator's Accreditation is

Item	Suspension Event	Termination Event
	suspended, cancelled or amended so that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Deed.	suspended, cancelled or amended so that it cannot lawfully operate the Train Services or otherwise perform its obligations generally under this Deed, and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.
6	The Operator fails to comply in a material respect with clause 24.11(c) 23.11(e) .	The Operator fails to comply with clause 24.11(c) 23.11(e) which in the reasonable opinion of Aurizon Network is causing or threatening to cause: <ul style="list-style-type: none"> (a) a serious or material risk to the safety of persons or property; or (b) serious or material Environmental Harm, and such failure continues for at least 10 Business Days after Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event.
7	If an Environmental Regulator gives Aurizon Network or the Operator a direction, notice or order about the conduct of the Operator in relation to the operation of Train Services which causes or threatens to cause serious Environmental Harm and <ul style="list-style-type: none"> (a) if the direction, notice or order is given to Aurizon Network, Aurizon Network promptly notifies the Operator of such direction, notice or order; and (b) the Operator fails, within the time: <ul style="list-style-type: none"> (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or (ii) otherwise agreed to by the Environmental Regulator, to (c) comply with the direction, notice	If an Environmental Regulator gives Aurizon Network or the Operator a direction, notice or order about the conduct of the Operator in relation to the operation of Train Services which causes or threatens to cause serious Environmental Harm and <ul style="list-style-type: none"> (a) if the direction, notice or order is given to Aurizon Network, Aurizon Network promptly notifies the Operator of such direction, notice or order; and (b) the Operator fails, within the time: <ul style="list-style-type: none"> (i) specified in the relevant direction, notice or order, or in any stay or other court order made in relation to such direction, notice or order; or (ii) otherwise agreed to by the Environmental Regulator, to (c) comply with the direction, notice or order, as modified by any

Item	Suspension Event	Termination Event
	<p>or order, as modified by any court order (if applicable); or</p> <p>(d) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Regulator in relation to the requirements of the direction, notice or order.</p>	<p>court order (if applicable); or</p> <p>(d) take other measures (including, for example, agreeing to implement an environmental management program) acceptable to the Environmental Regulator in relation to the requirements of the direction, notice or order,</p> <p>and such failure continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the failure.</p>
8	<p>The Operator fails to comply with the requirements of a notice given by Aurizon Network (within the reasonable time specified in the notice) requiring the Operator to cease an Activity of the Operator in connection with this Deed which causes, or threatens to cause, serious Environmental Harm.</p>	
9	<p>The Operator fails to:</p> <p>(a) effect or maintain the insurances required under clause 26.225-2; or</p> <p>(b) provide evidence of the insurances required under clause 26.225-2 having been effected and maintained,</p> <p>and such default continues for at least five Business Days after Aurizon Network gives the Operator notice of the default.</p>	<p>The Operator fails to:</p> <p>(a) effect or maintain the insurances required under clause 26.225-2; or</p> <p>(b) provide evidence of the insurances required under clause 26.225-2 having been effected and maintained,</p> <p>and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.</p>
10	<p>The Operator purports to Assign any of its rights or interests in this Deed other than as permitted in this Deed.</p>	<p>The Operator purports to Assign any of its rights or interests in this Deed other than as permitted by this Deed.</p>

Item	Suspension Event	Termination Event
11	<p>The Operator fails to comply with:</p> <ul style="list-style-type: none"> (a) any Laws relating to rail safety relevant to the operation of Train Services; (b) Train Control Directions; (c) Safeworking Procedures; or (d) Applicable Safety Standards, <p>and Aurizon Network is of the reasonable opinion that such default has caused an increased risk to the safety of any person or a material risk to property.</p>	<ul style="list-style-type: none"> (a) Subject to paragraph (b), Aurizon Network gives the Operator a Suspension Notice in respect of the Corresponding Suspension Event on three or more occasions in any 12 month period. (b) If a Dispute arises as to the validity of a Suspension Notice and it is determined under clause 3029 that the Suspension Notice was invalid, the Suspension Notice must not be taken into account for the purposes of this provision.
12	<p>The Operator fails to comply with any obligation under this Deed (other than any obligation which, if not complied with by the Operator, is reasonably likely to (either of itself or if other requirements are satisfied) result in any other Suspension Event occurring), and such default continues for at least 20 Business Days after Aurizon Network gives the Operator notice of the default.</p>	
13		The Access Agreement is terminated.

