

Aurizon Network Revised Draft

**[insert date]**

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Aurizon Network Pty Ltd

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**[The Party whose name and address appears  
in Item 1 of Schedule 1]**

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**Rail Connection  
Agreement for  
[Location that appears  
in Schedule 2]**

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Date

## Parties

**Aurizon Network Pty Ltd** ABN 78 132 181 116 of Level 5, 900 Ann Street, Fortitude Valley QLD 4006 (**Aurizon Network**)

**The Party whose name and address appears in Item 1 of Schedule 1 (Private Infrastructure Owner)**

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## Background

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

### 1 Interpretation

(a) In this Agreement:

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

**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.

**Accreditation** means accreditation in accordance with Part 3 of the RSNL (including accreditation by operation of section 97 of the Queensland RSNL), and **Accredited** means to have Accreditation.

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

**Annual Service Charge** means, in respect of a Maintenance Year, the proportion of the Operating and Maintenance Costs for the Maintenance Year which the non-Reference Train Services which utilised the Connecting Infrastructure during the Maintenance Year (if any) bears in proportion to the total number of all Train Services which utilised the Connecting Infrastructure during the Maintenance Year. For the avoidance of doubt, if zero non-Reference Train Services utilised the Connecting Infrastructure during the Maintenance Year, then the Annual Service Charge is zero.

**Assign** means to assign, novate, transfer, part possession with, license, charge, mortgage, become trustee of, grant an option or other right over or otherwise deal with or encumber.

**Aurizon Party** means a Related Body Corporate of Aurizon Network.

**Authority** means any:

- (a) government, government department or other governmental or semi-governmental 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].

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

**CI Criteria** means, in respect of a Design, that the Design:

- (a) meets the technical specifications reasonably required by Aurizon Network, in accordance with Good Engineering Practices, 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;
- (c) will have no adverse impact on safety; and
- (d) will not, after completion and commissioning of the proposed connection and any relevant Expansion, reduce capacity of the Network or supply chain capacity.

**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 Coal Loss Mitigation Provisions forming part of the Access Undertaking.

**Coal System** has the meaning given in the Access Undertaking.

**Commencement Date** means the date of execution of this Agreement.

**Commitment Date** means the date specified in **Item 4 of Schedule 1 - Reference Schedule**.

**Connecting Infrastructure** means the rail transport infrastructure (including, without limitation, track, signalling, overhead electric traction, points (including catch points) and signalling cable (if applicable)) that is identified as Connecting Infrastructure on the plan detailed in **Schedule 2**, as modified, upgraded or replaced from time to time.

**Connecting Infrastructure Work Notice** means the notice referred to in **clause 5.2(l)(ii)**.

**Consequential Loss** means:

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

- (h) loss or damage suffered or incurred by a Party arising out of a Claim against that Party by a Third Party, to the extent that the loss or damage would not be recoverable by the Third Party if the Party was not liable to the Third Party for “Consequential Loss” (as defined in this definition) in respect of the Claim by the Third Party,

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

- (i) any costs or expenses incurred by the Party in connection with mitigating the effects of any breach of this Agreement by the other Party (including implementing a workaround solution in respect of or otherwise mitigating any failure of a Party to comply with the requirements (including warranties) of this Agreement provided that if a loss arising from the breach of the Agreement is itself not recoverable because it is a Consequential Loss, the costs or expenses incurred in mitigating that loss will also be treated as (non-recoverable) Consequential Loss;
- (j) a loss (including a loss arising out of a Claim by a Third Party) in respect of:
  - (i) the cost of repairing, replacing or reinstating any real or personal property of any person (including a Party) that has been lost, damaged or destroyed; or
  - (ii) personal injury to or death of any person;
- (k) in respect of any personal injury Claim, special loss or economic loss as those terms are used in the context of personal injury claims; or
- (l) any fines or penalties imposed by a governmental or regulatory body for failure by the Party to comply with the law as a result of the other Party's failure to comply with the requirements of the Agreement, and any costs or expenses incurred by the first Party in dealing with any actions, investigations, inquiries or proceedings by a governmental or regulatory body in respect of such failures or breaches.

**Construction Agreement** means the agreement referred to in **clause 5.15(b)**.

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

**CPI means** The Consumer Price Index: All Groups – Brisbane (Australian Bureau of Statistics Publication No.6401.0, Tables 1 and 2, Series ID: A2325816R).

**Decommissioning Charges** means the reasonable and prudent costs of decommissioning and removing the Connecting Infrastructure upon the expiry, or earlier termination in accordance with **clause 19**, 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

**Default Rate** means, for any day in a month, the annual interest rate that is the sum of:

- (a) 2%; and
- (b) the Commonwealth Bank of Australia’s “Corporate Overdraft Reference Rate” (monthly cycle) quoted by the Commonwealth Bank of Australia on its public website for the last trading day of the previous month (or in the event that such a rate is not so quoted at or in respect of any relevant date, such other similar rate as is quoted by a major commercial bank as agreed by the Parties or, failing agreement, as determined by an expert under **clause 18**).

**Design** means the design of the Connecting Infrastructure.

**Dispute** has the meaning given in **clause 18(a)**.

**Dispute Notice** has the meaning given in **clause 18(a)**.

**Emergency Procedures** the procedures developed and advised by Aurizon Network from time to time for dealing with an Incident including all actions to be taken to prevent, mitigate or remedy any risks to the safety of persons, to property or to the Environment.

**Environment** has the meaning given in the *Environmental Protection Act 1994* (Qld).

**Emergency Response Plan** means the plan containing the set of procedures developed by the Private Infrastructure Owner and adequate 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, which is compatible with the Emergency Procedures:

- (a) as at the date of this Agreement being in the form set out in Schedule 4 - Emergency Response Plan and Interface Risk Management Plan; and
- (b) as subsequently amended in accordance with **clause 12**.

**Environmental Harm** means serious environmental harm, material environmental harm or environmental nuisance as those terms are defined in the *Environmental Protection Act 1994* (Qld).

**Expansion** has the meaning given to that term in the Access Undertaking or, where that term ceases to be defined in the Access Undertaking or there ceases to be an Access Undertaking, as last given to that term in the Access Undertaking.

**Expiry Date** means the date referred to in **Item 2 of** Schedule 1 - Reference Schedule.

**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 affected Party is 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, storm surge, cyclone, tornado, earthquake, washaway, landslide, explosion, severe weather conditions or other catastrophe or natural calamity;
- (m) epidemic and quarantine restriction; and
- (n) delay of a supplier due to any of the foregoing whether any such cause of delay exists before, at the time, or after the Commencement Date.

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

**GST** 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, on or affecting the use of the Connecting Infrastructure or the Network which causes or contributes to, or could cause or contribute to:

- (a) the death of, or injury to, any person;
- (b) damage to property;
- (c) Environmental Harm; or
- (d) a disruption to, or cancellation by Aurizon Network of, any Train Movement.

