

[Queensland Competition Authority Draft of Standard Rail Connection Agreement]

AURIZON NETWORK PTY LTD

ABN 78 132 181 116

and

**[THE PARTY WHOSE NAME AND ADDRESS APPEARS IN ITEM 1
OF SCHEDULE 1)]**

ABN XX XXX XXX XXX

RAIL CONNECTION AGREEMENT

for

[LOCATION THAT APPEARS IN SCHEDULE 2)]

THIS AGREEMENT is made on [*insert date of agreement*]

BETWEEN AURIZON NETWORK PTY LIMITED of Level 17, 175 Eagle Street, Brisbane (“**Aurizon Network**”)
AND THE PARTY WHOSE NAME AND ADDRESS APPEARS IN ITEM 1 OF SCHEDULE 1) (“**Owner**”)

RECITALS

- A The Owner [*owns*’ or *will own*’] the Private Infrastructure.
- B Aurizon Network owns, and is the Accredited Rail Infrastructure Manager of, the Network.
- C The Owner wishes to [*connect the Private Infrastructure*’ or *continue having the Private Infrastructure connected*’] to the Network, and Aurizon Network agrees to that connection via the Connecting Infrastructure on the terms and conditions set out in this Agreement.

IT IS AGREED

1. INTERPRETATION

1.1 In this Agreement:

Acceptable Credit Rating means an equivalent or better credit rating than Aurizon Holdings Limited has received from Standard & Poors or Moody's Investor Services, from time to time or:

- (a) where Aurizon Network has ceased to be the ultimate holding company of Aurizon Network, the credit rating the ultimate holding company has received from Standard & Poors or Moody's Investor Services, from time to time; or
- (b) where the ultimate holding company of Aurizon Network has ceased to be rated, a minimum long term credit rating of not less than BBB+ from Standard & Poors or of not less than Baa2 from Moody's Investor Services.

Accredited Personal Protection Officer means the competent Aurizon employee responsible for managing the rail safety component of worksite protection.

Accreditation means accreditation in accordance with Part 5 of the TRSA (including a TIA accreditation (as defined under the TRSA)) for railway operations under sections 9(a) and (b) of the TRSA, and Accredited means to have Accreditation.

Annual Service Charge means, in respect of a Maintenance Year, the charge determined in accordance with clause 3.2(c) or 3.2(d), as applicable.

Aurizon Network Access Undertaking means the access undertaking in respect of provision of access to the Network approved by the Queensland Competition Authority under the *Queensland Competition Authority Act 1997* (Qld) from time to time.

Aurizon Party means a Related Body Corporate of Aurizon Network.

Australian Consumer Law means Schedule 2) of the *Competition and Consumer Act 2010* (Cth).

Authorities means any:

- (a) government, government department or other governmental or semi-government body or authority including local government;
- (b) governmental, semi-governmental or judicial person; or
- (c) person (whether autonomous or not) who is charged with the administration of a Law.

Branch Line means [*insert description of distinct component of the Network to which the Connecting Infrastructure connects the Private Infrastructure*]

[*Examples of current Branch Lines include:*

- *Blackwater West – rail transport infrastructure from west of Burngrove;*
- *Blackwater East – rail transport infrastructure between Burngrove and Gracemere;*
- *Moura West – rail transport infrastructure west of Callide;*

- *Moura East – rail transport infrastructure between the Callide Junction and Byellee Fly Over;*
- *NCL South – rail transport infrastructure between Gracemere and Byellee and Gladstone Ports;*
- *Goonyella South – rail transport infrastructure between Burngrove Junction and Coppabella;*
- *Goonyella Central – rail transport infrastructure between Coppabella and Jilalan;*
- *Goonyella North – rail transport infrastructure between North Goonyella and Coppabella;*
- *Goonyella Far West – rail transport infrastructure between Blair Athol and Caval Ridge Junction;*
- *Goonyella West – rail transport infrastructure between Caval Ridge Junction and Wotonga Junction;*
- *Goonyella East – rail transport infrastructure between Jilalan and the Ports of Dalrymple Bay Coal Terminal and Hay Point;*
- *GAPE – rail transport infrastructure between North Goonyella and the Newlands Junction;*
- *Newlands West – rail transport infrastructure between the Newlands Junction and Kaili;*
- *Newlands East – rail transport infrastructure between Kaili and the Abbot Point coal terminal]*

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

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.

CLMP means the provisions (if any) in relation to coal loss management obligations to be imposed on the owners of private infrastructure to be connected to the Network by rail connection agreements as specified in the Aurizon Network Access Undertaking.

Commencement Date means the date of execution of this Agreement.

Commitment Date means the date specified in Item 4 of Schedule 1).

Connecting Infrastructure means the rail transport infrastructure (including, without limitation, track, signalling and overhead traction electricity (if applicable)) that is either:

- (a) identified as Connecting Infrastructure on the plan detailed in Schedule 2); or
- (b) not identified on the plan detailed in Schedule 2) as being Private Infrastructure, Connecting Infrastructure or part of the Network, but is managed, controlled or owned by Aurizon Network and connects the Network to the Private Infrastructure,

as modified, upgraded or replaced from time to time.

[**Connecting Infrastructure Work Notice** means the notice referred to in clause 6.3(c)(ii).] [*Definition only to be included if clauses 6.1-6.3 are included*]

Consequential Loss means:

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

but **Consequential Loss** does not include:

- (e) a loss (including a loss arising out of a Claim by a Third Party) in respect of:
 - (A) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or
 - (B) personal injury to or death of any person; or
 - (C) special loss or economic loss as those terms are used in the context of personal injury claims.

[**Construction Agreement** means the agreement referred to in clause 6.4(a).] [*Definition only to be included if clause 6.4 is included*]

Corporations Act means the *Corporations Act 2001* (Cth).

Design means the design of the Connecting Infrastructure.

Dispute has the meaning given in clause 17.1.

Dispute Notice has the meaning given in clause 17.1.

Emergency Response Plan means the plan constituting the set of procedures developed by the Owner for dealing with an Incident which may impact on the Network or Connecting Infrastructure, including all actions to be taken to minimise or alleviate any threat or danger to any person or property:

- (a) as at the date of this Agreement being in the form set out in Schedule 4); and
- (b) as subsequently amended in accordance with clause 11.

Environmental Harm has the meaning given to that term in the *Environmental Protection Act 1994* (Qld).

Expiry Date means the date referred to in Item 2 of Schedule 1).

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 which may, if paragraphs (a) and (b) of this definition are satisfied, include:

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

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

GST means a tax in the nature of a supply or goods and services tax levied or imposed by the Commonwealth of Australia.

GST Inclusive Reimbursement is the amount calculated by the formula:

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

Where:

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

Incident means any rollingstock derailment, rollingstock disablement or breakdown, accident, collision or any other unplanned occurrence which causes or could cause injury to any person, damage to property, or Environmental Harm or a disruption to or cancellation of any Train Service.

Insolvency Event means the happening of any of the following events in relation to the Owner:

- (a) it is unable to pay all of its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in section 459F(1) of the Corporations Act;
- (b) a meeting is convened to place it in voluntary liquidation or to appoint an administrator unless the resolution is withdrawn within 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 one month;
- (d) the appointment of a liquidator, provisional liquidator, controller or receiver (as defined in the Corporations Act) in respect of it, or any of its assets, if that appointment is not revoked within 10 Business Days after it is made; or
- (e) it proposes to enter into, or enters into, any arrangement or composition with its creditors or any of them within the meaning of the Corporations Act.

Interface Risk Assessment means the assessment jointly undertaken by the Parties of the risks associated with the Owner's operations and the Private Infrastructure insofar as they interface with the Connecting Infrastructure, and the Network.

Interface Risk Management Plan means the plan jointly developed by the parties for managing the interface risks identified by the Interface Risk Assessment:

- (a) as at the date of this Agreement being in the form set out in Schedule 4); and
- (b) as subsequently amended in accordance with clause 11.

Law means any statute, ordinance, code, law, decree, order, circular, rule, direction or regulation by any Authorities whether now or at any time in the future.

Maintenance Year means each 12 month period (or part thereof) occurring during the term of this Agreement, with the first Maintenance Year commencing on and from the Commitment Date and ending on the next 30 June, and each subsequent Maintenance Year occurring from 1 July until the earlier of the next 30 June or expiry of this Agreement.

MCI has the meaning given to the term 'Maintenance Cost Index' in the Aurizon Network Access Undertaking (or if it ceases to be used in the Aurizon Network Access Undertaking, the meaning it had in the last Aurizon Network Access Undertaking in which it was used).

Network means that part of the network of rail transport infrastructure (as defined in the *Transport Infrastructure Act 1994* (Qld)) for which Aurizon Network is the Accredited Rail Infrastructure Manager, as modified or upgraded from time to time, but excluding:

- (a) the Private Infrastructure, even if Aurizon Network is the Rail Infrastructure Manager for the Private Infrastructure at any time; and

- (b) rail transport infrastructure for which Aurizon Network is the Accredited Rail Infrastructure Manager but which is owned by a third party and connected under an agreement of similar nature to this Agreement.

Party means a party to this Agreement, and **Parties** means the parties to this Agreement.

Private Infrastructure means track and/or associated rail transport infrastructure owned by the Owner starting at the Connecting Infrastructure as shown on the Plan detailed in Schedule 2), and as modified or upgraded from time to time.

Private Land has the meaning given to that term in clause 26.3.

Rail Infrastructure Manager has the meaning given to that term in the TRSA.

Reference Tariff means an Access Charge (within the meaning of the Aurizon Network Access Undertaking) approved by the Queensland Competition Authority as amended, varied or escalated in accordance with the Aurizon Network Access Undertaking from time to time.

Reference Train Services means Train Services for which a Reference Tariff applies under the Aurizon Network Access Undertaking.

Reimbursable Item means an item of expense incurred by Aurizon Network in respect of which Aurizon Network is entitled under this Agreement to be reimbursed by the Owner for the cost of the item (subject to clause 1.2(d)).

Related Body Corporate has the meaning given to that term in the Corporations Act.

Security Amount means the amount specified in Item 3 of Schedule 1) as it may be adjusted from time to time in accordance with clause 20.2.

Senior Site Executive means the senior site executive appointed in accordance with the *Mineral Resources Act 1989* (Qld).

Train means any configuration of rollingstock operating as a unit on the Network, Connecting Infrastructure and/or Private Infrastructure.

Train Service means the running of a Train between specified origins and destinations.

Transfer Facilities means any coal loading facilities which utilise the Private Infrastructure and any alterations, additions and replacements of such facilities made by the Owner from time to time.

TRSA means the *Transport (Rail Safety) 2010 Act* (Qld).

1.2 Unless expressed to the contrary:

- (a) words importing the singular include the plural and vice versa;
- (b) a reference to:
- (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and permitted assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (v) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties; and
 - (vi) a clause of the Aurizon Network Access Undertaking is a reference to the Aurizon Network Access Undertaking in force at the date of this Agreement and, if that clause is subsequently altered or replaced, the reference will be taken to be to the altered or replacement clause of the Aurizon Network Access Undertaking;
- (c) where any Party comprises more than one person, then all of those persons together as well as each of them individually must comply with that Party's obligations under this Agreement;

- (d) where under this Agreement the Owner is required to reimburse a cost to Aurizon Network, the parties agree that:
- (i) other than with the prior written approval of the Owner, the Owner will not be required to reimburse any:
 - (A) profit; or
 - (B) overheads, except to the extent the overheads directly arise as a result of Aurizon Network performing its obligations under this Agreement rather than via an indirect allocation of general overhead costs,

which is paid or payable to a Related Body Corporate of Aurizon Network,
 - (ii) Aurizon Network will not be entitled to reimbursement of any costs incurred as a result of a breach of contract or negligence by Aurizon Network; and
- (e) where this Agreement requires an amount to be indexed annually based on the MCI or to otherwise be increased in proportion to a change in the MCI, the escalated amount is calculated as follows:

$$\text{Escalated Amount} = \text{Amount} \times \frac{\text{MCI}_n}{\text{MCI}_x}$$

where:

Escalated Amount is the amount as escalated;

Amount is the amount to be escalated;

MCI_n means the MCI as calculated to be current as at the end of the financial year immediately prior to the date to which the Amount is to be escalated; and

MCI_x means the MCI as calculated to be current as at the end of the financial year immediately prior to the date from which the Amount is to be escalated,

with such indexation to occur following all data required to calculate MCI_n being available.