Schedule 9

Interface Coordination Arrangements

1 Train Control Procedures

1.1 Train Controllers' contact details

- (a) For the benefit of the Operator's Staff who are responsible for the operation of Rollingstock used in the operation of a Train Service for a Train Service Type (**Traincrew**), contact details for the Train Controllers relevant to the Nominated Network are set out below:

Line Sections:	[insert]
Control Board:	[insert]
Phone:	[insert]
Fax:	[insert]

- (b) For the benefit of the Operator's Controller, contact details for the Train Controllers relevant to the Nominated Network are set out below:

Line Sections:	[insert]
Control Board:	[insert]
Phone:	[insert]
Fax:	[insert]

1.2 Operator's advice to Train Controller

- (a) The Operator's Controller and the Traincrew of the relevant Train must:
- (i) immediately upon becoming aware of an emergency that may affect the performance of the Operator's Train; and
 - (ii) as soon as reasonably practicable after becoming aware of any other event or circumstances that may affect the performance of the Operator's Train,

provide the Train Controller with such information as the Train Controller may reasonably require, including:

- (iii) the Train number;
- (iv) the nature of the event or circumstances; and
- (v) the likely impact on the performance of Network Train Services (including any Train Service operated by the Operator),

regardless of whether or not the Operator's Train has entered the Nominated Network.

- (b) At least 15 minutes before the departure of a Train Service, the Operator's Controller must provide the Train Controller with the following information

in relation to that Train Service:

- (i) information with respect to the Traincrew for that Train Service including the names of the Traincrew personnel and details of any mandatory Traincrew breaks;
 - (ii) if the initial Traincrew for that Train Service is rostered to be replaced by a new Traincrew before that Train Service reaches its Destination, details of the relevant rosters;
 - (iii) the location of nominated depots as specified in the Operating Plan, where Activities in relation to that Train Service such as provisioning, shunting and marshalling, will be carried out;
 - (iv) any en route locomotive provisioning requirements;
 - (v) if the Train is in "Train Order Territory" (as defined in Aurizon Network's safety management system (as amended from time to time)) or "Direct Traffic Control Territory" (as defined in Aurizon Network's safety management system (as amended from time to time)), the number of the leading locomotive; and
 - (vi) a document in the form required by Aurizon Network (**Train List**) which contains the following information in relation to that Train Service:
 - (A) the Train number;
 - (B) the Origin of the Train;
 - (C) the length of the Train in metres (including the locomotives);
 - (D) the number of vehicles in the Train;
 - (E) the gross mass of the Train;
 - (F) the gross trailing load of the Train in tonnes;
 - (G) the motive power employed by the Train;
 - (H) for each vehicle in the Train, in the order in which they will be placed, leading end first, the following information:
 - (1) vehicle classification;
 - (2) vehicle number;
 - (3) vehicle type;
 - (4) gross weight of the vehicle;
 - (5) a description of the goods carried in the vehicle (including details of all Dangerous Goods) by class and location on the Train;
 - (6) the destination of each vehicle; and
 - (7) any known defects, eg brakes cut out; and
 - (I) any other relevant information in relation to the operation of that Train Service.
- (c) Subject to the Traincrew complying with **item 1.2(b)(ii)** of this **schedule 9**, the Train Controller must notify the Traincrew of the most probable

location for the rostered change of Traincrew as soon as reasonably practicable after the Train Controller determines such location.