**Incident Information** has the meaning given in **clause 12(h)(iii)**.

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

- (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, undertaken in accordance with **clause 11**, of the risks associated with the Private Infrastructure 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**.

**Investigation Procedures** means the procedures in relation to investigations which are:

- (a) specified in Aurizon Network's document entitled *Incident Report and Investigations* which is published on the website [www.aurizon.com.au](http://www.aurizon.com.au) (as amended and replaced from time to time); and
- (b) as far as practicable, applied consistently for all Railway Operators operating Network Train Services in the same Coal System.

**Law** has the meaning given in the Access Undertaking.

**Maintenance Year** means each 12 month period (or part thereof) occurring during the Term, 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.

**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.

**Network Train Service** means the running of a Train between specified origins and destinations by a Railway Operator (including any Stowage (as that term is defined in the Access Undertaking) on the Network.

**Operating and Maintenance Costs** means, in respect of Maintenance Year, 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:

- (a) included in access charges for access rights utilised by Train Services entering or exiting the Network via the Connecting Infrastructure; or
- (b) excluded in accordance with **clause 1(b)(iv)**.

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

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

**PIO Party** means a Related Body Corporate of a Private Infrastructure Owner.

**Private Infrastructure** means track and/or associated rail transport infrastructure owned by the Private Infrastructure 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 27.2(a)**.

**Queensland RSNL** means the *Rail Safety National Law (Queensland) Act 2017* (Qld), as varied from time to time.

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

**Railway Operator** has the meaning given in the Access Undertaking.

**Reference Tariff** has the meaning given in the Access Undertaking as amended, varied or escalated in accordance with the Access Undertaking from time to time.

**Reference Train Services** means Train Services for which a Reference Tariff applies under the 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 Private Infrastructure Owner for the cost of the item (subject to **clause 1(b)(iv)**).

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

**RSNL** means the Rail Safety National Law set out in the Schedule to the *Rail Safety National Law (South Australia) Act 2012* (SA), as adopted and varied from time to time by the Queensland RSNL.

**Resolution Institute** means Resolution Institute ABN 69 008 651 232.

**Safety Regulator** has the meaning given to that term in the Access Undertaking.

**Security Amount** means the amount specified in **Item 3 of** Schedule 1 - Reference Schedule as it may be adjusted from time to time in accordance with **clause 21**.

**Site Senior Executive** means the site senior executive appointed under the *Coal Mining Safety and Health Act 1999* (Qld).

**Term** has the meaning given in **clause 2**.

**Third Party** means a person other than the Private Infrastructure Owner or Aurizon Network.

**Train** means any configuration of rolling stock operating as a unit on the Network, Connecting Infrastructure or Private Infrastructure.

**Train Movement** means any operation on the Network of a Train by a Train Operator (as that term is defined in the Access Undertaking) or any other Railway Operator (as that term is defined in the Access Undertaking).

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

**Transfer Facilities** means any coal loading facilities which are used to load trains which use the Private Infrastructure.

- (b) Unless expressed to the contrary:
- (i) words importing the singular include the plural and vice versa;
  - (ii) a reference to:
    - (A) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
    - (B) a person includes its legal personal representatives, successors and permitted assigns;
    - (C) 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;
    - (D) any code, guideline, recommendation or policy, or any provision of any code, guideline, recommendation or policy, includes any modification of it, or the substitution of it or any of its provisions for others, unless otherwise specified or directed by Aurizon Network;
    - (E) any Authority, association or body whether statutory or otherwise (**first body**) is, if the first body ceases to exist or is re-constituted, re-named or replaced or the powers or functions of the first body

are transferred to any other Authority, association or body (**replacement body**), deemed to refer to the replacement body established or constituted in lieu of the first body or as nearly as may be succeeding to the powers or functions of the first body;

- (F) "\$" or "dollars" is a reference to the lawful currency of Australia;
  - (G) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties; and
  - (H) a clause of the Access Undertaking is a reference to the Access Undertaking in force at the Commencement Date and, if that clause is subsequently altered or replaced, the reference will be taken to be to the altered or replacement clause of the Access Undertaking;
- (iii) 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;
  - (iv) where under this Agreement the Private Infrastructure Owner is required to reimburse a cost to Aurizon Network, the Parties agree that:
    - (A) other than with the prior written approval of the Private Infrastructure Owner, the Private Infrastructure Owner will not be required to reimburse any:
      - (1) profit;
      - (2) margin; or
      - (3) overheads,which is paid or payable to Aurizon Network or a Related Body Corporate of Aurizon Network; and
    - (B) 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
  - (v) where this Agreement requires an amount to be indexed annually based on the CPI or to otherwise be increased in proportion to a change in the CPI, the escalated amount is calculated as follows:

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

where:

**Escalated Amount** is the amount as escalated;

**Amount** is the amount to be escalated;

**CPI<sub>n</sub>** means the CPI as calculated to be current as at the end of the financial year immediately before the date to which the Amount is to be escalated; and

**CPI<sub>x</sub>** means the CPI as calculated to be current as at the end of the financial year immediately before the date from which the Amount is to be escalated,

with such indexation to occur following all data required to calculate CPI<sub>n</sub> being available.

Subject to **clause 19**, this Agreement commences on the Commencement Date and expires on the Expiry Date (**Term**).

### 3 Charges, invoicing, payment and audit

- (a) Subject to this **clause 3**, the Private Infrastructure Owner must, in consideration for Aurizon Network performing its obligations under this Agreement, pay Aurizon Network:
  - (i) subject to **clause 3(c)**, the Annual Service Charge;
  - (ii) the Decommissioning Charges; and-
  - (iii) the reasonable and prudent costs of the design, construction and commissioning of modifications to, or upgrade or replacement of, the Connecting Infrastructure undertaken in accordance with **clause 6.3**, 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.
- (b) Aurizon Network may invoice the Private Infrastructure Owner for:
  - (i) subject to **clause 3(d)**, the Annual Service Charge for a Maintenance Year within 30 Business Days after that Maintenance Year expires; and
  - (ii) other amounts payable under this Agreement but only after Aurizon Network incurs the relevant costs and provided that such invoices cannot be issued more regularly than monthly.
- (c) For any Maintenance Year, notwithstanding any clause of this Agreement, Aurizon must not seek to recover, and the Private Infrastructure Owner is not obliged to pay, any costs relating to the Connecting Infrastructure through the Annual Service Charge to the extent that such costs have already been, or will be, recovered by Aurizon from the Private Infrastructure Owner, a PIO Party or any other person under any other agreement or arrangement.
- (d) Subject to **clause 3(f)**, the Private Infrastructure Owner must pay an amount invoiced by Aurizon Network under this Agreement within 20 Business Days after the Private Infrastructure Owner receives the invoice.
- (e) If the Private Infrastructure Owner disputes an invoice issued by Aurizon Network, the Private Infrastructure Owner may, within 10 Business Days after the invoice is issued, give Aurizon Network a Dispute Notice. The Private Infrastructure Owner must pay the undisputed portion of the amount claimed in the invoice by the due date. If the Dispute is resolved such that the Private Infrastructure Owner is required to pay the amount the subject of the Dispute Notice, the Private Infrastructure Owner must pay the relevant amount to Aurizon Network within 10 Business Days after the Dispute is resolved.
- (f) If the Private Infrastructure Owner fails to pay in full any amount payable by it under this Agreement by the due date, except for amounts that are the subject of an ongoing Dispute under **clause 3(e)**, the Private Infrastructure Owner must pay interest on the outstanding amount at the Default Rate.
- (g) Interest payable under **clause 3(f)** will be calculated on daily balances on the amounts outstanding from the day after the due date until such amount, together with interest thereon, has been paid in full. All interest accrued but unpaid at the end of each month will itself bear interest.
- (h) The Private Infrastructure Owner may at any time require an audit of the charges referred to in **clause 3(a)** for the purpose of verifying that the charges have been