2. TERM

This Agreement commences on the Commencement Date and expires on the Expiry Date, subject to earlier termination in accordance with **clause 18**.

3. CHARGES, INVOICING AND PAYMENT

3.1 The Owner must pay to Aurizon Network the following costs, fees and charges at the times and in the manner specified:

- (a) the Annual Service Charge (if any);
- (b) the reasonable and prudent costs of the design, construction and commissioning of modifications to, or upgrade or replacement of, the Connecting Infrastructure in accordance with clauses 6.9 and 6.10, excluding any costs incurred by Aurizon Network in the performance of its maintenance, operation or reinstatement obligations under this Agreement in relation to the Connecting Infrastructure; and
- (c) the reasonable and prudent costs of decommissioning and removing the Connecting Infrastructure upon the expiry, or earlier termination in accordance with clause 18, of this Agreement so as to remove the connection between the Network and the Private Infrastructure and restore the affected section of the Network to a condition consistent with the adjacent sections of the Network,

subject to and as adjusted in accordance with clause 3.2.

3.2

- (a) The amounts payable by the Owner under clause 3.1 represent consideration for Aurizon Network meeting all obligations under this Agreement including maintenance and inspection charges for the Connecting Infrastructure and administration of the Agreement.

- (b) The amounts payable by the Owner under clause 3.1 will be adjusted where an audit undertaken in accordance with clause 3.5 has identified an error in the levy, allocation or calculation of the reasonable and prudent costs which have been invoiced to the Owner in accordance with clause 3.3.
- (c) If for any Maintenance Year, all Train Services which utilised the Connecting Infrastructure to enter and/or exit the Network were Reference Train Services, no Annual Service Charge will be payable.
- (d) If for any Maintenance Year, some or all of the Train Services which utilised the Connecting Infrastructure to enter and/or exit the Network were not Reference Train Services, the Annual Service Charge will be the proportion of the reasonable and prudent incremental and direct costs actually incurred by Aurizon Network during that Maintenance Year in connection with performing its operation and maintenance activities in relation to the Connecting Infrastructure in accordance with this Agreement, excluding costs which are included in access charges for access rights utilised by Train Services entering and/or exiting the Network via the Connecting Infrastructure and costs excluded in accordance with clause 1.2(d), which the non-Reference Train Services which utilised the Connecting Infrastructure during the Maintenance Year bears to the total number of all Train Services which utilised the Connecting Infrastructure during the Maintenance Year.

3.3 Aurizon Network must issue an invoice to the Owner for:

- (a) the Annual Service Charge (if any) referable to a Maintenance Year, within 30 Business Days of the expiry of that Maintenance Year (with an invoice for an Annual Services Charge calculated pursuant to clause 3.2(d) being required to provide details of how the relevant proportion and exclusions were calculated); and
- (b) other costs payable under clause 3.1 or other clauses of this Agreement, following the incurring of any such costs by Aurizon Network provided that such invoices cannot be issued more regularly than monthly.

The Owner must pay the amount invoiced by Aurizon Network within 20 Business Days after the Owner's receipt of the invoice. The other costs payable by the Owner under this Agreement are payable within 10 Business Days of receipt by the Owner of an invoice from Aurizon Network in respect of such costs.

3.4

- (a) If the Owner disputes an amount or amounts claimed by Aurizon Network in an invoice issued to the Owner, the Owner will, within 10 Business Days of the invoice being issued, give notice of that dispute to Aurizon Network setting out in detail the grounds for the dispute, and the dispute will be resolved in accordance with clause 17 of this Agreement. The Owner will pay the undisputed portion of the amount claimed in the relevant invoice on or before the due date for payment. Within 10 Business Days after the resolution of the dispute, an appropriate adjustment will be made between the Parties as required.
- (b) If the Owner fails to pay in full any costs, fees or charges payable by the Owner under this Agreement on or before the due date for payment (including any disputed amount which is subsequently determined to be payable by the Owner to Aurizon Network), the Owner will be liable to pay interest on the outstanding amount at a rate of two per cent (2%) above the Commonwealth Bank of Australia's 'Reference Rate' for borrowers with overdrafts of \$100,000 or more as published in the Australian Financial Review from time to time whilst such amounts remain outstanding or, if such 'Reference Rate' is not so published, at a rate reasonably specified by Aurizon Network.
- (c) Interest payable under clause 3.4(b) will be calculated on daily balances on the amounts outstanding from the date for payment of the amount until such amount, together with interest thereon, has been paid in full. All interest accrued but unpaid at the end of each day (or such longer period as specified by Aurizon Network) will itself bear interest.

3.5 The Owner may at any time (and from time to time) require that an audit is undertaken of the costs, fees and charges referred to in clause 3.1 for the purpose of verifying that the costs, fees and charges invoiced to the Owner have been properly allocated to the Owner. If the Owner requires such an audit is undertaken:

- (a) the audit must be carried out by a person agreed by the Parties (or failing agreement nominated by the President for the time being of CPA Australia Limited) who is appropriately skilled and qualified to carry

out the audit, is impartial and has undertaken to be bound by reasonable duties of confidence, if so required by either the Owner or Aurizon Network;

- (b) the Owner must bear the costs of the audit;
- (c) Aurizon Network must make available such information as is reasonably required by the auditor; and
- (d) promptly following completion of the audit, the results of the audit (which must include findings as to whether the Owner has been invoiced the correct amounts and, if not, the financial adjustment required to rectify that error) will be made available to Aurizon Network and the Owner.

4. GST

4.1

- (a) Unless otherwise stated, all amounts payable or other consideration to be provided under this Agreement are exclusive of GST.
- (b) If Aurizon Network is required to pay GST on any amount payable or other consideration to be provided under this Agreement then, subject to clause 4.1(e), the Owner must pay to Aurizon Network the amount of that GST on the same date as the payment giving rise to the GST.
- (c) If the supply of a Reimbursable Item under this Agreement is subject to GST, the Owner must pay Aurizon Network in respect of that Reimbursable Item the GST Inclusive Reimbursement.
- (d) All invoices prepared pursuant to this Agreement will take the form of a tax invoice.
- (e) If a dispute between Aurizon Network and the Owner arises out of or in connection with this clause 4.1, then either Party will give to the other Party a notice of dispute in writing adequately identifying and providing details of the dispute. If the dispute has not been resolved within 10 Business Days after service of a notice of dispute, the dispute must be referred for determination by an expert in accordance with clause 17.4.

5. ACCESS TO OPERATE ROLLINGSTOCK ON PRIVATE INFRASTRUCTURE, NETWORK AND CONNECTING INFRASTRUCTURE

5.1 This Agreement does not constitute an agreement between the Parties for:

- (a) access by Aurizon Network or any third party to operate rollingstock on the Private Infrastructure; or
- (b) access by the Owner or any third party to operate rollingstock on the Network or the Connecting Infrastructure.

5.2 Arrangements for access to operate rollingstock on the Private Infrastructure, the Network and/or the Connecting Infrastructure will be the subject of a separate agreement or agreements between the relevant entities.

6. CONNECTING INFRASTRUCTURE

[Parties to select clauses 6.1-6.3 if the Owner is constructing the Connecting Infrastructure or clause 6.4 if Aurizon Network is constructing the Connecting Infrastructure, and delete the non-applicable clauses. If the Connecting Infrastructure has already been constructed by the Owner at the time of this Agreement all of clauses 6.1-6.4 should be deleted. The choice made will necessitate a degree of renumbering within clause 6 and consequential amendments to cross-references elsewhere in this Agreement to clauses within clause 6.]

Under clause 8.3(c) of the Aurizon Network Access Undertaking, Aurizon Network has a right to design, project manage, construct and commission the Connecting Infrastructure if it chooses to do so.]

6.1 [To enable the Owner to plan, design, construct and otherwise carry out the construction of the Connecting Infrastructure, Aurizon Network must, promptly following a written request from the Owner, provide all assistance reasonably requested by the Owner, at the Owner's reasonable and prudent cost, so that the Connecting Infrastructure satisfies the minimum technical, engineering and safety standards required to connect the Private Infrastructure to the Network, including:

- (a) the provision of technical and engineering information in relation to the Network, including all information relating to the design specifications, infrastructure standards and scope of the rail infrastructure adjacent to the Private Infrastructure or to which the Private Infrastructure will connect;

- (b) advice in connection with the design specifications, infrastructure standards and the scope of the rail infrastructure for the coal system which the Owner of the Private Infrastructure is developing;
- (c) providing access to planning procedures developed and maintained by Aurizon Network which would reasonably have an impact on the operation of Train Services using the Connecting Infrastructure including any planned or anticipated upgrades or augmentation of the Network;
- (d) the provision of information relating to any capacity analysis associated with the Private Infrastructure, including capacity modelling assumptions and modelled simulation outputs required for planning and design purposes; and
- (e) reasonable access to employees, agents or officers of Aurizon Network who have knowledge of the Network, in particular of the matters identified in clauses 6.1(a) to (d).

6.2

- (a) Prior to commencing construction of the Connecting Infrastructure, the Owner may submit the Design to Aurizon Network for approval in accordance with this clause 6.2. Any such submission must be accompanied by details of the Train Services the Owner anticipates entering and/or exiting the Network via the Connecting Infrastructure.
- (b) Within 10 Business Days of submission of the Design in accordance with clause 6.2(a), Aurizon Network must give written notice to the Owner:
 - (i) where the Design is unusually complex or otherwise especially difficult to assess, informing the Owner that additional time is required to consider the Design, and the reason that additional time is required;
 - (ii) approving the Design; or
 - (iii) rejecting the Design, in which case Aurizon Network:
 - (A) must give reasons for the rejection; and
 - (B) must give details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Owner.
 - (iv) Aurizon Network must approve the Design of the Connecting Infrastructure where the Design:
 - (A) meets the technical specifications reasonably required by Aurizon Network for connection to the Network;
 - (B) provides for the Connecting Infrastructure to be constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining part of the Network, and, if constructed in accordance with that Design, there will be no adverse impact on safety; and
 - (C) will not result in the Connecting Infrastructure, by virtue of its existence, reducing capacity of the Network or supply chain capacity,

provided that Aurizon Network cannot refuse to approve the Design on the basis of clauses 6.2(b)(iv)(A)-(C) above if that would result in the Connecting Infrastructure being required to be of a standard or to be of any condition which exceeds the standard and condition of the parts of the Network which are to be used by Train Services which the Owner anticipates will enter and/or exit the Network via the Connecting Infrastructure.
- (c) Within 20 Business Days of giving a notice in accordance with clause 6.2(b)(i), Aurizon Network must give written notice to the Owner:
 - (i) approving the Design; or
 - (ii) rejecting the Design, in which case Aurizon Network:
 - (A) must give reasons for the rejection; and

- (B) must give details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Owner.
- (iii) Aurizon Network must approve the Design of the Connecting Infrastructure where the Design:
 - (A) meets the technical specifications reasonably required by Aurizon Network for connection to the Network;
 - (B) provides for the Connecting Infrastructure to be constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining part of the Network, and, if constructed in accordance with that Design, there will be no adverse impact on safety; and
 - (C) will not result in the Connecting Infrastructure, by virtue of its existence, reducing capacity of the Network or supply chain capacity,
- (iv) provided that Aurizon Network cannot refuse to approve the Design on the basis of clauses 6.2(c)(iii)(A)-(C) above if that would result in the Connecting Infrastructure being required to be of a standard or to be of any condition which exceeds the standard and condition of the parts of the Network which are to be used by Train Services which the Owner anticipates will enter and/or exit the Network via the Connecting Infrastructure.
- (d) Following receipt of a notice under clauses 6.2(b)(iii), 6.2(c)(ii) or 6.2(e), the Owner may:
 - (i) modify and resubmit the Design, in which case clause 6.2(b) will reapply; or
 - (ii) dispute any of Aurizon Network's reasons for rejecting the Design in which case the matter will be resolved in accordance with clause 10.1 of the Aurizon Network Access Undertaking.
- (e) If, following approval of the Design by Aurizon Network but prior to the approval of the suitability of the Connecting Infrastructure in accordance with clause 6.3(b), Aurizon Network reasonably considers there has been a material change in circumstances such that it would no longer be required to approve the Design pursuant to clause 6.2(b)(iv) it must, as soon as practicable of becoming aware of that change, give notice to the Owner of the nature of the material change in circumstances and details of any modifications that it requires to be made to the Design so that it is suitable for the purpose of connecting the Private Infrastructure to the Network and for the operation of the Train Services anticipated by the Owner. Where it is the conduct of Aurizon Network or an Aurizon Party in respect of the Network which would cause the material change in circumstances:
 - (i) Aurizon Network must consult with the Owner before implementing any such change; and
 - (ii) the Owner will not be required to pay any costs associated with such change if the material change in circumstances is the result of Aurizon Network or an Aurizon Party's wilful misconduct, wilful default or gross negligence.