- (d) The Operator must enter the Train List into Aurizon Network’s nominated information system in accordance with the procedures specified by Aurizon Network.
- (e) The Operator must, as soon as reasonably practicable after it becomes aware of any changes to the information it has provided to Aurizon Network in relation to the Train List, update Aurizon Network’s nominated information system with respect to such changes in accordance with the procedures specified by Aurizon Network.
- (f) The Operator must, at all times, ensure that the Train List for a Train Service is accurate and includes all relevant information in relation to that Train Service.
- (g) If the weight and/or length of a Train operated by the Operator alters during the operation of a Train Service utilising that Train, the Operator's Controller must advise the Train Controller of the new weight and/or length (as applicable) of the Train.
- (h) The Operator must provide to Aurizon Network (and keep current at all times during the Term) the contact details (including a mobile phone number and after hours contact details) for the Operator’s Controller. As at the date of this Deed, the contact details for the Operator’s Controller are set out below:

Name:	[insert]
Position:	[insert]
Phone (during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile phone number:	[insert]
Fax:	[insert]

- (i) The Operator’s Controller must be contactable by the Train Controller at all times while any of the Operator’s Train Services are operating on the Nominated Network.
- (j) The Operator must provide to Aurizon Network (and keep current at all times during the Term):
 - (i) the hours during which the Operator’s Controller will not be contactable while the Operator’s Train Services are not operating on the Nominated Network; and
 - (ii) the after hours contact procedures for the Operator’s Controller.
- (k) When a Train Service is operating on a section of Track which is not within “Track Circulated Territory” (as defined in Aurizon Network’s safety management system (as amended from time to time)), the Traincrew must, when reasonably requested by the Train Controller, advise the Train Controller of the arrival and departure times, or the departure times if the Train did not stop, for each “Crossing Location” (as defined in Aurizon Network’s safety management system (as amended from time to

time)) that the Train passed through on the Nominated Network.

- (l) The Train Controller must enter the arrival and departure times referred to in **item 1.2(k)** of this **schedule 9** into Aurizon Network's nominated information system as soon as reasonably practicable after the advice is received from the Traincrew.

1.3 Train Controller's advice to the Operator

- (a) As soon as reasonably practicable after becoming aware of any event or circumstances that may affect the performance of the Operator's Train, the Train Controller must provide to the Operator's Controller such information as the Operator's Controller may reasonably require, including:
 - (i) the Train number;
 - (ii) the nature of the event or circumstances; and
 - (iii) the likely impact on the performance of Network Train Services (including any Train Service operated by the Operator).
- (b) When reasonably requested by the Operator's Controller, the Train Controller will provide to the Operator's Controller an estimated time of arrival at any location on the Nominated Network for the Operator's Train.
- (c) When reasonably requested by the Traincrew, the Train Controller will provide information to the Traincrew regarding events or circumstances that may impact on the performance of the Operator's Train.

1.4 Consultation between Train Controller and the Operator

- (a) The Operator's Controller is responsible for determining whether the initial Traincrew for a Train Service will need to be replaced by a new Traincrew before the relevant Train Service reaches its Destination where such change of Traincrew is not included in the roster provided by the Operator's Controller to the Train Controller under **item 1.2(b)(ii)** of this **schedule 9** (if any) (**Relief**).
- (b) Subject to **item 1.4(c)** of this **schedule 9**~~Error! Reference source not found.~~[Error! Reference source not found.](#), the Traincrew will contact the Operator's Controller to request meal breaks and personal needs breaks (**Traincrew Breaks**) and Relief.
- (c) If the Traincrew cannot establish contact with the Operator's Controller to request a Traincrew Break or Relief, the Traincrew may contact the Train Controller directly to request the relevant Traincrew Break or Relief.
- (d) If the Traincrew submits a request for a Traincrew Break or Relief directly to the Train Controller, the Train Controller must:
 - (i) record the Traincrew's request for a Traincrew Break or Relief (as applicable); and
 - (ii) advise the Operator's Controller that it has received a request for a Traincrew Break or Relief (as applicable) from the Traincrew.
- (e) Upon receiving advice from the Train Controller in accordance with **item 1.4(d)** of this **schedule 9**, the Operator's Controller must verbally acknowledge receipt of that advice from the Train Controller.