properly allocated to the Private Infrastructure Owner, and are reasonable and prudent incremental and direct costs. If the Private Infrastructure Owner requires that such an audit is undertaken:

- (i) the auditor must:
    - (A) be a person agreed by the Parties (or failing agreement nominated by the President for the time being of [the Chartered Accountants of Australia]) who is appropriately skilled and qualified to carry out the audit; and
    - (B) be impartial and have no interest or duty which conflicts or may conflict with their function as the auditor;
  - (ii) the Private Infrastructure Owner must bear the costs of the audit, except where the audit identifies an error in the levy, allocation or calculation of the charges invoiced to the Private Infrastructure Owner in which case Aurizon Network must bear the costs of the audit;
  - (iii) Aurizon Network must make available to the auditor such information as the auditor reasonably requires to conduct the audit within 2 Business Days after receiving a request from the auditor;
  - (iv) promptly following completion of the audit, the results of the audit (which must include findings as to whether the Private Infrastructure Owner has been invoiced the correct amounts and, if not, the financial adjustment required to rectify that error) must be made available to Aurizon Network and the Private Infrastructure Owner;
  - (v) in the absence of manifest error, the decision of the auditor is final and binding upon Aurizon Network and the Private Infrastructure Owner; and
  - (vi) the auditor must undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties.
- (i) If, pursuant to an audit carried out under **clause 3(h)**, an error is identified in the levy, allocation or calculation of an amount invoiced by Aurizon Network then the invoice must be adjusted to correct the error.
  - (j) The value of any adjustment under **clause 3(i)** must be:
    - (i) if the Private Infrastructure Owner has already paid the invoiced amount, refunded to the Private Infrastructure Owner by Aurizon Network within 5 Business Days after the audit results are available; or
    - (ii) if the Private Infrastructure Owner has not already paid the invoiced amount, reflected in a new invoice that Aurizon Network must issue to the Private Infrastructure Owner together with a cancellation of the unadjusted invoice within 5 Business Days after the audit results are available.

## 4 GST

- (a) Unless otherwise stated, all amounts payable or other consideration 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(e)**, the Private Infrastructure 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 Private Infrastructure Owner must pay Aurizon Network in respect of that Reimbursable Item the GST Inclusive Reimbursement.
- (d) All invoices prepared under this Agreement will take the form of a tax invoice.

- (e) If a dispute arises out of or in connection with this **clause 4**, then either Party must give to the other Party a Dispute Notice. If the dispute is not resolved within 10 Business Days after service of a Dispute Notice, the dispute must be referred for expert determination under **clause 18(c)**.

## 5 Design and construction of Connecting Infrastructure

### 5.1 Aurizon Network responsible for design and construction

- (a) This **clause 5.1** applies if Aurizon Network is responsible for the planning, design and construction of the Connecting Infrastructure (as specified in **Item 5 of Schedule 1**)
- (b) Aurizon Network will design, construct, project manage and commission the Connecting Infrastructure, at the cost of the Private Infrastructure Owner, in accordance with the terms of the separate construction agreement between the Parties (**Construction Agreement**), subject to this **clause 5.1**.
- (c) Before commencing construction of the Connecting Infrastructure, and in any event within [x timeframe] of approving the Private Infrastructure Owner's access proposal under [clause 9.1] of the Access Undertaking, Aurizon Network must submit to the Private Infrastructure Owner a draft Design and draft Construction Agreement. If Aurizon Network does not comply with this **clause 5(c)**, the Private Infrastructure Owner may refer to the matter for resolution under [Part 11] of the Access Undertaking.
- (d) Within [10 Business Days] of submission of the draft Design and the draft Construction Agreement under **clause 5(c)**, the Private Infrastructure Owner must give written notice to Aurizon Network:
  - (i) that additional time is required to consider the Design or the Construction Agreement (or both) and the reason that additional time is required, such additional time not to exceed a further [20 Business Days] and, provided that such additional time does not exceed [20 Business Days], Aurizon Network is deemed to have agreed to such additional time; or
  - (ii) approving the Design or the Construction Agreement (or both); or
  - (iii) subject to **clause 5(e)**, rejecting the Design or the Construction Agreement (or both), in which case the Private Infrastructure Owner must give:
    - (A) reasons for the rejection; and
    - (B) details of any amendments it requires to be made to the Design or the Construction Agreement so that they are suitable for the purpose of connecting the Private Infrastructure to the Network for the operation of the Train Services anticipated by the Private Infrastructure Owner.
- (e) The Private Infrastructure Owner may only request amendments under **clause 5(d)(iii)** if they relate to:
  - (i) the CI Criteria; or
  - (ii) project management or timing issues that the Private Infrastructure Owner considers will result in non-prudent or unreasonable costs or delays being incurred,

provided that the Private Infrastructure Owner cannot refuse to approve the Design or the Construction Agreement if the proposed Design or Construction Agreement would result in the Connecting Infrastructure being to a standard or condition which exceeds than the standard and condition of any relevant part of the Network (including any planned or known Expansion).

- (f) If the Private Infrastructure Owner gives Aurizon Network written notice under **clause 5(d)(i)**, then within the timeframe specified in the notice the Private Infrastructure Owner must give written notice to Aurizon Network under either **clause 5(d)(ii) or 5(d)(iii)**
- (g) Within **[20 Business Days]** after receipt of a notice under **clause 5(d)(iii) or 5(h)**, Aurizon Network must:
  - (i) modify and resubmit the Design or the Construction Agreement (as applicable) in which case **clause 5(d)** will apply; or
  - (ii) dispute any of the Private Infrastructure Owner's reasons for rejecting the Design or the Construction Agreement and the matter will be resolved under [Part 11] of the Access Undertaking.
- (h) If, before execution of the Construction Agreement, the Private Infrastructure Owner reasonably considers there has been a material change in circumstances such that it would no longer be able to approve the Design under **clause 5(d)(ii)** it must, as soon as practicable of becoming aware of that change, notify Aurizon Network of:
  - (i) the nature of the material change in circumstances; and
  - (ii) details of any modifications that it requires to be made to the Design and the Construction Agreement 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 Private Infrastructure Owner.
- (i) If the Private Infrastructure Owner acting reasonably considers that its own conduct or the conduct of a PIO Party will cause a material change in circumstances referred to in **clause 5(h)** then the Private Infrastructure Owner must consult with Aurizon Network before implementing any such conduct.
- (j) Aurizon Network will be required to pay any costs associated with the material change referred to in **clause 5(h)** if it was the result of Aurizon Network's wilful misconduct, wilful default or gross negligence.
- (k) The Construction Agreement must contain at least the terms set out in Schedule 5 - Construction Agreement terms, however the terms of the Construction Agreement prevail over this Agreement to the extent of any inconsistency.