6.3

- (a) At the request of the Owner, Aurizon Network must, at the Owner's cost, inspect works in progress for the Connecting Infrastructure to determine:
 - (i) whether the Design approved in accordance with clause 6.2 (including any modifications made following a notice under clause 6.2(e)) appears to have been complied with to the date of inspection; and
 - (ii) whether there is any evidence of defects or issues with the works in progress to the date of inspection that may result in the Connecting Infrastructure not meeting the suitability requirements in clause 6.3(b),
 and advise the Owner as soon as reasonably practical of the results of that inspection, and how it considers any such potential non-compliances, defects or issues could be rectified.
- (b) Prior to the Commitment Date, Aurizon Network will inspect the Connecting Infrastructure within 10 Business Days of a written request from the Owner, to determine whether it is suitable for the purpose of

connecting the Private Infrastructure to the Network and for the operation of the Train Services contemplated to enter or exit the Network via the Connecting Infrastructure under any access agreement. The Connecting Infrastructure shall be suitable for these purposes where it:

- (i) complies with any Design approved in accordance with clause 6.2 (including any modifications made following a notice under clause 6.2(e)); or
- (ii) meets the following criteria:
 - (A) meets the technical specifications reasonably required by Aurizon Network for connection to the Network;
 - (B) has been constructed to a standard appropriate to the nature of the traffic and the current service standards of the adjoining part of the Network, and there is no adverse impact on safety; and
 - (C) will not, by virtue of its existence, reduce capacity of the Network or supply chain capacity,

provided that the Connecting Infrastructure will be deemed to meet those criteria if a contrary treatment would result in Aurizon Network requiring the Connecting Infrastructure to be of a standard or to be of any condition which exceeds the standard and condition of the parts of the Network which are to be used by Train Services which the Owner anticipates will enter and/or exit the Network via the Connecting Infrastructure.

- (c) If Aurizon Network has, in accordance with clause 6.3(b), determined that modification or upgrade to, or replacement of, the Connecting Infrastructure is required in order to make it suitable for those purposes, Aurizon Network will:
 - (i) first, consult with the Owner in respect of the work which Aurizon Network believes is required with a view to agreeing the most efficient and effective means of making the Connecting Infrastructure suitable for the purposes set out in clause 6.3(b); and
 - (ii) second, if Aurizon Network believes that work is still required and having regard to the consultation with the Owner, give to the Owner a written notice setting out comprehensive details of the work required (including a scope of work), comprehensive reasons why Aurizon Network considers that the work is required, details of the party or parties who Aurizon Network proposes to carry out the work and Aurizon Network's procurement strategy (**Connecting Infrastructure Work Notice**).
- (d) The Owner may dispute all or any part of the Connecting Infrastructure Work Notice in accordance with this Agreement.
- (e) Following the expiry of a period of 15 Business Days from the date on which the Connecting Infrastructure Work Notice was issued and provided that the Owner has not disputed the Connecting Infrastructure Work Notice, Aurizon Network will carry out, or cause to be carried out, those modifications, upgrades or replacement, at the Owner's cost. If the Owner has disputed the Connecting Infrastructure Work Notice and it is determined in a dispute resolution carried out in accordance with this Agreement that the work described in the Connecting Infrastructure Work Notice is reasonably required, Aurizon Network shall be entitled to carry out, or cause to be carried out, that work following and in accordance with the determination of the dispute.
- (f) The Owner shall pay to Aurizon Network the reasonable and prudent costs of the work carried out by or for Aurizon Network in accordance with clause 6.3(e), provided that the Owner may dispute the amount of those costs in accordance with the procedure set out in clause 17.]

6.4

- (a) [Aurizon Network will design, construct, project manage and commission the Connecting Infrastructure, at the cost of the Owner, in accordance with the terms of the separate construction agreement between the Parties (**Construction Agreement**).

- (b) The Construction Agreement must contain at least the following terms and these terms prevail over other terms in the Construction Agreement to the extent of any inconsistency:
- (i) Aurizon Network must give the Owner a reasonable period within which to provide comments to Aurizon Network on any design or construction matters, or project management issues which the Owner considers will result in non-prudent or unreasonable costs or delays being incurred;
 - (ii) any dispute arising out of or in relation to the negotiation of the Construction Agreement which relates to a matter which the Aurizon Network Access Undertaking provides for the parties to have a right to resolve via the dispute provisions in the Aurizon Network Access Undertaking, will be resolved in accordance with the Aurizon Network Access Undertaking;
 - (iii) the Owner shall pay (under and in accordance with the Construction Agreement) to Aurizon Network the reasonable and prudent costs of the work carried out by or for Aurizon Network in accordance with clause 6.4(a), provided that the Owner may dispute the amount of those costs in accordance with the Construction Agreement or with clause 6.4(b)(ii);
 - (iv) Aurizon Network must provide reasonable substantiation of the costs sought to be recovered by it;
 - (v) Aurizon Network must give the Owner written notice of completion of the construction of the Connecting Infrastructure and an estimate of the further time required for commissioning and other activities before the Connecting Infrastructure will be available for utilisation by Train Services;
 - (vi) Aurizon Network is not permitted to contract work to an Aurizon Party without the written approval of the Owner; and
 - (vii) Aurizon Network will not materially vary the works for the Connecting Infrastructure from the initial design without notifying the Owner.

6.5 For the avoidance of doubt, Aurizon Network:

- (a) subject to clause 18.4, at all times (including during the construction process) owns the Connecting Infrastructure;
- (b) shall not encumber, transfer or dispose of the Connecting Infrastructure except as expressly permitted in this Agreement unless at the same time it also:
 - (i) transfers, disposes of or grants an encumbrance over the adjoining Branch Line in favour of the same transferee; and
 - (ii) procures an assignment of its obligations under this Agreement to the same transferee; and
- (c) shall not remove, relocate or part with possession of the Connecting Infrastructure except as expressly permitted in this Agreement.

6.6 Aurizon Network will inspect the Connecting Infrastructure at least once per year during the term of this Agreement, to assess the state of repair of the Connecting Infrastructure.

6.7 Aurizon Network will maintain and repair the Connecting Infrastructure to the standard required to maintain the connection between the Network and the Private Infrastructure.

6.8 Subject to clause 18.9, Aurizon Network will reinstate or replace any part of the Connecting Infrastructure that is damaged or destroyed to the standard required to maintain the connection between the Network and the Private Infrastructure.

6.9 At any time Aurizon Network may require modifications or upgrades to, or replacement of, the Connecting Infrastructure, but only to the extent that such modifications, upgrades or replacement are reasonably required so that the Connecting Infrastructure:

- (a) does not have an adverse impact on safety;
- (b) will meet the technical specifications reasonably required by Aurizon Network for connection to the Network;

- (c) is of a standard appropriate to the nature of the traffic and the service standards of the adjoining parts of the Network as applicable from time to time; or
- (d) does not, by virtue of its existence, reduce Capacity or Supply Chain Capacity (as those terms are defined in the Aurizon Network Access Undertaking),

and provided that the Connecting Infrastructure is not required to be of a standard or to be of any condition which exceeds the standards and condition of the parts of the Network which are to be used by Train Services which Aurizon Network anticipates will enter and/or exit the Network via the Connecting Infrastructure.

- 6.10 Aurizon Network will give to the Owner comprehensive written details of any modifications, upgrades or replacement that it requires to be made to the Connecting Infrastructure under clause 6.9, and thereafter provide the Owner with a reasonable opportunity to consult with Aurizon Network about the proposed modifications, upgrades or replacements. If after consulting with the Owner Aurizon Network considers that it is required to carry out, or cause to be carried out, those modifications, upgrades or replacement it will give the Owner a written notice (including full details) and carry out or cause to be carried out that work at the Owner's cost (subject to the Owner's right to dispute). The Owner may dispute the amount of the costs payable in respect of any modifications, upgrade or replacement, the scope of work and/or who Aurizon Network chooses to carry out the work.
- 6.11 The Parties acknowledge that the construction and commissioning of modifications or upgrades to, or replacement of, the Network or Connecting Infrastructure, and the maintenance or repair of the Network or Connecting Infrastructure, may cause disruption to Train Services which cannot reasonably be avoided. Except in the case of emergencies, Aurizon Network will:
- (a) give the Owner reasonable prior written notice of any such works and any reasonably expected disruptions; and
 - (b) minimise any expected disruptions insofar as it is reasonably practicable to do so.
- 6.12 Aurizon Network will, upon reasonable notice to the Owner and the Rail Infrastructure Manager of the Private Infrastructure (to the extent it is not the Owner or Aurizon Network), be entitled to enter and remain upon the Private Infrastructure, with such workmen and machinery as may be necessary, to the extent reasonably necessary to exercise its rights, and fulfil its obligations in relation to maintenance and repair of the Connecting Infrastructure, under this Agreement. Aurizon Network must, and must procure that any persons it authorises to access the Connecting Infrastructure, comply with the requirements of clause 26.4 in relation to access to Private Land.
- 7. MAINTENANCE OF AND MODIFICATION OR UPGRADE TO PRIVATE INFRASTRUCTURE**
- 7.1 Aurizon Network may require modifications or upgrades to be made to the Private Infrastructure to the extent that such modifications or upgrades are reasonably required to rectify a non-compliance with the standard described at clause 7.4.
- 7.2 Any modifications or upgrades to the Private Infrastructure required by Aurizon Network will be carried out by or on behalf of the Owner at the Owner's cost, and will in all respects comply with the minimum technical, engineering and safety standards that would be expected of a competent Accredited Rail Infrastructure Manager, as determined by an independent appropriately qualified person acceptable to both Parties (or failing agreement by the President for the time being of Engineers Australia, Queensland Division).
- 7.3 The Owner will carry out, or cause to be carried out, the construction and commissioning of any modifications or upgrades to the Private Infrastructure in such a way as to minimise the disruption to Train Services insofar as it is reasonably practicable to do so.
- 7.4 The Owner will, at its cost, at all times ensure that the Private Infrastructure is [designed, constructed,] [*To be used where the Owner is constructing the Connecting Infrastructure*] operated and maintained and any future modifications are designed and constructed to a standard which:
- (a) satisfies the minimum technical, engineering and safety standards that would be expected of a competent Accredited Rail Infrastructure Manager in accordance with all applicable laws and standards;
 - (b) enables Trains to fully depart the Network and run onto the Private Infrastructure, or to fully depart the Private Infrastructure and run onto the Network, at the speed for which the relevant sections of the Network were originally designed;

- (c) maintains the integrity of all electrical, signalling and telecommunications interfaces between the Private Infrastructure and the connecting sections of the Network (including the Connecting Infrastructure);
- (d) maintains the integrity of any weighbridge or overload detector on the Private Infrastructure; and
- (e) does not have an adverse impact on the safety or operation of the Connecting Infrastructure or the Network.