- (f) If the Operator's Train Controller or the Traincrew submits a request for a Traincrew Break or Relief to the Train Controller, then:
 - (i) the Train Controller and the Operator's Controller must consult with each other as to the most appropriate time and location for the Traincrew Break or Relief (as applicable); and
 - (ii) the Train Controller must not unreasonably refuse to agree to the time and location for the Traincrew Break or Relief (as applicable).
- (g) If the Train Controller and the Operator's Controller agree the time and location for the requested Traincrew Break or Relief (as applicable), then:
 - (i) the Operator's Controller must:
 - (A) make all the necessary arrangements for the Traincrew Break or Relief (as applicable) and, subject to **item 1.4(h)** of this **schedule 9**, advise the Traincrew of such arrangements; and
 - (B) inform the Train Controller of any changes to the Traincrew's requirements for that Traincrew Break or Relief (as applicable) including any changes to the Traincrew's requirements with respect to the time for that Traincrew Break or Relief (as applicable); and
 - (ii) the Train Controller must advise the Operator's Controller if the estimated time of arrival of the Train at the location for the Traincrew Break or Relief (as applicable) varies by more than 15 minutes from the agreed time for the Traincrew Break or Relief (as applicable).
- (h) If the Operator's Controller is unable to contact the Traincrew directly to provide advice in relation to the arrangements for the Traincrew Break or Relief (as applicable) referred to in **item 1.4(g)** of this **schedule 9**, then the Train Controller may, subject to receiving a request from the Operator's Controller, advise the Traincrew of the arrangements for that Traincrew Break or Relief (as applicable).
- (i) If the Operator's Train Controller informs the Train Controller in accordance with **item 1.4(g)(i)(B)** of this **schedule 9** that the Traincrew's requirements for a Traincrew Break or Relief have changed, then the Train Controller and the Operator's Controller must consult with each other with respect to the relevant changes.

1.5 Radio procedures

- (a) The Operator's Staff must follow the general radio procedures contained in the "Observance of Signals Manual STD/0037/SWK" (as amended from time to time) when using the Train Control radio system.

- (b) The details for access to the Train Control radio system for each of the line sections that comprise the Nominated Network are set out below:

Line Section:	[insert]
Channel Number:	[insert]
Line Section:	[insert]
Channel Number:	[insert]

1.6 Procedures for entering the Nominated Network

- (a) The Operator must comply with the yard procedures at the Origin for a Train Service (if any) as advised by Aurizon Network.
- (b) The Operator will only enter the Nominated Network upon receipt of the appropriate "Proceed Authority" (as defined in Aurizon Network's safety management system (as amended from time to time)) as advised by Aurizon Network.
- (c) The Operator's Controller must advise the Train Controller of the anticipated departure time of the Operator's Train at least two hours before the Scheduled Time for the departure of the Train or when reasonably requested by the Train Controller. If the anticipated departure time alter from that previously advised to the Train Controller, then the Operator's Controller must advise the Train Controller of the new anticipated departure time as soon as reasonably practicable after it becomes aware of the change.
- (d) The Traincrew for a Train Service must advise the Train Controller when the Train for that Train Service is ready to depart the Origin.
- (e) Prior to the departure of the Train, the Operator must supply the Train driver with the Scheduled Times for that particular Train Service for that particular day.

1.7 Procedures for shunting/entering and exiting yards

Aurizon Network will advise the Operator of the appropriate procedures for shunting, entering yards and leaving yards en route.

1.8 Procedures for leaving the Nominated Network

The Operator must comply with yard procedures at the Destination for a Train Service (if any) as advised by Aurizon Network.