## **5.2 Private Infrastructure Owner responsible for design and construction**

- (a) This **clause 5.2** applies if the Private Infrastructure Owner is responsible for the planning, design and construction of the Connecting Infrastructure (as specified in **Item 5 of** Schedule 1 - Reference Schedule).
- (b) Aurizon Network must, promptly following a written request from the Private Infrastructure Owner, provide all information and assistance reasonably requested by the Private Infrastructure Owner, at the Private Infrastructure 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.
- (c) Before commencing construction of the Connecting Infrastructure, the Private Infrastructure Owner must submit the Design to Aurizon Network for approval in accordance with this **clause 5.2**. Any such submission must be accompanied by details of the Train Services the Private Infrastructure Owner anticipates entering or exiting the Network via the Connecting Infrastructure.
- (d) Within 10 Business Days after the Design is submitted in accordance with **clause 5.2(c)**, Aurizon Network must give written notice to the Private Infrastructure Owner:
  - (i) informing the Private Infrastructure Owner that additional time is required to consider the Design, and the reason that additional time is required; or

- (ii) approving the Design; or
- (iii) subject to **clause 5.2(e)**, rejecting the Design, in which case Aurizon Network must give:
  - (A) reasons for the rejection; and
  - (B) 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 Private Infrastructure Owner.
- (e) Aurizon Network must approve the Design where the Design meets the CI Criteria, provided that Aurizon Network cannot refuse to approve the Design on the basis that it does not meet the CI Criteria if the proposed Design for the Connecting Infrastructure is to a standard or condition which exceeds the standard and condition of any relevant part of the Network (including any planned or known Expansion).
- (f) If Aurizon Network gives the Private Infrastructure Owner written notice under **clause 5.2(d)(i)**, then within 20 Business Days of giving a notice in accordance with **clause 5.2(d)(i)**, Aurizon Network must give written notice to the Private Infrastructure Owner under either **clause 5.2(d)(ii)** or **(iii)**.
- (g) Following receipt of a notice under **clauses 5.2(d)(iii)** or **5.2(h)**, the Private Infrastructure Owner may:
  - (i) modify and resubmit the Design, in which case **clause 5.2(d)** will reapply; or
  - (ii) dispute any of Aurizon Network's reasons for rejecting the Design in which case the matter will be resolved under **[clause 11.1]** of the Access Undertaking.
- (h) If Aurizon Network reasonably considers there has been a material change in circumstances before construction of the Connecting Infrastructure commences such that it would no longer be required to approve the Design under **clause 5.2(d)(ii)** it must, as soon as practicable after becoming aware of that change, notify the Private Infrastructure Owner of:
  - (i) the nature of the material change in circumstances; and
  - (ii) 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 Private Infrastructure Owner.
- (i) If Aurizon Network, acting reasonably, considers that its own conduct or the conduct of an Aurizon Party will cause the material change in circumstances referred to in **clause 5.2(h)**:
  - (i) Aurizon Network must consult with the Private Infrastructure Owner before implementing any such conduct; and
  - (ii) the Private Infrastructure 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.
- (j) At the request of the Private Infrastructure Owner, Aurizon Network must, at the Private Infrastructure Owner's cost (to the extent that such costs are reasonable), inspect works in progress for the Connecting Infrastructure to determine:
  - (i) whether the Design approved in accordance with **clause 5.2(d)(ii)** (including any modifications made following a notice under **5.2(h)**) 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 **5.2(k)**,

and advise the Private Infrastructure Owner as soon as reasonably practicable of the results of that inspection, and how it considers any such potential non-compliances, defects or issues could be rectified.

- (k) Before the Commitment Date, Aurizon Network must inspect the Connecting Infrastructure within 10 Business Days of a written request from the Private Infrastructure 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 will be suitable for these purposes where it:
  - (i) complies with any Design approved in accordance with clause 5.2(d)(ii) (including any modifications made following a notice under clause 5.2(h)); or
  - (ii) complies with the CI Criteria, provided that the Connecting Infrastructure will be deemed to meet the CI Criteria if a contrary treatment would result in Aurizon Network requiring the Connecting Infrastructure to be of a standard or condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).
- (l) If Aurizon Network has, in accordance with **clause 5.2(k)**, 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 must:
  - (i) first, consult with the Private Infrastructure 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 **5.2(k)**; and
  - (ii) second, if Aurizon Network believes that work is still required and having regard to the consultation with the Private Infrastructure Owner, give to the Private Infrastructure Owner a written notice setting out comprehensive details of the work required (including a scope of work) and comprehensive reasons why Aurizon Network considers that the work is required (**Connecting Infrastructure Work Notice**).
- (m) The Private Infrastructure Owner may dispute all or any part of the Connecting Infrastructure Work Notice in accordance with this Agreement.
- (n) Within 15 Business Days (or such longer period as the Parties may agree) from the date on which the Connecting Infrastructure Work Notice was issued and provided that the Private Infrastructure Owner has not disputed the Connecting Infrastructure Work Notice, the Private Infrastructure Owner must commence carrying out, or cause to be carried out, those modifications, upgrades or replacements, at the Private Infrastructure Owner's cost (to the extent that such costs are reasonable). If the Private Infrastructure Owner has disputed the Connecting Infrastructure Work Notice and it is determined in accordance with this Agreement that the work described in the Connecting Infrastructure Work Notice is reasonably required, the Private Infrastructure Owner must carry out, or cause to be carried out, that work following and in accordance with the determination of the Dispute.

## 6 Connecting Infrastructure

### 6.1 Dealing with Connecting Infrastructure

- (a) For the avoidance of doubt:
    - (i) as between the Parties, the Connecting Infrastructure must at all times (including during the construction process) be owned by Aurizon Network;
    - (ii) Aurizon Network must not Assign the Connecting Infrastructure except as expressly permitted in this Agreement unless at the same time it also:
-

- (A) Assigns the adjoining Branch Line in favour of the same assignee; and
- (B) procures that the assignee enters into a deed of novation in favour of the Private Infrastructure Owner in respect of its rights and obligations under this Agreement on such terms as the Private Infrastructure Owner may reasonable require;
- (iii) Aurizon Network must not remove, relocate or part with possession of the Connecting Infrastructure except as expressly permitted in this Agreement; and
- (iv) Aurizon Network must ensure that, once constructed, the Connecting Infrastructure is connected to the Network immediately.
- (b) If, once constructed, the Connecting Infrastructure is not consistent with the plan detailed in Schedule 2 - Connecting Infrastructure, the parties must seek to agree, as soon as reasonably practicable, to amend Schedule 2 - Connecting Infrastructure to include a plan that is consistent with the constructed Connecting Infrastructure.