- 7.5 If coal is loaded and shipped from a Transfer Facility utilising the Private Infrastructure onto the Network via the Connecting Infrastructure, the Owner must ensure that all coal Trains that depart the Private Infrastructure and enter the Network comply with CLMP.
- 7.6 If the Owner reaches an arrangement with Aurizon Network for Aurizon Network to carry out the design construction and/or maintenance of the Private Infrastructure, that arrangement will be the subject of a separate written agreement between the Parties.
- 7.7 The Owner will provide to Aurizon Network all information collected by any weighbridge or overload detector which is located on the Private Infrastructure before departing the Transfer Facilities (or for non-coal related Train Services, the relevant loading facility), or at such other intervals and in such manner as specified in writing by Aurizon Network from time to time.
- 7.8 The Owner will, in relation to the Private Infrastructure, provide to Aurizon Network, in a form reasonably requested by Aurizon Network from time to time, all electrical, signalling and telecommunications information required by Aurizon Network to manage and operate the Network (including the Connecting Infrastructure and all Trains entering or running on the Network).
- 7.9 Aurizon Network may, and the Owner must permit Aurizon Network to, have reasonable access to inspect (from time to time) the connecting sections of the Private Infrastructure and any construction or maintenance of those connecting sections of the Private Infrastructure, in relation to the Owner's compliance with this clause 7. Aurizon Network will:
- (a) give the Owner reasonable notice of any such inspection, except in an emergency when Aurizon Network must give as much notice as is practicable in the circumstances; and
 - (b) at all times comply with the requirements of clause 26.4 in relation to access to Private Land, including in the event of an emergency.
- 7.10 The Owner will be responsible for all electrical safety obligations for the Private Infrastructure.

8. SAFETY TRAINING

- (a) The Owner will cause all employees, agents and independent contractors of the Owner who are, or may be, required to work on, or in the immediate vicinity of, the Network or Connecting Infrastructure to attend trackside safety training and other applicable safety training prior to commencing such work. Aurizon Network will provide such training as and when reasonably required by the Owner, at the cost of the Owner, upon reasonable notice by the Owner to Aurizon Network.
- (b) Aurizon Network will cause all its employees, agents and independent contractors who are, or may be, required to work on, or in the immediate vicinity of, the Private Infrastructure to attend trackside safety training and other applicable safety training prior to commencing such work. The Owner will provide such training as and when reasonably required by Aurizon Network, at the cost of the Owner, upon reasonable notice by Aurizon Network to the Owner.

9. ACCREDITATION REQUIREMENTS

- 9.1 The Owner must be Accredited, or procure another person or entity to be Accredited, as the Rail Infrastructure Manager for the Private Infrastructure prior to the Commitment Date.
- 9.2 The Owner must:
- (a) maintain its Accreditation and comply with all conditions of its Accreditation prior to the Commitment Date and thereafter until the Expiry Date; or

- (b) if the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation and complies with all conditions of its Accreditation prior to the Commitment Date and thereafter until the Expiry Date,

notify Aurizon Network immediately if at any time during the term of this Agreement the Rail Infrastructure Manager for the Private Infrastructure ceases to be Accredited in respect of the Private Infrastructure.

9.3 Aurizon Network must:

- (a) be Accredited as the Rail Infrastructure Manager for the Connecting Infrastructure and the Network prior to the Commitment Date and thereafter until the Expiry Date; and
- (b) notify the Owner immediately if at any time during the term of this Agreement it has ceased to be Accredited in respect of the Connecting Infrastructure or the Network.

10. EXCHANGE OF SAFETY AND INTERFACE INFORMATION

10.1 This clause 10 applies where the Owner is the Rail Infrastructure Manager for the Private Infrastructure or has contracted an entity other than Aurizon Network to do so. Where this clause 10 applies, references to a Party or Parties in this clause 10 will include the Rail Infrastructure Manager for the Private Infrastructure which is contracted by the Owner from time to time.

10.2 If the Owner intends to act as, or contract an entity other than Aurizon Network to act as, the Rail Infrastructure Manager for the Private Infrastructure, the Owner must notify Aurizon Network of that intention no less than:

- (a) where such an entity will be the Rail Infrastructure Manager for the Private Infrastructure on the Commitment Date, 90 days prior to the Commitment Date; or
- (b) where such an entity will become the Rail Infrastructure Manager for the Private Infrastructure subsequent to the Commitment Date, 90 days prior to the date on which they are scheduled to become the Rail Infrastructure Manager.

10.3 Within 10 Business Days of receiving a notification under clause 10.2, Aurizon Network must notify the Owner of all interface standards required by Aurizon Network for the Private Infrastructure to connect to the Network and to maintain that connection.

10.4 The Parties must collaborate with each other for the purpose of the development, management and continuous improvement of all interface matters relating to the Private Infrastructure, the Connecting Infrastructure and the Network, including:

- (a) implementing and maintaining measures for managing interface and safety risks;
- (b) evaluating, testing and, if necessary, revising of those measures;
- (c) identifying accountabilities, authorities and reporting requirements of each Party, including safety requirements, roles and responsibilities of staff; and
- (d) monitoring compliance with obligations of the parties to this and any related interface agreements.

10.5

- (a) As required by the Rail Infrastructure Manager for the Private Infrastructure or Aurizon Network (**Requesting Party**), the other entity (**Providing Party**) must provide the Requesting Party (and all other personnel nominated by the Requesting Party) with the latest published versions of all documents relating to the following interface matters that may occur, or have an impact, on the operation of the Connecting Infrastructure:
 - (i) the Providing Party's safety policies, including compliance arrangements with legislative safety requirements;
 - (ii) safety documentation associated with all accountabilities, authorities and reporting of safety requirements and relevant competencies for relevant staff and safety audit regimes;
 - (iii) procedures for managing notifiable occurrences or reportable incidents;
 - (iv) interface risk management plans;

- (v) interface management plans;
 - (vi) where Aurizon Network is the Providing Party, changes to rail infrastructure standards of the section of the Network the Private Infrastructure connects to and between the Connecting Infrastructure and the destination of the Train Services entering and/or exiting the Network via the Connecting Infrastructure;
 - (vii) where Aurizon Network is the Providing Party, Network operating requirements and operating procedures that are relevant to the operation of the Connecting Infrastructure or to Train Services entering and/or exiting the Network via the Connecting Infrastructure;
 - (viii) relevant timetabling and scheduling information and procedures;
 - (ix) operational interface procedures;
 - (x) emergency response plans;
 - (xi) rollingstock standards;
 - (xii) train operating protocols;
 - (xiii) planning and management of possessions;
 - (xiv) communications protocols; and
 - (xv) such other procedures and protocols as the Providing Party publishes or develops relating to functions associated with undertaking the role of Rail Infrastructure Manager.
- (b) Each Party must participate in:
- (i) reviews of the safety management systems and safety assurance matters in respect of interface issues;
 - (ii) meetings, workshops and forums reasonably requested by the other Party which involve safety and operational interface matters (including general engineering standards and operational safety requirements);
 - (iii) identification of relevant engineering standards and procedures and operational systems safety standards; and
 - (iv) development of interface risk management planning activities reasonably required by the other Parties.

10.6

- (a) Prior to disclosing any information pursuant to this clause 10, a Providing Party may require that the Requesting Party enter into a confidentiality deed in the form set out in Schedule 6) except to the extent that any information to be disclosed by either entity under this clause 10 is already subject to confidentiality obligations under another agreement between the entities (including any interface agreement entered into in accordance with clause 11.11).
- (b) Where the Owner or the Rail Infrastructure Manager for the Private Infrastructure requests amendments to the form of confidentiality deed set out in Schedule 6), the Parties will negotiate those amendments in good faith.
- (c) If the Rail Infrastructure Manager for the Private Infrastructure executes a confidentiality deed in the form set out in Schedule 6), the Owner may require that Aurizon Network sign the confidentiality deed.

11. INTERFACE RISK ASSESSMENT AND EMERGENCY RESPONSE PLAN

- 11.1 If at any time during the term of this Agreement either Party has reasonable grounds to believe that the then current Interface Risk Management Plan is no longer effective in managing the interface risks, the Parties will meet to jointly review the Interface Risk Management Plan (including conducting a revised Interface Risk Assessment to the extent considered necessary) to ensure all interface risks, including any risks which have arisen subsequently to the Interface Risk Management Plan being agreed, are effectively managed.

- 11.2 If the Parties are unable to agree on any aspects of the Interface Risk Assessment or the Interface Risk Management Plan, either Party may give a Dispute Notice to the other Party and the Dispute will be referred to an expert for resolution in accordance with clause 17.4. The Parties agree that the expert for the purposes of this clause 11.2 and clause 17.4(a) will be the Queensland Rail Safety Regulator. If the Queensland Rail Safety Regulator refuses or is unable (for any reason whatsoever) to determine the Dispute, the expert will be appointed by the President for the time being of Engineers Australia, Queensland Division.
- 11.3 If, after a review pursuant to clause 11.1 or 11.2, the Parties agree or an expert determines that the Interface Risk Management Plan requires amendment to effectively manage the interface risks, the plan will be so amended and the amended plan will be taken to be the Interface Risk Management Plan.
- 11.4 The Owner must prior to the Commitment Date prepare, and thereafter during the term of this Agreement maintain, an Emergency Response Plan reasonably satisfactory to Aurizon Network, relating to Incidents that impact on, or impact operations on, the Connecting Infrastructure and/or the Network. The Owner will incorporate any findings arising from the joint review conducted pursuant to clause 11.1 or an investigation pursuant to clauses 11.10 into the Emergency Response Plan or Interface Risk Management Plan (as applicable) as soon as possible.
- 11.5 The Parties must at all times comply with the Emergency Response Plan and the Interface Risk Management Plan, and must ensure that their officers, employees, agents and independent contractors (including, in respect of the Owner, any Rail Infrastructure Manager for the Private Infrastructure that is not Aurizon Network) also comply.
- 11.6 The Owner must not cause or permit any obstructions on the Connecting Infrastructure or the Network except where otherwise agreed with Aurizon Network.
- 11.7 Subject to clause 11.8, following an Incident the Parties must (and the Owner must procure that the Rail Infrastructure Manager for the Private Infrastructure must) cooperate and use all reasonable endeavours to restore the Connecting Infrastructure, the Network and the Private Infrastructure to normal operation as soon as possible, including taking any reasonable action necessary in respect of recovery of rollingstock and repairs to the Connecting Infrastructure, the Network and the Private Infrastructure. Where necessary, a Party will permit the other (or the Rail Infrastructure Manager for the Private Infrastructure) to enter and remain upon the Connecting Infrastructure, the Network or the Private Infrastructure (subject to compliance with clause 26.4) with such workmen and machinery as may be necessary, to enable prompt recommencement of Train movements.
- 11.8 The Parties acknowledge that Aurizon Network will give priority to any action necessary to restore the Network to normal operation as soon as possible. Nothing in clause 11.7 will be interpreted to require Aurizon Network to take or refrain from taking any action which would cause or be likely to cause any delay in restoring the Network to normal operation or which would or would be likely to hinder Aurizon Network in restoring the Network to normal operation as soon as possible, notwithstanding that such action may result in a delay in restoration of the Private Infrastructure or Connecting Infrastructure.
- 11.9 Subject to any requirement of the TRSA, if an Incident arises on the Private Infrastructure and causes damage to or affects the operation of the Connecting Infrastructure or the Network, the Owner must procure that the Rail Infrastructure Manager for the Private Infrastructure assume responsibility for the overall coordination and management of the response to the Incident (including notifying all relevant emergency services). The parties must cooperate with and assist the Rail Infrastructure Manager for the Private Infrastructure in responding to the Incident.
- 11.10 Subject to any requirement of the TRSA, where an Incident arising on the Private Infrastructure causes damage to or affects the operation of the Connecting Infrastructure or the Network:
- (a) an investigation into the Incident will be commenced as soon as practicable unless otherwise agreed;
 - (b) the Owner will procure that such investigation is conducted by the Rail Infrastructure Manager for the Private Infrastructure;
 - (c) each Party must cooperate and ensure their respective staff cooperate fully with any investigation, and will ensure that any such investigation has ready, full and free access to all relevant files, documents, employees (including the taking of statements), equipment, copies of train graphs, voice recordings, data log recordings, maintenance records and any other information which may be relevant to any investigation. All such information will be treated as confidential;