1.9 Contact details for party responsible for loading Trains – clause ~~18.4(e)~~ 19.4(c)

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

- (b) As at the date of this Deed, the parties responsible for loading the Operator's Trains are set out below:

Name	Phone	Fax
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]
[insert]	[insert]	[insert]

2 Train Operations Procedures

2.1 Safety Alerts and Safety Notices

(a) Safety Alerts

- (i) In this **item 2** of **schedule 9**, **Safety Alert** means a document specified as a "Safety Alert" which notifies the recipient that a serious safety incident that has affected or could affect Aurizon Network, the Operator or any other user of the Infrastructure has occurred. A Safety Alert may include:
- (A) details in relation to the serious safety incident (for information purposes); and/or
 - (B) information in relation to any immediate actions to be taken in relation to the serious safety incident.
- (ii) Aurizon Network must give a Safety Alert as soon as reasonably practicable after the occurrence of a serious safety incident.
- (iii) Aurizon Network may give the Operator a Safety Alert using the Operator's address for notices specified in **item 2** of **schedule 14**. Without limiting the method of delivery, Aurizon Network may give the Operator a Safety Alert by electronic means.
- (iv) As soon as possible after the receipt of a Safety Alert from Aurizon Network, the Operator must make the Operator's Staff aware of the contents of such Safety Alert.

(b) Safety Notices

- (i) In this **item 2** of **schedule 9**:
- (A) **Safety Change** means a temporary or permanent change to Aurizon Network's safety management system.
 - (B) **Safety Notice** means a document specified as a "Safety Notice" which is published by Aurizon Network on a weekly basis for distribution to Aurizon Network's employees and the Operator (if it contains safety information relevant to the Operator) and includes safety information about a Safety Change.
- (ii) Subject to **item 2.1(b)(iii)** of this **schedule 9**, Aurizon Network will include safety information about a Safety Change in a Safety Notice published at least seven days before the date that the Safety Change becomes effective.

- (iii) If:
 - (A) Aurizon Network considers it necessary to communicate certain safety information about a Safety Change; and
 - (B) that safety information has not been published in a Safety Notice at least seven days before the date that the relevant Safety Change will become effective;then, Aurizon Network must:
 - (C) publish that safety information in a Train Notice or a Safety Alert; and
 - (D) as soon as reasonably practicable after publication of that Train Notice or Safety Alert, publish that safety information in a Safety Notice.
- (iv) The Operator must ensure that members of the Operator's Staff who perform Safety Related Work have access to a copy of, or are notified of, any safety information in the Safety Notices relevant to their area of work.
- (v) Aurizon Network may give the Operator a Safety Notice using the Operator's address for notices specified in **item 2 of schedule 14**. Without limiting the method of delivery, Aurizon Network may give the Operator a Safety Notice by electronic means.

(c) Train Notices

- (i) In this **item 2 of schedule 9, Train Notice** means a document specified as a "Train Notice" which is published by Aurizon Network on a daily basis (or as otherwise determined by Aurizon Network) for distribution to the Operator and conveys operational instructions, information and messages about Activities on the Infrastructure.
- (ii) The Operator must ensure that all Train Notices are given to members of the Operator's Staff who:
 - (A) are responsible for the operation of Rollingstock used in the operation of a Train Service for a Train Service Type; or
 - (B) work on or near any Track.
- (iii) Aurizon Network may give the Operator a Train Notice using the Operator's address for notices specified in **item 2 of schedule 14**. Without limiting the method of delivery, Aurizon Network may give the Operator a Train Notice by email.

(d) Safeworking Forms

- (i) Aurizon Network will make available to the Operator access to electronic copies of administrative forms included in Aurizon Network's safety management system which are necessary for the Operator to operate Train Services on the Nominated Network (**Safeworking Forms**).