## 6.2 Maintenance of Connecting Infrastructure

- (a) Aurizon Network must inspect the Connecting Infrastructure at least annually to assess the state of repair of the Connecting Infrastructure.
- (b) Aurizon Network must maintain and repair the Connecting Infrastructure to the standard required to maintain the connection between the Network and the Private Infrastructure including the standards in **clause 7.2**.
- (c) Subject to **clause 19(h)**, Aurizon Network must 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.

## 6.3 Modification, upgrade or replacement of Connecting Infrastructure

- (a) Aurizon Network may make modifications or upgrades to, or replace, the Connecting Infrastructure to the extent that such modifications, upgrades or replacement are reasonably required to ensure that the Connecting Infrastructure complies with the CI Criteria and provided that the Connecting Infrastructure is not required to be of a standard or condition which exceeds the standard and condition of any relevant part of the Network (including any planned or ~~anticipated~~ known Expansion).
- (b) Aurizon Network must notify the Private Infrastructure Owner, in comprehensive detail, of any modifications, upgrades or replacement required under **clause 6.3(a)**, and give the Private Infrastructure Owner reasonable opportunity to consult with Aurizon Network about its requirements. If, after consulting with the Private Infrastructure Owner, Aurizon Network decides to carry out, or cause to be carried out, those modifications, upgrades or replacements, it must notify the Private Infrastructure Owner and carry out, or cause to be carried out, that work at the Private Infrastructure Owner's cost and must 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 Parties, by the President for the time being of Engineers Australia, Queensland Division).
- (c) For clarification, the Private Infrastructure Owner may dispute the amount of the costs payable in respect of any such modifications, upgrade or replacement under this **clause 6.3**, as well as the proposed scope of work and any subcontractor Aurizon Network appoints to carry out the work.

## 6.4 Notice of works and conditions of access

- (a) ~~Aurizon Network must:~~

- (i) subject to **clause 6(b)(ii)**, give the Private Infrastructure Owner reasonable prior written notice of any works on the Network or Connecting Infrastructure and any reasonably expected disruptions;
  - (ii) in the case of emergency maintenance and emergency repairs, notify the Private Infrastructure Owner as soon as reasonably practicable of any such works and any reasonably expected disruptions; and
  - (iii) to the extent reasonably practicable, minimise any disruptions and the effects of any disruptions.
- (b) Aurizon Network will, upon reasonable notice to the Private Infrastructure Owner and the Rail Infrastructure Manager of the Private Infrastructure, be entitled to enter and remain upon the Private Infrastructure, with such personnel 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 **clause 27.2(b)**

## 6.5 Changes to the System Operating Parameters

- (a) If Aurizon Network proposes to make changes to the System Operating Parameters (as defined under the Access Undertaking) relevant to that part of the Network of which the Branch Line and Connecting Infrastructure form a part, then Aurizon Network must:
- (i) notify the Private Infrastructure Owner and, the Rail Infrastructure Manager of the Private Infrastructure of those changes as soon as reasonably practicable, which notice must include a timeframe in which the Private Infrastructure Owner may request a consultation meeting with Aurizon Network in respect of those changes; and
  - (ii) within [x timeframe] of a request from the Private Infrastructure Owner under **clause 6.5(a)(i)** meet with the Private Infrastructure Owner and, the Rail Infrastructure Manager of the Private Infrastructure and negotiate in good faith and agree the proposed changes.
- (b) If the Private Infrastructure Owner, and Aurizon Network are unable to agree within the [x timeframe] specified in **clause 6.5(a)(ii)**, the matter must be referred for resolution under Part 11 of the Access Undertaking.

# 7 Private Infrastructure

## 7.1 Modification, upgrade or replacement of Private Infrastructure

- (a) Aurizon Network may require modifications or upgrades to the Private Infrastructure to the extent that such modifications or upgrades are reasonably required to rectify a non-compliance with the standard in **clause 7.2**.
- (b) Aurizon Network must notify the Private Infrastructure Owner, in comprehensive detail, of any modifications or upgrades required under clause 7.1(a), and give the Private Infrastructure Owner reasonable opportunity to consult with Aurizon Network about its requirements. For clarification, the Private Infrastructure Owner may dispute the amount of the costs payable in respect of any such modifications, upgrade or replacement, the proposed scope of work and any subcontractor Aurizon Network appoints to carry out the work.
- (c) Any modifications or upgrades to the Private Infrastructure required by Aurizon Network must be carried out by or on behalf of the Private Infrastructure Owner at the Private Infrastructure Owner's cost and in such a way as to minimise the disruption to Train Services insofar as it is reasonably practicable to do so and must 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 Parties, by the President for the time being of Engineers Australia, Queensland Division).

## **7.2 Maintenance of Private Infrastructure**

The Private Infrastructure Owner must, at its cost, ensure that the Private Infrastructure is operated and maintained and any modifications or upgrades to the Private Infrastructure are designed and constructed to a standard which:

- (a) satisfies the minimum technical, engineering and safety standards expected of a competent Accredited Rail Infrastructure Manager, as determined by an expert acceptable to both Parties (or failing agreement by the President for the time being of Engineers Australia, Queensland Division);
- (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 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,

provided that the Private Infrastructure is not required to be of a standard or condition which exceeds the standard and condition of any relevant part of the Network (including any planned or anticipated Expansion).

## **7.3 Private Infrastructure Owner to provide information**

- (a) The Private Infrastructure Owner must provide to Aurizon Network all information collected by any weighbridge or overload detector located on the Private Infrastructure before a Train departs the Transfer Facilities (or for non-coal carrying Train Services, the relevant loading facility), or as otherwise reasonably required by Aurizon Network.
- (b) The Private Infrastructure Owner must, in relation to the Private Infrastructure and solely in its capacity under this Agreement, provide to Aurizon Network, in a form reasonably requested by Aurizon Network, all electrical, signalling and telecommunications information required by Aurizon Network to manage and operate the Network.

## **7.4 Other obligations of Private Infrastructure Owner**

- (a) If coal is loaded and transported from a Transfer Facility utilising the Private Infrastructure onto the Network via the Connecting Infrastructure, the Private Infrastructure Owner must ensure that all coal Trains that depart the Private Infrastructure and enter the Network comply with the CLMP.
- (b) The Private Infrastructure Owner is responsible for all electrical safety obligations for the Private Infrastructure.