- (d) each Party will consult with the other in relation to the implementation of any recommendations arising from an investigation; and
 - (e) the Owner will (or will procure that the Rail Infrastructure Manager for Private Infrastructure) provide to Aurizon Network a copy of the report produced as a result of the investigation, except that any information within the report that is market sensitive, confidential or subject to legal professional privilege need not be disclosed.
- 11.11 Subject to any requirement of the TRSA, if an Incident arises on the Connecting Infrastructure or the Network and causes damage to or affects the operation of the Private Infrastructure, Aurizon Network must assume responsibility for the overall coordination and management of the response to the Incident (including notifying all relevant emergency services). The Owner (and the Rail Infrastructure Manager for the Private Infrastructure, if not Aurizon Network) must cooperate with and assist Aurizon Network in responding to the Incident.
- 11.12 Subject to any requirement of the TRSA, where an Incident arising on the Connecting Infrastructure or the Network causes damage to or affects the operation of the Private Infrastructure:
- (a) Aurizon Network will commence an investigation into the Incident as soon as practicable unless otherwise agreed;
 - (b) each Party must cooperate and ensure their respective staff cooperate fully with any investigation, and will ensure that any such investigation has ready, full and free access to all relevant files, documents, employees (including the taking of statements), equipment, copies of train graphs, voice recordings, data log recordings, maintenance records and any other information which may be relevant to any investigation. All such information will be treated as confidential;
 - (c) each Party will consult with the other in relation to the implementation of any recommendations arising from an investigation; and
 - (d) Aurizon Network will provide to the Owner (and the Rail Infrastructure Manager for the Private Infrastructure, if not Aurizon Network) a copy of the report produced as a result of the investigation, except that any information within the report that is market-sensitive, confidential or subject to legal professional privilege need not be disclosed.
- 11.13 If the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, then the Owner must procure that:
- (a) prior to the Commitment Date; and
 - (b) prior to the appointment of any new Rail Infrastructure Manager for the Private Infrastructure,
- the existing or new (as applicable) Rail Infrastructure Manager for the Private Infrastructure enters into an interface agreement (as defined in section 71 of the TRSA) with Aurizon Network in accordance with section 59 of the TRSA.
- 11.14 To the extent that the Rail Infrastructure Manager for the Private Infrastructure has not entered an interface agreement in accordance with clause 11.11 Aurizon Network may suspend, until such an interface agreement is entered, some or all of the Owner's rights under this Agreement and the running of Train Services across the Connecting Infrastructure by giving written notice to the Owner of the extent of rights being suspended.
- 12. TRAIN CONTROL**
- 12.1 Aurizon Network is responsible for the scheduling and control of all Train movements entering and exiting the Private Infrastructure from or to the Network.
- 12.2 Aurizon Network may, in its absolute discretion, not schedule Trains to and from the Private Infrastructure if:
- (a) Aurizon Network is notified by the Owner under clause 13.1 that it is unsafe to do so or that there is an obstruction on the Network, Connecting Infrastructure or Private Infrastructure which would prevent such Trains from reaching their origin or destination;
 - (b) the Owner is in breach of any of its obligations under clause 7.4;
 - (c) the Rail Infrastructure Manager for the Private Infrastructure has not entered into an Interface Agreement with Aurizon Network, or such agreement is terminated; or

- (d) the Rail Infrastructure Manager for the Private Infrastructure ceases to be Accredited in respect of the Private Infrastructure.

12.3 Subject to its rights under clause 12.2 and its obligations under the network management principles in the Aurizon Network Access Undertaking, Aurizon Network must use reasonable endeavours to schedule Train movements to and from the Private Infrastructure to ensure Train Services utilising the Connecting Infrastructure enter and exit the Network and Connecting Infrastructure in a manner that enables such a Train Service to utilise any corresponding access rights held in respect of the Network.

12.4 The Owner must, or must procure that any contracted Rail Infrastructure Manager for the Private Infrastructure that is not Aurizon Network must, co-operate with Aurizon Network to seek to achieve the scheduling outcomes described in clause 12.3 and comply with directions of Aurizon Network's train controllers regarding entry to and exit from the Connecting Infrastructure.

13. NOTIFICATION OF MATTERS AFFECTING THE PRIVATE INFRASTRUCTURE

13.1 The Owner (or its contracted Rail Infrastructure Manager for the Private Infrastructure) will verbally advise the Aurizon Network contact specified in Item 6 of Schedule 1) immediately upon becoming aware of any circumstances which:

- (a) make it unsafe to schedule Trains onto the Private Infrastructure, or have affected, or could potentially affect, the security or safety of the Private Infrastructure or persons or property on or near the Private Infrastructure;
- (b) have affected, or could potentially affect, the ability of any Train Service to conform with its scheduled time;
- (c) could cause, or has caused, an Incident or a Claim involving Train Services or an obstruction on the Network, Connecting Infrastructure or Private Infrastructure (including overloading on any Train Service);
- (d) if coal is loaded and shipped from a Transfer Facility utilising the Private Infrastructure onto the Network via the Connecting Infrastructure, constitutes a breach of the CLMP; or
- (e) constitute, or could constitute, a breach of the Owner's Emergency Response Plan.

13.2 Such verbal notification must be confirmed in writing by the Owner (or its contracted Rail Infrastructure Manager for the Private Infrastructure) as soon as practicable thereafter, where the circumstance notified is relevant to Aurizon Network's management and operation of the Network or Connecting Infrastructure.

13.3 If coal is loaded and shipped from a Transfer Facility utilising the Private Infrastructure onto the Network via the Connecting Infrastructure, the Owner must comply with the reporting obligations in the CLMP.

14. NO REQUIREMENT TO TAKE ACTION JEOPARDISING ACCREDITATION

Nothing in this Agreement will be interpreted as requiring Aurizon Network or the Accredited Rail Infrastructure Manager for the Private Infrastructure (whether or not the Owner) to, in the performance of their respective roles as Accredited Rail Infrastructure Managers for the Network/Connecting Infrastructure and Private Infrastructure, take any action if the taking of that action would be likely to result in the suspension or revocation of their Accreditation.

15. FORCE MAJEURE EVENT

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

15.2 A Party which is by reason of a Force Majeure Event unable to perform any obligation under this Agreement must:

- (a) notify the other Party as soon as reasonably practicable of the occurrence of the Force Majeure Event and its proposed course of action to remedy or abate the Force Majeure Event;
- (b) use all reasonable diligence to remedy or abate the Force Majeure Event (provided that no Party will be obliged to settle any strike, lockout or other labour dispute on terms not reasonably acceptable to it); and

- (c) resume performance, or partial performance, as soon as reasonably practicable.

16. INSURANCE

- (a) The Owner must, at its expense, take out and subsequently maintain current at all times during the Term, or procure the Rail Infrastructure Manager for the Private Infrastructure to take out and subsequently maintain current at all times during the Term, insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in Schedule 3).
- (b) Aurizon Network must, at its expense, take out and subsequently maintain current at all times during the Term, insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in Schedule 3).
- (c) Prior to the Commitment Date and then as soon as reasonably practicable after a written request is made by the other Party, a Party must provide the other Party with a certificate of currency in respect of the insurance policies effected pursuant to this clause 16 and when requested by the other Party in writing, make available for inspection at a reasonable time, a copy of such insurance policies.
- (d) Aurizon Network and the Owner must in respect of any Claims by it or any other insured for which it is responsible, pay all excesses/deductibles provided for in any insurances effected in accordance with this clause 16.
- (e) Aurizon Network and the Owner will not do, or suffer to be done, anything whereby any policy of insurance required to be maintained by Aurizon Network or the Owner will be or become void or voidable.
- (f) Within three months of every third anniversary of the Commencement Date, Aurizon Network will review the adequacy of the sum insured specified in Schedule 3). If Aurizon Network reasonably considers that the sum insured is not adequate or is excessive, then Aurizon Network will by notice advise the Owner of the amount which it requires to be the new sum insured (which must be the same for both Aurizon Network and the Owner), and Aurizon Network and the Owner will adjust accordingly all policies held pursuant to this clause 16.
- (g) Aurizon Network will from time to time review whether the insurances specified in Schedule 3) remain available in the market for reasonable commercial pricing (having regard to the likelihood and possible financial exposure arising from the risks insured). If Aurizon Network forms the view that such insurances are no longer available in the market for reasonable commercial pricing, Aurizon Network and the Owner will discuss in good faith whether the insurances required under this Agreement should be varied.

17. DISPUTES

- 17.1 If any claim, dispute, disagreement or question (**Dispute**) arises between the Parties under this Agreement, then either Party may give to the other Party a notice in writing (**Dispute Notice**) specifying the Dispute and requiring that it be dealt with:
- (a) in the manner set out in this clause 17; or
 - (b) where the dispute relates to a matter which the Aurizon Network Access Undertaking provides for the Parties to have a right to resolve via the dispute provisions in the Aurizon Network Access Undertaking, in the manner set out in the Aurizon Network Access Undertaking.
- 17.2 Within five Business Days of the date of the Dispute Notice any Dispute (other than those to be dealt with under the Aurizon Network Access Undertaking pursuant to clause 17.1(b) or those of the type described in clause 17.5) will be referred to the Chief Executive Officer of Aurizon Network (or his nominee) and the Chief Executive Officer (or equivalent) of the Owner (or his nominee) for resolution. Failing such resolution within 10 Business Days, the relevant Dispute may be referred by either Party to an expert in accordance with this clause 17.
- 17.3 The Parties will seek to agree on the expert to be appointed, and failing agreement within 10 Business Days of referral of the Dispute to an expert, the expert will be appointed by:
- (a) in the case of what the Parties agree are financial matters, the President for the time being of CPA Australia Limited;

- (b) in the case of what the Parties agree are nonfinancial matters, the President for the time being of Engineers Australia, Queensland Division; and
- (c) in the case of what the Parties agree are combined financial and non-financial matters, where the Parties cannot agree on the appropriate categorisation of a matter or where the Parties agree that it is appropriate, by the President for the time being of the Queensland Law Society Incorporated.

17.4 Where a Party refers a Dispute to an expert for resolution, the following provisions will apply:

- (a) The Parties will agree on the expert to be appointed, and failing agreement within 10 Business Days of referral of the Dispute to an expert, the expert will be appointed in accordance with clause 17.3.
- (b) The expert will have appropriate qualifications and practical experience having regard to the nature of the Dispute, have no interest or duty which conflicts or may conflict with his function as expert, and will not be an employee of the Owner or Aurizon Network or a Related Body Corporate of either Party;
- (c) The expert will have regard to the provisions of this Agreement and will:
 - (i) have the power to inform himself independently as to the facts and if necessary technical and/or financial matters to which the Dispute relates;
 - (ii) consult with such other professional qualified persons as he in his absolute discretion thinks fit; and
 - (iii) consider oral and/or written submissions from the Parties as to the subject matter of the Dispute, but not be bound by the rules of evidence;
- (d) The Parties will upon request by the expert, provide or make available to the expert:
 - (i) all information in their possession or control; and
 - (ii) all assistance,
 that the expert may reasonably require;
- (e) The expert will be required to provide both Parties with a copy of his determination within a reasonable time after his appointment;
- (f) The expert appointed will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties. In any dispute dealt with pursuant to this clause 17, any financial records of Aurizon Network required to assist the determination of the dispute must be supplied to the expert only and will not be available to the Owner. The expert's determination must not include details of Aurizon Network's financial records but may contain conclusions based on the expert's assessment of Aurizon Network's financial records;
- (g) Any person nominated as an expert hereunder will be deemed to be and will act as an expert and not an arbitrator, and the law relating to arbitration will not apply to him or his determination or the procedures by which he may reach his determination;
- (h) In the absence of manifest error the determination of the expert will be final and binding upon the Parties; and
- (i) The costs of the expert and any advisors will be borne by the Parties in such proportion as determined by the expert.

17.5 Where the right to terminate which provided the grounds for a suspension under clause 18.6 is in relation to serious safety and serious environmental matters and becomes the subject of a bona fide Dispute between the Parties, such Dispute will be resolved as follows:

- (a) after the Dispute comes to the attention of the Parties, the Owner will immediately propose an expert to be appointed to resolve the Dispute and Aurizon Network will agree or disagree with that appointment within two Business Days of the Owner's proposal. If Aurizon Network fails to agree to that appointment or fails to agree within that timeframe, the expert will be appointed in accordance with clause 17.3.
- (b) the Dispute will otherwise be resolved in accordance with clause 17.4, other than clause 17.4(e).