- (ii) The Operator may obtain a reasonable quantity of Safeworking Forms by submitting a request to the following contact at Aurizon Network:

Position:	[insert]
Phone:	[insert]
Email address:	[insert]
Fax:	[insert]

2.2 Operational meetings

- (a) The contact details for the Operator's Representative are set out below:

Position:	[insert]
Phone:	[insert]
Mobile phone:	[insert]
Email address:	[insert]
Fax:	[insert]

- (b) The contact details for the Aurizon Network Representative are set out below:

Position:	[insert]
Phone:	[insert]
Mobile phone:	[insert]
Email address:	[insert]
Fax:	[insert]

- (c) The Operator's Representative and the Aurizon Network Representative (or their nominees) must meet on a monthly basis or as agreed by the Parties for the purpose of:
- (i) reviewing the achievement of Performance Levels (as that term is defined in the Access Agreement) and other matters affecting the performance of Train Services so as to identify remedial action in relation to recurring problems and to plan action to address potential or known problems;
 - (ii) reviewing requests or proposals by the Operator or Aurizon Network to vary the procedures contained in this **schedule 9**;
 - (iii) reviewing the reliability of the Operator's Rollingstock;
 - (iv) reviewing Operational Constraints;
 - (v) investigating or reviewing breaches or suspected breaches of the Applicable Safeworking Procedures, Applicable Safety Standards or Train Control Directions by the Operator's Staff; and
 - (vi) reviewing any other matters relevant to the performance of this

Deed.

- (d) The Operator's Representative must attend other operational meetings relevant to the operation of Train Movements on the Nominated Network as required by Aurizon Network from time to time.

3 Nominated Persons

3.1 Operator's Incident Response Coordinator

The contact details for the Operator's Incident Response Coordinator are as follows:

Name:	[insert]
Position:	[insert]
Phone (during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile:	[insert]
Email:	[insert]
Fax:	[insert]

3.2 Operator's Recovery Team Leader

The contact details for the Operator's Recovery Team Leader are as follows:

Name:	[insert]
Position:	[insert]
Phone (during business hours):	[insert]
Phone (outside business hours):	[insert]
Mobile:	[insert]
Email:	[insert]
Fax:	[insert]

4 Possession Protocols

Aurizon Network must publish the the Possession Protocols (as amended from time to time) on its Website which detail the rules governing the management and scheduling of Planned Possessions and Emergency Possession on the Infrastructure.

5 Document Control Procedures

- (a) The contact details for the Operator's Document Controller are set out below:

Name:	[insert]
Position:	[insert]

Phone:	[insert]
Postal Address:	[insert]
Email Address:	[insert]

- (b) Upon execution of this Deed, Aurizon Network will give the Operator one electronic copy of each of the Applicable Safeworking Procedures and Applicable Safety Standards.
- (c) Aurizon Network will manage updates and revisions of the documents referred to in **item 5(b)** of this **schedule 9**, the Emergency Procedures and the Investigations Procedures in accordance with the provisions of the relevant Australian Standards that apply to document control at that time.
- (d) The Operator is responsible for ongoing distribution of all documents provided to it by or on behalf of Aurizon Network in respect of Aurizon Network's safety management system (including the documents referred to in **item 5(b)** of this **schedule 9**) to the relevant members of the Operator's Staff.

Schedule 10

Ancillary Services and Ancillary Services Charges

1 Ancillary Services

[Drafting note: Arrangements for the provision of Ancillary Services (if any) by Aurizon Network to the Operator will be agreed on a transaction-by-transaction basis and documented in this **schedule 10**.]

1.1 Provision of Wayside Equipment

In this **item 1.1** of **schedule 10**:

Wayside Equipment means equipment owned by Aurizon Network that is located on or adjacent to the Infrastructure which records data which, if made available to the Operator, could be used by the Operator to monitor the condition of the Operator's Rollingstock, but excludes Weighbridges and Overload Detectors.

[Drafting note: Arrangements for the provision of Wayside Equipment by Aurizon Network to the Operator will be an Ancillary Service to be agreed on a transaction-by-transaction basis and documented in this **schedule 10**.]

Schedule 11

Interface Risk Management Plan