## **7.5 Aurizon Network may inspect Private Infrastructure**

Aurizon Network may, and the Private Infrastructure Owner must permit Aurizon Network to, have reasonable access to inspect the connecting sections of the Private Infrastructure and any construction or maintenance of those connecting sections of the Private Infrastructure, in relation to the Private Infrastructure Owner's compliance with this clause 7 Aurizon Network must give the Private Infrastructure Owner at least 5 Business Days' written notice of any

such inspection, except in an emergency when Aurizon Network must give as much notice as is practicable in the circumstances.

## 8 Safety training

- (a) The Private Infrastructure Owner must cause all employees, agents and independent contractors of the Private Infrastructure 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 before commencing such work. Aurizon Network must provide such training as and when reasonably required by the Private Infrastructure Owner, at the cost of the Private Infrastructure Owner, upon reasonable notice by the Private Infrastructure Owner to Aurizon Network.
- (b) Aurizon Network must 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 before commencing such work. The Private Infrastructure Owner must provide such training as and when reasonably required by Aurizon Network, at the cost of the Private Infrastructure Owner, upon reasonable notice by Aurizon Network to the Private Infrastructure Owner.

## 9 Rail Infrastructure Managers

### 9.1 Accreditation Requirements

- (a) The Private Infrastructure Owner must be Accredited, or procure another person or entity to be Accredited, as the Rail Infrastructure Manager for the Private Infrastructure before the Commitment Date.
- (b) The Private Infrastructure Owner must:
  - (i) ensure that the Rail Infrastructure Manager for the Private Infrastructure maintains its Accreditation and complies with its Accreditation; and
  - (ii) notify Aurizon Network immediately if the Rail Infrastructure Manager for the Private Infrastructure ceases to be Accredited in respect of the Private Infrastructure.
- (c) Aurizon Network must:
  - (i) maintain and comply with its Accreditation as the Rail Infrastructure Manager for the Connecting Infrastructure and the Network; and
  - (ii) notify the Private Infrastructure Owner immediately if it ceases to be Accredited in respect of the Connecting Infrastructure or the Network.

### 9.2 When an interface agreement is required.

- (a) If the Rail Infrastructure Manager for the Private Infrastructure is neither the Private Infrastructure Owner nor Aurizon Network, then the Private Infrastructure Owner must procure that before:
  - (i) the Commitment Date; and
  - (ii) 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 105 of the RSNL) with Aurizon Network in accordance with section 106 of the RSNL, or is taken to be a party to an interface agreement pursuant to section 83 of the Queensland RSNL.

- (b) To the extent that the Rail Infrastructure Manager for the Private Infrastructure has not entered into an interface agreement in accordance with **clause 9.2(a)** Aurizon Network may suspend, until such an interface agreement is entered into, some or all of the Private Infrastructure Owner's rights under this Agreement and the running of Train Services across the Connecting Infrastructure by notifying the Private Infrastructure Owner of the extent of rights being suspended. Aurizon Network must lift the suspension immediately after the Rail Infrastructure Manager for the Private Infrastructure enters into an interface agreement under **clause 9.2(a)**.

## 10 Exchange of safety and interface information

- (a) This **clause 10** applies where the Private Infrastructure 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** include the Rail Infrastructure Manager for the Private Infrastructure which is contracted by the Private Infrastructure Owner.
- (b) If the Private Infrastructure 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 Private Infrastructure Owner must notify Aurizon Network of that intention no less than:
  - (i) where such an entity will be the Rail Infrastructure Manager for the Private Infrastructure on the Commitment Date, 90 days before the Commitment Date; or
  - (ii) where such an entity will become the Rail Infrastructure Manager for the Private Infrastructure after the Commitment Date, 90 days before the date on which they are scheduled to become the Rail Infrastructure Manager.
- (c) Within 10 Business Days of receiving a notice under **clause 10(b)**, Aurizon Network must notify the Private Infrastructure Owner of all interface standards required by Aurizon Network for the Private Infrastructure to connect to the Network and to maintain that connection.
- (d) 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.
- (e) If 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 with the latest published versions of all documents relating to interface matters that may occur, or have an impact, on the operation of the Connecting Infrastructure.
- (f) 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.
- (g) Before disclosing information under this **clause 10**, a Providing Party may require that the Requesting Party enter into a confidentiality deed.
- (h) Where the Private Infrastructure Owner contracts an entity other than Aurizon Network to be the Rail Infrastructure Manager for the Private Infrastructure, the

Private Infrastructure Owner will ensure, as part of any engagement of that third party an obligation to comply with this **clause 10** and any other relevant parts of this Agreement.

## 11 Interface Risk Management Plan

- (a) The Parties must comply with the Interface Risk Management Plan, and must ensure that their officers, employees, agents and independent contractors also comply.
- (b) If a Party notifies the other Party that it believes that the Interface Risk Management Plan is ineffective in managing the interface risks associated with the Connecting Infrastructure, the Parties must promptly meet to jointly review the Interface Risk Management Plan (including conducting a revised Interface Risk Assessment to the extent considered necessary) and in good faith endeavour to agree amendments to the Interface Risk Management Plan to ensure all interface risks are effectively managed.
- (c) If the Parties are unable to agree on any aspects of the Interface Risk Assessment or the Interface Risk Management Plan within [20] Business Days of commencement of the joint review under **clause 11(b)**, either Party may give the other Party a Dispute Notice and the Dispute will be referred for expert resolution under **clause 18(c)**. The expert for the purposes of this **clause 11(c)** and **clause 18(c)(i)** is the Safety Regulator. However, if the Safety Regulator refuses or is unable to determine the Dispute, the expert will be appointed by the President of Engineers Australia, Queensland Division.
- (d) If, after a review under **clauses 11(b) or 11(c)**, 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 the Interface Risk Management Plan.

## 12 Emergencies and Incidents

- (a) The Private Infrastructure Owner must maintain an Emergency Response Plan reasonably satisfactory to Aurizon Network.
- (b) The Parties must comply with the Emergency Response Plan, and must ensure that their officers, employees, agents and independent contractors also comply.
- (c) The Private Infrastructure Owner must incorporate any findings arising from the review under **clause 11(b)** or an investigation under **clause 12(h)** into the Emergency Response Plan as soon as possible.
- (d) The Private Infrastructure Owner must not knowingly cause or permit any obstructions on the Connecting Infrastructure or the Network except where otherwise agreed with Aurizon Network.
- (e) Subject to **clause 12(f)**, following an Incident the Parties must (and the Private Infrastructure 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. Where necessary and subject to **clause 27.2(b)**, a Party must 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 with such personnel and machinery as may be necessary, to enable prompt recommencement of Train Movements.
- (f) Aurizon Network will give priority to any action necessary to restore the Network to normal operation as soon as possible following an Incident. Nothing in **clause 12(e)** 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.