- (c) the expert will be required to provide both Parties with a copy of his determination as soon as is practicable following his appointment.
- (d) the Parties will use their best endeavours to assist the expert in making a determination as soon as is practicable.

18. TERMINATION AND SUSPENSION

18.1 Without prejudice to any other rights of Aurizon Network and subject to clause 18.2, Aurizon Network may terminate this Agreement by notice to the Owner, upon the occurrence of any one or more of the following events or circumstances:

- (a) the Owner:
 - (i) abandons, terminates or permanently ceases operation of the whole of the Private Infrastructure; or
 - (ii) there are no entities holding access rights or seeking access rights to the Network in respect of Train Services utilising (or proposed to utilise) the Connecting Infrastructure to enter and/or exit the Network and the Owner fails to satisfy Aurizon Network, within 20 Business Days after notice from Aurizon Network, that there is likely to be any continuing demand for the connection of the Private Infrastructure to the Network;
- (b) the Owner fails to pay when due any amount payable under this Agreement, and such default continues for 20 Business Days after notice from Aurizon Network demanding payment of the outstanding amount;
- (c) the Owner is in default of its obligation to establish or to maintain a security as required under clause 20, and such default continues for 20 Business Days after notice from Aurizon Network of such default;
- (d) the Owner is in default of its obligation to maintain insurance in accordance with clause 16 of this Agreement, and such default continues for 20 Business Days after notice from Aurizon Network to the Owner of the default;
- (e) an Insolvency Event occurs in relation to the Owner;
- (f) the Owner, and if the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, the Rail Infrastructure Manager for the Private Infrastructure, fails, in any material respect, to comply with the Emergency Response Plan, the Interface Risk Management Plan or the interface agreement entered into under clause 11.11 (as applicable) or any relevant laws, and that default is not remedied within 20 Business Days after notice from Aurizon Network to the Owner of the default;
- (g) the Owner fails to comply with:
 - (i) clause 9 (Accreditation Requirements), including, if the Owner is not the Rail Infrastructure Manager for the Private Infrastructure, where the Owner fails to ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation or complies with all conditions of its Accreditation; or
 - (ii) clause 7.4 (Construction and Maintenance Standards),
 and such default continues for 20 Business Days after notice from Aurizon Network to the Owner of the default;
- (h) the Owner conducts activities which cause or contribute to Environmental Harm on the Connecting Infrastructure or the Network and does not remedy the Environmental Harm (to the extent caused or contributed to by the Owner) within 20 Business Days after notice from Aurizon Network to remedy the Environmental Harm;
- (i) the Owner is in default of the due performance of any other material obligation under this Agreement and the Owner has not remedied the default within 20 Business Days after notice from Aurizon Network specifying the nature of such default and requiring such default to be remedied; or
- (j) the termination of [*the Construction Agreement or*] any [*other*] agreement to which Aurizon Network and the Owner are parties to the extent they have agreed that termination of that agreement should result in

termination of this Agreement. [*Wording in italics to only be included where Aurizon Network is responsible for construction of the Connecting Infrastructure*]

- 18.2 Aurizon Network may not terminate this Agreement under clause 18.1 to the extent that the right to terminate is the subject of a bona fide dispute between the Parties pursuant to clause 17 or the Aurizon Network Access Undertaking that has not been resolved in favour of Aurizon Network having the right to terminate this Agreement.
- 18.3 Without prejudice to any other rights of the Owner, the Owner may terminate this Agreement by notice to Aurizon Network if Aurizon Network is in default of the due performance of any material obligation under this Agreement and Aurizon Network has not remedied the default within 20 Business Days after notice from the Owner specifying the nature of such default and requiring such default to be remedied.
- 18.4 Upon expiry or earlier termination of this Agreement for any reason whatsoever, Aurizon Network:
- (a) if requested by the Owner within 20 Business Days of such expiry or termination, will enter into good faith negotiations regarding the terms and conditions upon which the Connecting Infrastructure will remain connected to the Network, having regard to interface safety and Aurizon Network's reasonable ongoing maintenance costs (where such costs will not otherwise be recovered by Aurizon Network through access charges or taken into account in calculation of Reference Tariffs);
 - (b) if an agreement is reached pursuant to clause 18.4(a), will do all things required to transfer ownership and possession of the Connecting Infrastructure to the Owner (except any part of the Connecting Infrastructure which Aurizon Network reasonably requires for the purpose of continued operation of the Network); and
 - (c) where agreement has need been reached pursuant to clause 18.4(a) within 6 months of the expiry or termination (or such longer period as the Parties agree), Aurizon Network may, at its election, forthwith remove all or any part of the Connecting Infrastructure.
- 18.5 Upon termination of this Agreement, Aurizon Network and the Owner will be released from all further obligations or liabilities under this Agreement except in respect of any antecedent breach of this Agreement on their respective parts or obligations intended to survive termination (including, without limitation, the Owner's obligations under clause 3.1(c) and Aurizon Network's obligations under clause 18.4). Any liability in respect of such antecedent breach will be limited in the manner provided in this Agreement.
- 18.6 Subject to clauses 18.7 and 18.8, upon the occurrence of an event or circumstance which would entitle Aurizon Network to terminate this Agreement under clause 18.1 either immediately or upon the expiration of a remedy period, Aurizon Network may immediately, and prior to the expiration of any applicable remedy period under clause 18.1, suspend some or all of the Owner's rights under this Agreement, including the running of Trains across the Connecting Infrastructure, by giving a notice in writing to the Owner (and the Rail Infrastructure Manager for the Private Infrastructure where that is not the Owner or Aurizon Network). Aurizon Network must include in the notice:
- (a) details of the proposed or likely period of suspension;
 - (b) the reasons for the suspension;
 - (c) whether the suspension relates to a serious safety and serious environmental matter;
 - (d) the actions the Owner must take to have the suspension lifted; and
 - (e) the particular rights which have been suspended.
- 18.7 Without limiting clause 18.6, any suspension under the CLMP will operate to suspend this Agreement until the cessation of the suspension under the CLMP.
- 18.8 Except in relation to any suspensions occurring in relation to serious safety and serious environmental matters which are to be dealt with in accordance with clause 17.5, any suspension occurring under clause 18.6 will cease to the extent that the grounds for suspension become the subject of a bona fide dispute between the Parties pursuant to clause 17 or the Aurizon Network Access Undertaking unless and until such dispute is resolved in favour of Aurizon Network having the right to suspend the Owner's rights under this Agreement.
- 18.9 If the Connecting Infrastructure is damaged or destroyed by a Force Majeure Event and, in Aurizon Network's reasonable opinion, the cost of repairing such damage or replacing the Connecting Infrastructure is not economic

and the Owner is not willing to pay such rectification costs, Aurizon Network may by written notice advise the Owner of its intention to not repair or replace the relevant part of the Connecting Infrastructure and thereupon terminate this Agreement unless the Owner elects to pay, and does in fact pay, the cost of repairing or replacing the relevant part of the Connecting Infrastructure.

- 18.10 If the Private Infrastructure is damaged or destroyed by a Force Majeure Event and, in the Owner's reasonable opinion, the cost of repairing such damage or replacing the Private Infrastructure is not economic, the Owner may by written notice advise Aurizon Network of its intention to not repair or replace the Private Infrastructure and thereupon terminate this Agreement.

19. ASSIGNMENT

- 19.1 The Owner will not assign or transfer or otherwise dispose of any of its rights or obligations under this Agreement without the prior written consent of Aurizon Network, which will not be unreasonably withheld where the assignee is:

- (a) financially sound having regard to the obligations which are to be assumed; and
- (b) otherwise capable of performing the obligations of the Owner under this Agreement.

- 19.2 Aurizon Network may assign or transfer or otherwise dispose of the whole or any part of its rights or obligations under this Agreement without the prior consent of the Owner, provided that Aurizon Network procures the assignee to covenant with the Owner by deed to be bound by and perform the obligations of Aurizon Network under this Agreement to the extent of the rights and obligations assigned, transferred or disposed of.

20. SECURITY

- 20.1 If on, or at any time after, the Commencement Date the Owner does not have an Acceptable Credit Rating, then Aurizon Network may (taking into consideration expected future payment obligations under this Agreement and the financial performance of the Owner) require the Owner to deliver to Aurizon Network security in the amount of up to the Security Amount for the due and proper performance by the Owner of its obligations under this Agreement in the form of:

- (a) a parent company guarantee from a holding company (as defined in the Corporations Act) of the Owner that has an Acceptable Credit Rating in a form reasonably acceptable to Aurizon Network;
- (b) a bank guarantee from a trading bank holding a current Australian banking licence and with an Acceptable Credit Rating and in the form set out in **Schedule 5**) or such other form as is reasonably acceptable to Aurizon Network; or
- (c) any other security reasonably acceptable to Aurizon Network,

and Aurizon Network shall not unreasonably withhold or delay its acceptance of any security delivered under this clause 20.1.

20.2

- (a) Following each 30 June occurring from the Commencement Date Aurizon Network will have a right to request the Security Amount be increased from that listed in Item 3 of Schedule 1) in proportion to the change in the MCI over the most recent financial year (with the calculation and timing of that indexation to occur in accordance with clause 1.2(e)).
- (b) If Aurizon Network purports to vary the Security Amount in accordance with clause 20.2(a), and the Owner disputes whether that varied Security Amount properly reflects the changes permitted to be made pursuant to clause 20.2(a), clause 17 will apply. In such cases, there will be no variation to the Security Amount until the dispute between the parties has been properly resolved.

- 20.3 If Aurizon Network calls up any amount from the security provided by or on behalf of the Owner, the Owner will deliver to Aurizon Network, within 10 Business Days of Aurizon Network making such call up, further security in favour of Aurizon Network, in a form permitted by this clause 20, undertaking to pay Aurizon Network on demand an amount equal to the amount called up. Such further security will form part of the security provided by the Owner under this Agreement from the date on which the Owner provides such further security.

20.4 Aurizon Network must, subject to the rights of recourse to the security under this clause 20, account to the Owner for the security:

- (a) as soon as is reasonably practicable and in no event later than three months after the expiration or termination of this Agreement;
- (b) as soon as is reasonably practicable in the event that the Owner's credit rating becomes an Acceptable Credit Rating; and
- (c) where the Owner provides a replacement security which meets the requirements in clause 20.1.

21. LIABILITY

21.1 Despite any other provision in this Agreement, neither Party will in any circumstances be liable to the other for any Consequential Loss arising from, under or in connection with this Agreement.

21.2 Neither Party will make any Claim against the other in respect of the neglect or default of that other Party under this Agreement unless notice of the Claim has been given to the other Party within six months of the later of the Claim arising or becoming reasonably apparent to the relevant Party.

21.3 Subject to clause 21.4 and 22.3, to the extent permitted by law, the liability of:

- (a) Aurizon Network to the Owner; and
- (b) the Owner to Aurizon Network,

at common law, under the Australian Consumer Law or otherwise, in respect of any matters arising out of, or in any way related to, this Agreement or the subject matter thereof, will in no event exceed in aggregate the amount specified in Item 5 of Schedule 1).

21.4 The limitation in clause 21.3 does not apply in respect of:

- (a) liability for fraud, criminal conduct or unlawful acts or omissions;
- (b) liability for wilful default, wilful damage, wilful misconduct or gross negligence;
- (c) liability for death or personal injury;
- (d) liability for third party claims including death, personal injuries or property damage; and
- (e) loss which is covered by an insurance policy in favour of a Party, or which would have been covered by an insurance policy in favour of a Party if that Party had maintained in force the insurance policies that that Party is required to maintain in force under this Agreement.

21.5 Nothing in this Agreement creates or constitutes any contract between Aurizon Network and any haulage operator contracted by the Owner or otherwise responsible for the operation of the Train Services utilising the Connecting Infrastructure.