- (g) Subject to any requirement of the RSNL, if an Incident on the Private Infrastructure damages or affects the operation of the Connecting Infrastructure or the Network, the Private Infrastructure Owner must procure that the Rail Infrastructure Manager for the Private Infrastructure to 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.
- (h) Subject to any requirement of the RSNL, if an Incident on the Private Infrastructure damages or affects the operation of the Connecting Infrastructure or the Network:
  - (i) an investigation into the Incident will be commenced as soon as practicable unless otherwise agreed;
  - (ii) the Private Infrastructure Owner must at its cost procure that such investigation is conducted by the Rail Infrastructure Manager for the Private Infrastructure;
  - (iii) subject to any obligations on Aurizon Network in relation to “Protected Information” in [Part 3] of Aurizon Network’s Access Undertaking, each Party must cooperate and ensure their respective staff cooperate fully with any investigation, and must ensure that any such investigation has reasonable 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 (**Incident Information**), and all such Incident Information will be treated as confidential;
  - (iv) the Parties must consult with the other in relation to the implementation of any recommendations arising from an investigation; and
  - (v) the Private Infrastructure Owner must (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.
- (i) Subject to any requirement of the RSNL, if an Incident on the Connecting Infrastructure or the Network damages or affects the operation of the Private Infrastructure, Aurizon Network is responsible for the overall coordination and management of the response to the Incident (including notifying all relevant emergency services). The Private Infrastructure 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.
- (j) Subject to any requirement of the RSNL, if an Incident on the Connecting Infrastructure or the Network damages or affects the operation of the Private Infrastructure:
  - (i) Aurizon Network must commence an investigation into the Incident as soon as practicable and, to the extent applicable, comply with the Investigation Procedures;
  - (ii) subject to any obligations on Aurizon Network in relation to “Protected Information” in Part 3 of Aurizon Network’s Access Undertaking, each Party must cooperate and ensure their respective staff cooperate fully with any investigation, and must ensure that any such investigation has reasonable access to all Incident Information, and all such Incident Information will be treated as confidential;
  - (iii) each Party must consult with the other in relation to the implementation of

- any recommendations arising from an investigation; and
- (iv) Aurizon Network must provide to the Private Infrastructure 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.

## 13 Train Control

- (a) Aurizon Network is responsible for the scheduling and control of all Train Movements entering and exiting the Private Infrastructure from or to the Network.
- (b) Aurizon Network may, in its absolute discretion, not schedule Trains to and from the Private Infrastructure if:
  - (i) Aurizon Network is notified by the Private Infrastructure Owner under **clause 14(a)** 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;
  - (ii) the Private Infrastructure Owner is in breach of any of its obligations under **clause 7.2** and the breach continues unremedied for 20 Business Days after notice from Aurizon Network to remedy such breach;
  - (iii) the Rail Infrastructure Manager for the Private Infrastructure has not entered into an interface agreement with Aurizon Network, or such agreement is terminated; or  
the Rail Infrastructure Manager for the Private Infrastructure ceases to be Accredited in respect of the Private Infrastructure, except where the loss of Accreditation is caused or contributed to by the wilful misconduct, wilful default or gross negligence of Aurizon Network or an Aurizon Party.
- (c) Subject to **clause 13(b)** and its obligations under the Network Management Principles (as defined in the 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.
- (d) The Private Infrastructure Owner must, or must procure that any 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 in **clause 13(c)** and comply with directions of Aurizon Network's train controllers regarding entry to and exit from the Connecting Infrastructure.

## 14 Notification of matters affecting the Private Infrastructure

- (a) The Private Infrastructure Owner or the Rail Infrastructure Manager for the Private Infrastructure (if not Aurizon Network) must verbally advise the Aurizon Network contact specified in **Item 7** of Schedule 1 - Reference Schedule immediately upon becoming aware of any circumstances which:
  - (i) 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;
  - (ii) have affected, or could potentially affect, the ability of any Train Service to conform with its scheduled time;
  - (iii) 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);
- (iv) if coal is loaded and transported from a Transfer Facility utilising the Private Infrastructure onto the Network via the Connecting Infrastructure, constitutes a breach of the CLMP; or
- (v) constitute, or could constitute, a breach of the Emergency Response Plan.
- (b) Such verbal notification must be confirmed in writing by the Private Infrastructure 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.
- (c) If coal is loaded and transported from a Transfer Facility utilising the Private Infrastructure onto the Network via the Connecting Infrastructure, the Private Infrastructure Owner must comply with the reporting obligations in the CLMP.

## 15 No requirement to take action jeopardising Accreditation

Nothing in this Agreement requires Aurizon Network or the Accredited Rail Infrastructure Manager for the Private Infrastructure to, in the performance of their respective roles as Accredited Rail Infrastructure Managers for the Network or Connecting Infrastructure and Private Infrastructure, take any action if that action would be likely to result in the suspension or revocation of their Accreditation.

## 16 Force Majeure Event

- (a) Subject to **clause 16(b)**, if by reason of a Force Majeure Event affecting a Party, that Party (**Affected 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.
- (b) The Affected Party must:
  - (i) notify the other Party as soon as reasonably practicable of the occurrence of the Force Majeure Event (including details of the Force Majeure Event and the obligations affected) and its proposed course of action to remedy or abate the Force Majeure Event;
  - (ii) use all reasonable diligence to remedy or abate, and mitigate the effects of, 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
  - (iii) resume performance, or partial performance, as soon as reasonably practicable.

## 17 Insurance

- (a) The Private Infrastructure Owner must, at its expense, effect and maintain, or procure the Rail Infrastructure Manager for the Private Infrastructure to effect and maintain, insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in Schedule 3 - Insurance.
- (b) Aurizon Network must, at its expense, effect and maintain insurance with a corporation licensed to conduct insurance business in Australia for the risks and on the terms specified in Schedule 3 - Insurance and any insurance policy required to be effected and maintained by Aurizon Network pursuant to this **clause 17**, may at any time, be placed in whole or in part with a wholly owned captive insurance

company.

- (c) Before the Commitment Date and then within 10 Business Days 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 under this **clause 17**.
- (d) Aurizon Network and the Private Infrastructure Owner must in respect of any Claims by it or any other insured for which it is responsible, pay all excesses and deductibles provided for in any insurances effected in accordance with this **clause 17**.
- (e) Aurizon Network and the Private Infrastructure Owner must not do, or suffer to be done, anything whereby any policy of insurance required to be maintained by Aurizon Network or the Private Infrastructure 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 - Insurance. If Aurizon Network reasonably considers that the sum insured is not adequate or is excessive, then Aurizon Network will notify the Private Infrastructure Owner of the amount which it requires to be the new sum insured (which must be the same for both Aurizon Network and the Private Infrastructure Owner), and Aurizon Network and the Private Infrastructure Owner will adjust accordingly all policies held under this **clause 17**.
- (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 Private Infrastructure Owner will discuss in good faith whether the insurances required under this Agreement should be varied.