22. INDEMNITIES

22.1 The Owner indemnifies and releases, and agrees to keep indemnified, Aurizon Network, its officers, employees, agents and contractors from and against all Claims arising out of, or which in any way relate to, the Private Infrastructure and/or Connecting Infrastructure or operations thereon, which may be made or brought against Aurizon Network, its officers, employees, agents and/or contractors or which Aurizon Network, its officers, employees, agents and/or contractors may pay, incur, sustain or be put to, by reason of or in consequence of, any act or omission of the Owner and/or its officers, employees, agents or contractors which is negligent or is a breach of this Agreement, except to the extent such Claims occur as the result of a negligent or wilful act or omission of Aurizon Network and/or its officers, employees, agents or contractors.

22.2 Aurizon Network indemnifies and releases, and agrees to keep indemnified, the Owner, its officers, employees, agents and contractors from and against all Claims arising out of, or which in any way relate to, the Network and/or Connecting Infrastructure or operations thereon, which may be made or brought against the Owner, its officers, employees, agents and/or contractors or which the Owner, its officers, employees, agents and/or contractors may pay, incur, sustain or be put to, by reason of or in consequence of, any act or omission of Aurizon Network and/or its officers, employees, agents or contractors which is negligent or is a breach of this Agreement, except to the

extent such Claims occur as the result of a negligent or wilful act or omission of the Owner and/or its officers, employees, agents or contractors.

- 22.3 The indemnities provided in this clause 22 will not extend to and neither Aurizon Network nor the Owner will be liable for, any Consequential Loss suffered by the other or for which the other becomes liable.

23. NOTICES

- 23.1 Any notice, invoice, or other communication under this document will be given in writing and may be given by an authorised representative of the sender.

- 23.2 Any communication may be given by:

- (a) being personally served on a Party;
- (b) being left at the Party's current address for service;
- (c) being sent to the Party's current address for service by pre-paid ordinary mail;
- (d) being sent by facsimile to the Party's current number for service;
- (e) being sent by email to the Party's current email address for service; or
- (f) if at any time agreed by the Parties, being sent by another agreed electronic form.

- 23.3

- (a) The addresses and numbers for service are initially:

Aurizon Network Pty Ltd:

Address: Level 17, 175 Eagle Street, Brisbane QLD 4000

Facsimile: 07 3235 3637

Email: access.services@qmational.com.au

Attention: Chief Executive Officer, Aurizon Network Pty Ltd

The Owner:

Address: as set out in Item 1 of Schedule 1)

Facsimile: as set out in Item 1 of Schedule 1)

Email: as set out in Item 1 of Schedule 1)

Attention: as set out in Item 1 of Schedule 1)

- (b) A Party may from time to time change its address or number for service by notice to the other Party.

- 23.4 A communication is deemed given if:

- (a) personally delivered, upon delivery;
- (b) sent by post, on the third Business Day after posting;
- (c) sent by facsimile, on the next Business Day after being sent if the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number; and
- (d) sent by email, on the next Business Day after the sender receives confirmation by read receipt that the message has been transmitted.

- 23.5 If a communication to a Party is received by it after 5.00 pm or on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.

24. CONFIDENTIALITY

- 24.1 Each Party will keep the terms of this Agreement confidential, and will not disclose the terms of this Agreement to any third party except:

- (a) to the extent required by law, under an order or direction of any Authority or by the rules of any stock exchange on which a Party or its Related Bodies Corporate are listed;
- (b) to its officers, employees and agents, legal and other professional advisers, Related Bodies Corporate, and officers, employees, agents, legal and other professional advisers of such Related Bodies Corporate

provided that any such disclosure by Aurizon Network must not breach the ring-fencing and confidentiality obligations included in the Aurizon Network Access Undertaking;

- (c) to an existing or proposed Rail Infrastructure Manager for the Private Infrastructure which first executes a Confidentiality Deed in the form contained in Schedule 6), and its legal and other professional advisers;
- (d) to a bona fide potential financier of a Party or its Related Bodies Corporate and their legal and other professional advisers;
- (e) to a bona fide potential purchaser of a Party (directly or indirectly), the Network or the Private Infrastructure and their legal and other professional advisers;
- (f) to an expert or the Queensland Competition Authority in a dispute resolution process in connection with this Agreement or under the Aurizon Network Access Undertaking;
- (g) in legal proceedings in connection with enforcement of this Agreement;
- (h) to the extent the terms of this Agreement are in the public domain through means other than a breach of this clause 24.1; or
- (i) with the prior written consent of the other Party, such consent not to be unreasonably withheld,

provided that a recipient pursuant to clause 24.1(c), (d) or (e) must first undertake to keep the terms of this Agreement confidential.

24.2 Each Party will keep confidential any intellectual property, trade secrets, operating procedures and financial or other information disclosed by the other Party as required under this Agreement (including, without limitation, any information provided in accordance with **clauses 6, 10 and 11**) and will not:

- (a) use such information for any purpose other than the purpose for which it was provided;
- (b) disclose such information to any third party except:
 - (i) in accordance with this Agreement;
 - (ii) to an existing or proposed Rail Infrastructure Manager for the Private Infrastructure and their legal and other professional advisers in connection with the performance of the Rail Infrastructure Manager's obligations under this Agreement or an interface agreement with Aurizon Network and subject to the execution of a confidentiality deed in accordance with **clause 10.6**, if necessary;
 - (iii) to the extent the information is in the public domain through means other than a breach of this **clause 24.2**; or
 - (iv) with the other Party's written consent.

24.3 If a Party does not comply with **clause 24.1** or **clause 24.2** and the other Party suffers any detriment as a result of or in connection with that non-compliance, the Party which suffers detriment shall be entitled to bring a Claim against the non-complying Party for breach of confidence.

24.4 Any obligation of confidence under this Agreement survives termination and remains binding for a period of 10 years from termination of this Agreement.

25. COMPLIANCE WITH LAWS

Each party must comply with all relevant laws relating to the subject matter of this Agreement including, without limitation, laws relating to the environment.

26. ACCESS TO LAND

26.1

- (a) To the extent that some part of the Private Infrastructure or the Connecting Infrastructure has been, or will be, constructed upon land owned or controlled by Aurizon Network or an Aurizon Party or the construction or operation of the Private Infrastructure or Connecting Infrastructure otherwise reasonably requires access to such land, then Aurizon Network will provide reasonable access to the relevant land for the Owner, the Railway Infrastructure Manager for the Private Infrastructure, and their respective

employees, officers, agents and contractors to the extent that access to the relevant land is reasonably required for construction of the relevant infrastructure and/or ongoing operation and maintenance of the Private Infrastructure or to enable the Owner or the Railway Infrastructure Manager for the Private Infrastructure to comply with its obligations under this Agreement or an interface agreement with Aurizon Network, provided that:

- (i) the land is owned by Aurizon Network or an Aurizon Party or Aurizon Network has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
 - (ii) the access is not inconsistent with the terms of any lease, license or other arrangement to which Aurizon Network or an Aurizon Party is a party in respect of the land.
- (b) If Aurizon Network does not have authority to authorise the Owner to access land as provided by **clause 26.1(a)**, then Aurizon Network will provide the following in relation to access to that land within 10 Business Days of receiving a written request from the Owner to access the relevant land:
- (i) details of the relevant entity (including that entity's name, address and contact details) that the Owner would need to obtain approval from to gain access to that land, where this information is reasonably available to Aurizon Network;
 - (ii) advice as to the nature and extent of the rights, if any, that Aurizon Network holds in relation to the relevant land; and
 - (iii) a notice to be provided to that entity identifying that Aurizon Network has no objection to the Owner negotiating for access to that land.

26.2 Where the Owner or the Railway Infrastructure Manager for the Private Infrastructure access land pursuant to clause 26.1, the Owner or the Railway Infrastructure Manager for the Private Infrastructure, as applicable, must, and must procure that its representatives and contractors who access the relevant land, comply with all site and safety rules applicable to the land and all Aurizon Network rail corridor access processes notified by Aurizon Network to the Owner or Rail Infrastructure Manager for the Private Infrastructure (as applicable) prior to such access, be accompanied by an Accredited Personal Protection Officer, and comply with any reasonable direction given by any Aurizon Network representative and any other reasonable conditions specified by Aurizon Network.

26.3

- (a) If Aurizon Network requires access to any land on which the Private Infrastructure or Connecting Infrastructure is or will be constructed (**Private Land**), the Owner will provide reasonable access to the Private Land for Aurizon Network and its employees, officers, agents and contractors to the extent that access to the Private Land is reasonably required to enable Aurizon Network to comply with its obligations under this Agreement or an interface agreement with the Rail Infrastructure Manager for the Private Infrastructure, provided that:
- (i) the Private Land is owned by the Owner or its Related Body Corporate or the Owner has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
 - (ii) the access is not inconsistent with the terms of any lease, license or other arrangement to which the Owner or its Related Body Corporate is a party in respect of the land.
- (b) If the Owner does not have authority to authorise Aurizon Network to access land as provided by clause 26.3(a), then the Owner will provide the following in relation to access to that land within 10 Business Days of receiving a written request from Aurizon Network to access the Private Land:
- (i) details of the relevant entity (including that entity's name, address and contact details) that Aurizon Network would need to obtain approval from to gain access to that land, where this information is reasonably available to the Owner;
 - (ii) advice as to the nature and extent of the rights, if any, that the Owner holds in relation to the relevant land; and

- (iii) a notice to be provided to that entity identifying that the Owner has no objection to Aurizon Network negotiating for access to that land.

26.4 Where Aurizon Network accesses Private Land, Aurizon Network must, and must procure that its representatives and contractors who access the Private Land, comply with all site and safety rules applicable to the Private Land as notified by the Owner or the Railway Infrastructure Manager for the Private Infrastructure prior to such access, any reasonable direction given by any nominated Senior Site Executive for the Private Land and any other reasonable conditions specified by the Owner or its Related Body Corporate.

26.5 Subject to clause 26.6,

- (a) Aurizon Network may enter Private Land owned or controlled by the Owner or Railway Infrastructure Manager for the Private Infrastructure without the consent of the Owner or the Railway Infrastructure Manager; and

- (b) the Owner and the Rail Infrastructure Manager for the Private Infrastructure may enter land owned or controlled by Aurizon Network or an Aurizon Party without the consent of Aurizon Network,

if immediate entry is necessary to prevent, minimise or alleviate any threat or danger to any person or property that has resulted, or is expected to result, from an Incident.

26.6 If a Party enters land in accordance with clause 26.5 (the **Accessing Party**) it must:

- (a) before entering the land, give the other Party (and in the case of Private Land, the Owner and Rail Infrastructure Manager for the Private Infrastructure) as much notice as is practicable in the circumstances; and

- (b) within 48 hours of entering the land, provide details to the other parties outlining the nature of access, the reasons for entering the land and details of the emergency, any actions carried out on the land to address the risks posed by the emergency and, if applicable, when the Accessing Party will withdraw from the land.

27. MISCELLANEOUS

27.1

- (a) The Owner will, as between the Parties, be liable for and duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under it.

- (b) Each Party will bear its own legal and other costs and expenses relating directly or indirectly to the negotiation, preparation and execution of this Agreement.

27.2

- (a) A single or partial exercise or waiver of a right relating to this Agreement, or a failure or delay in exercising a right, will not prevent any other exercise of that right or the exercise of any other right.

- (b) No waiver of any provision of this Agreement will be effective unless the same will be in writing and then such waiver will be effective only in the specific instance and for the purpose for which it is given.

27.3 Each Party will promptly execute all documents and do all things that any other Party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

27.4 This Agreement is governed by and is to be construed in accordance with the laws in force in Queensland. Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of 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.

27.5 This Agreement embodies the entire understanding and agreement between the Parties as to the subject matter of this Agreement and, to the extent that this Agreement is inconsistent with any prior agreement between the Parties, this Agreement will prevail over, and will replace, the inconsistent terms of the prior agreement.

27.6 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 will be of no force or effect whatever and no Party will be liable to any other Party in respect of those matters.

27.7 Each provision of this Agreement will be deemed to be separate and separable from the others of them.

Schedule 1)**Reference Schedule**

Item 1	<p>Name of Owner:</p> <p>Address of Owner:</p> <p>ABN:</p> <p>Facsimile No. of Owner:</p> <p>Telephone No. of Owner:</p> <p>Email of Owner:</p> <p>Attention:</p>
Item 2	<p>Expiry Date</p> <p>The date which is the earlier of:</p> <p>(a) [Owner to nominate anticipated expiry date]; or</p> <p>(b) the date on which Aurizon Network's leasehold interest in respect of the land on which the Connecting Infrastructure is, or is to be, located, expires or otherwise ceases.</p>
Item 3	<p>Security Amount</p> <p><i>[\$[the estimated reasonable and prudent costs of decommissioning and removing the Connecting Infrastructure (including a reasonable and prudent contribution for Aurizon Network's internal costs related to such decommissioning and removal) upon the expiry of this Agreement so as to remove the connection between the Network and the Private Infrastructure and restore the affected section of the Network to a condition consistent with the adjacent sections of the Network]</i></p>
Item 4	<p>Commitment Date</p> <p><i>[The date which is the scheduled date for availability of the connection] [To be used where Aurizon Network is constructing Connecting Infrastructure]</i></p> <p><i>[The later of [the date which is scheduled for availability of the connection] and [#] days after the Owner gives notice to Aurizon Network that construction of the Connecting Infrastructure is complete.] [To be used where the Owner is constructing Connecting Infrastructure]</i></p>
Item 5	<p>Cap on liability (clause 21.3)</p> <p>\$ [#] per Train Service contracted to enter and/or exit the Network via the Connecting Infrastructure</p>
Item 6	<p>Aurizon Network Train Control contact (clause 13.1)</p> <p>Name:</p> <p>Address:</p> <p>Facsimile:</p> <p>Telephone:</p> <p>Email:</p>

Schedule 2)**Plan showing Connecting Infrastructure, Private Infrastructure and the Network**

[This plan must identify the boundaries between the Connecting Infrastructure, Private Infrastructure and the Network, so that it is clear where one ends and the next begins, and should include a description and/or address of the location of the Private Infrastructure and Connecting Infrastructure.]

Schedule 3)

Insurance

Required Owner Insurances

Professional indemnity insurance to cover against legal liability arising from a breach of professional duty in connection with the insured's performance of professional services under this Agreement for an amount not less than \$20,000,000 for any one claim and in the aggregate (indexed annually in accordance with the MCI).

Public liability insurance

- to cover legal liability of the insured for claims in respect of:
 - injury to or death of any person other than the insured or an employee of the insured; and/or
 - loss of or damage to any property other than property owned by the insured,
 arising out of or in connection with the connecting of the Private Infrastructure to the Network via the Connecting Infrastructure and the performance of the insured's obligations under this Agreement for an amount not less than \$100,000,000 on any one occurrence; and
- 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.

Workers' compensation insurance as required by law.

Motor vehicle insurance to cover against:

- legal liability of the insured arising out of or in connection with the use of all vehicles by the insured or the insured's staff; and
 - legal liability arising from third party property damage arising out of or in connection with the use of all vehicles in the performance of the Agreement by the insured or the insured's staff,
- for an amount not less than \$20,000,000, and
- the statutory liability in respect of any personal injury arising out of or in connection with the use by the insured or the insured's staff of all vehicles in the performance of the Agreement in accordance with the relevant statutory requirements.

Any other insurance which is required by law to be maintained by the Owner in connection with the Private Infrastructure, the Connecting Infrastructure or this Agreement.

Required Aurizon Network Insurances

Professional indemnity insurance to cover against legal liability arising from a breach of professional duty in connection with Aurizon Network's performance of its professional services under this Agreement for an amount not less than \$20,000,000 for any one claim and in the aggregate (indexed annually in accordance with the MCI).

Public liability insurance

- to cover legal liability of the insured for claims in respect of:
 - injury to or death of any person other than the insured or an employee of the insured; and/or
 - loss of or damage to any property other than property owned by the insured,

arising out of or in connection with the connecting of the Private Infrastructure to the Network via the Connecting Infrastructure and the performance of Aurizon Network's obligations under this Agreement for an amount not less than \$100,000,000 on any one occurrence;

- 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

Workers' compensation insurance as required by law.

Motor vehicle insurance to cover against:

- legal liability of the insured arising out of or in connection with the use of all vehicles in the performance of the Agreement by Aurizon Network or Aurizon Network's staff; and
- legal liability arising from third party property damage arising out of or in connection with the use of all vehicles in the performance of the Agreement by Aurizon Network or Aurizon Network's staff.,
for an amount not less than \$20,000,000, and
- the statutory liability in respect of any personal injury arising out of or in connection with the use by Aurizon Network or Aurizon Network's staff of all vehicles in the performance of the Agreement in accordance with the relevant statutory requirements.
- Any other insurance which is required by law to be maintained by Aurizon Network in connection with the Private Infrastructure, the Connecting Infrastructure or this Agreement.

The calculation and timing of indexation of any amounts to be indexed by MCI will occur in accordance with clause 1.2(e).

Schedule 4)

Emergency Response Plan and Interface Risk Management Plan

[Initial Emergency Response Plan and Interface Risk Management Plan developed jointly between the parties before executing this agreement to be inserted]

Schedule 5)**Pro forma bank guarantee**

[On bank letterhead]

To: Aurizon Network Pty Ltd ACN 132 181 116 (**Aurizon Network**)

At the request of *[insert Owner details]* (ACN *### ### ###*) (the **Owner**) and in consideration of Aurizon Network accepting this undertaking in respect of the agreement dated *[date]* in respect of rail infrastructure connecting rail owned or controlled by the Owner and rail infrastructure for which Aurizon Network is the accredited rail infrastructure manager (within the meaning of that term in the Transport (Rail Safety) Act 2010 (Qld) (the **Agreement**), *[insert details of bank]* (ABN *### ### ###*) (the **Guarantor**) unconditionally and irrevocably undertakes to pay on written demand any sum or sums which may from time to time be demanded by Aurizon Network under and in accordance with the Agreement (as amended from time to time) to a maximum aggregate sum of \$*[security amount to reflect Item 3 of Schedule 1]*].

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

The undertaking is to continue until:

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

whichever occurs first.

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

This undertaking is governed by the laws of Queensland.

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

[Bank Details]

Schedule 6)

Confidentiality Deed

CONFIDENTIALITY DEED

THIS DEED is made on *[insert date of agreement]*

BETWEEN AURIZON NETWORK PTY LIMITED of Level 17, 175 Eagle Street, Brisbane (“**Aurizon Network**”)

AND *[Rail Infrastructure Manager for the Private Infrastructure]* (“the **RIM**”)

RECITALS

- A Pursuant to clause 10 of the Rail Connection Agreement, the Parties may each require the other to provide information which the other Party wishes to remain secret and confidential.
- B The Parties have agreed to supply the information to each other on condition of entry into this Deed to protect the secret and confidential nature of the information to be disclosed.

IT IS AGREED

1. INTERPRETATION

(a) Unless the context otherwise requires, and subject to clause 1(b) terms defined in the Rail Connection Agreement will have the same meanings when used in this Deed.

(b) In this Deed, the following words and expressions shall have the respective meanings:

“**Confidential Information**” means any information, data or other matter (“**information**”) disclosed by the Discloser to the Recipient pursuant to clause 10.5 of the Rail Connection Agreement, provided that such information:

- (a) is not already in the public domain;
- (b) does not become available to the public through means other than a breach of the confidentiality provisions in this Deed;
- (c) was not in the other party’s lawful possession prior to such disclosure; and
- (d) is not received by the Recipient independently from a third party free to disclose such information, data or other matter;

and provided further that information will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example if:

- (e) the information is now in the public domain through means other than a breach of the confidentiality provisions in this Deed; or
- (f) the information has been received by Aurizon Network or the RIM (as applicable) independently from a third party free to disclose the information.

“**Discloser**” has the meaning given in clause 2.1.

“**Permitted Purpose**” means one or more of the following purposes:

- (a) managing the interface arrangements in respect of the Private Infrastructure and the Network;
- (b) in the case of Aurizon Network, managing the Network or the Connecting Infrastructure; and
- (c) in the case of the RIM, managing the Private Infrastructure.

“**Rail Connection Agreement**” means the Rail Connection Agreement between Aurizon Network and the Owner dated *[*]*.

“**Recipient**” has the meaning given in clause 2.1.

2. Disclosure and Use of Confidential Information

2.1 Each of Aurizon Network and the RIM (“the **Recipient**”) undertakes to keep confidential and not disclose any Confidential Information disclosed by the other party to it (“the **Discloser**”) or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by that party) except in accordance with this Deed, and to use Confidential Information disclosed by the Discloser only for the Permitted Purpose, unless:

- (a) the Discloser provides its prior written approval; or
- (b) the disclosure and/or use is:
 - (1) required or compelled by any law;
 - (2) required or compelled by any order of a court;
 - (3) required or compelled by notice validly issued by any Authority;
 - (4) necessary for the conduct of any legal proceedings, including any dispute resolution process under the Rail Connection Agreement, the Aurizon Network Access Undertaking or the *Queensland Competition Authority Act 1997* (Qld);
 - (5) required under any stock exchange listing requirement or rule; or
 - (6) to the Recipient’s solicitors, barristers, or accountants under a duty of confidentiality.

3. General Obligations

3.1 Each Recipient acknowledges and agrees that:

- (a) the Confidential Information of the Discloser is confidential to the Discloser and is and remains at all times the valuable and exclusive property of the Discloser;
- (b) the Recipient is responsible for any use or disclosure of Confidential Information which is contrary to the provisions of this Deed by persons to whom the Recipient discloses the Confidential Information, and shall take such steps as may be necessary to prevent any such improper use or disclosure (including enforcing any confidentiality deed or confidentiality provisions contained in another arrangement pursuant to which the Recipient disclosed that Confidential Information);
- (c) the Recipient shall not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Confidential Information furnished to it by or on behalf of another party to this Deed except to the extent necessary to carry out the Permitted Purpose;
- (d) this Deed shall not be construed as assigning any other rights to use Confidential Information, or as granting to the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the Discloser;
- (e) the Recipient shall secure and protect the Confidential Information received from another party to this Deed from unauthorised disclosure, access or use;
- (f) the Discloser may take legal proceedings against the Recipient and/or any third party if there is any actual, threatened or suspected breach of this Deed or a breach by a Related Body Corporate of the Recipient of a confidentiality deed or confidentiality provisions contained in another arrangement with the Recipient pursuant to which the Confidential Information was disclosed to it; and
- (g) damages may be inadequate compensation for breach of this Deed and, subject to the court’s discretion, the Discloser shall be entitled to specific performance of this Deed and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this Deed.

4. General

4.1 Unless otherwise terminated by mutual consent of all parties in writing, this Deed will continue in force notwithstanding the return of all copies of Confidential Information held by a Recipient to the Discloser.

4.2 This Deed:

- (a) may be terminated by mutual consent of all parties in writing;

- (b) will terminate if the Rail Connection Agreement terminates;
 - (c) will terminate if the RIM ceases to be the Rail Infrastructure Manager for the Private Infrastructure for the purposes of the Rail Connection Agreement.
- 4.3 Any obligation of confidence under this Deed is independent and survives the term of this Deed and remains binding for a period of 10 years after termination of this Deed. Any other term by its nature intended to survive the termination of this Deed survives termination of this Deed.
- 4.4 This Deed is personal to the parties and may not be assigned or otherwise transferred in whole or in part without the prior written consent of the other party.
- 4.5 The laws of Queensland will govern the construction and performance of this Deed and the parties submit to the non-exclusive jurisdiction of the Supreme Court of Queensland. This Deed constitutes the entire agreement between the parties in respect of the Confidential Information and supersedes all previous agreements and understandings in respect of the Confidential Information. Nothing in this Deed derogates from any obligation of any party under the Rail Connection Agreement or the Aurizon Network Access Undertaking with respect to the Confidential Information.
- 4.6 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 4.7 In this Deed, references to Clauses are references to Clauses contained in this Deed unless otherwise stated.

EXECUTED as a DEED

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Aurizon Network Pty Ltd** (ACN 132 181 116):

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **[the RIM]**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed as an agreement

Signed for
Aurizon Network Pty Limited
by its representative

sign here
▶ _____
Representative

print name

sign here
▶ _____
Witness

print name

Signed for
The Party whose name and address appears in Item 1 of Schedule 1)
by its representative

sign here
▶ _____
Representative

print name

sign here
▶ _____
Witness

print name