## 18 Disputes

- (a) 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 details of the Dispute and requiring that it be dealt with:
  - (i) in the manner set out in this **clause 18**; or
  - (ii) where the dispute relates to a matter which the Access Undertaking provides for the Parties to have a right to resolve under the Access Undertaking, in the manner set out in the Access Undertaking.
- (b) Within 5 Business Days of the date of the Dispute Notice any Dispute (other than those referred to in **clause 18(a)(ii)** or **clause 18(d)**) will be referred to the Chief Executive Officer of Aurizon Network (or his or her nominee) and the Chief Executive Officer (or equivalent) of the Private Infrastructure Owner (or his or her 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**.
- (c) Where a Party refers a Dispute to an expert for resolution:
  - (i) the Parties must 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 [The Institute of Chartered Accountants Australia and New Zealand];
    - (B) in the case of what the Parties agree are non-financial

matters, the President for the time being of the [Resolution Institute]; 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.
- (ii) the expert must have appropriate qualifications and practicable 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 must not be an employee of the Private Infrastructure Owner or Aurizon Network or a Related Body Corporate of either Party;
- (iii) the expert must have regard to the provisions of this Agreement and must:
  - (A) have the power to inform himself or herself independently as to the facts and if necessary technical and/or financial matters to which the Dispute relates;
  - (B) consult with such other professional qualified persons as the expert in their absolute discretion thinks fit; and
  - (C) consider oral and/or written submissions from the Parties as to the subject matter of the Dispute, but will not be bound by the rules of evidence;
- (iv) the Parties must upon request by the expert, provide or make available to the expert:
  - (A) all information in their possession or control; and
  - (B) all assistance,that the expert may reasonably require;
- (v) the expert must determine the Dispute no later than 60 Business Days following appointment under **clause 18(c)(i)**;
- (vi) the expert must provide both Parties with a copy of their determination as soon as reasonably practicable following determination of the Dispute;
- (vii) the expert appointed will be required to undertake to keep confidential all matters coming to their knowledge by reason of their appointment and performance of their duties. In any dispute dealt with under this **clause 18**, 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 Private Infrastructure 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;
- (viii) 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 that person or their determination or the procedures by which that person may reach their determination;
- (ix) in the absence of manifest error the determination of the expert will be final and binding upon the Parties; and
- (x) the costs of the expert and any advisors will be borne by the Parties in such proportion as determined by the expert.
- (d) Where the right to terminate which provided the grounds for a suspension under **clause 19(f)** 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 in accordance with **clause 18(c)** provided that:
  - (i) despite **clause 18(c)(iv)**, the expert will be required to provide both

- Parties with a copy of its determination as soon as is practicable following its appointment; and
- (ii) without limiting the Parties' obligations under **clause 18(c)(iv)**, the Parties must use their best endeavours to assist the expert in making a determination as soon as is practicable.

## 19 Termination and suspension

- (a) Without prejudice to any other rights of Aurizon Network and subject to **clause 19(b)**, Aurizon Network may terminate this Agreement by notice to the Private Infrastructure Owner (which notice must set out the specific grounds for the termination), upon the occurrence of any one or more of the following events or circumstances:
  - (i) the Private Infrastructure Owner abandons, terminates or permanently ceases operation of the whole of the Private Infrastructure;
  - (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 Private Infrastructure Owner fails to satisfy Aurizon Network (acting reasonably), within 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network, that there is likely to be any continuing demand for the connection of the Private Infrastructure to the Network;
  - (iii) subject to **clause 3(f)**, the Private Infrastructure Owner fails to pay when due any amount payable under this Agreement, and such default continues for 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network demanding payment of the outstanding amount;
  - (iv) the Private Infrastructure Owner is in default of its obligation to establish or to maintain a security as required under **clause 21**, and such default continues for 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network of such default;
  - (v) the Private Infrastructure Owner is in default of its obligation to maintain insurance in accordance with **clause 17**, and such default continues for 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network to the Private Infrastructure Owner of the default;
  - (vi) an Insolvency Event occurs in relation to the Private Infrastructure Owner;
  - (vii) the Private Infrastructure Owner, and if the Private Infrastructure 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 9.2** (as applicable) or any relevant laws, and:
    - (A) in the case of any default which is capable of remedy, that default is not remedied or remedial action in respect of the default has not commenced; or
    - (B) in the case of any default which is not capable of remedy, reasonable steps to prevent the reoccurrence of the default or circumstances that resulted in the default have not been taken,
    - (C) within 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network to the Private Infrastructure Owner of the default;
  - (viii) the Private Infrastructure Owner fails to comply with **clause 9.1** or **clause**

**7.2 and:**

- (A) in the case of any default which is capable of remedy, such default is not remedied or remedial action in respect of the default has not commenced or the relevant remedial action is not being diligently progressed; or
  - (B) in the case of any default which is not capable of remedy, reasonable steps to prevent the reoccurrence of the default or circumstances that resulted in the default have not been taken or are not being diligently progressed,
  - (C) within 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network to the Private Infrastructure Owner of the default;
- (ix) the Private Infrastructure Owner conducts activities which cause or contribute to Environmental Harm on the Connecting Infrastructure or the Network and:
- (A) in the case of Environmental Harm which is capable of remedy, does not remedy the Environmental Harm (to the extent caused or contributed to by the Private Infrastructure Owner) or remedial action in respect of the Environmental Harm has not commenced; or
  - (B) in the case of any Environmental Harm which is not capable of remedy, reasonable steps to prevent the reoccurrence of the Environmental Harm or circumstances that resulted in the Environmental Harm have not been taken,
  - (C) within 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network to remedy the Environmental Harm;
- (x) the Private Infrastructure Owner is in default of the due performance of any other material obligation under this Agreement and the Private Infrastructure Owner has not remedied the default within 20 Business Days (or such longer period as may be agreed between the Parties) after notice from Aurizon Network specifying the nature of such default and requiring such default to be remedied; or
- (xi) the termination of [*the Construction Agreement or*] any [*other*] agreement to which Aurizon Network and the Private Infrastructure 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]*

- (b) Aurizon Network may not terminate this Agreement under **clause 19(a)** to the extent that the right to terminate is the subject of a bona fide dispute between the Parties under **clause 18** or the Access Undertaking that has not been resolved in favour of Aurizon Network having the right to terminate this Agreement.
- (c) Without prejudice to any other rights of the Private Infrastructure Owner, the Private Infrastructure Owner may terminate this Agreement by notice (which notice must set out the specific grounds for the termination) to Aurizon Network if:
  - (i) Aurizon Network is in default of the due performance of any obligation under this Agreement and:
    - (A) in the case of any default which is capable of remedy, that default is not remedied or remedial action in respect of the default has not commenced; or
    - (B) in the case of any default which is not capable of remedy, reasonable steps to prevent the reoccurrence of the default or circumstances that resulted in the default have not been taken,

- (C) within 20 Business Days (or such longer period as may be agreed between the Parties) after notice from the Private Infrastructure Owner specifying the nature of such default and (if applicable) requiring such default to be remedied;
  - (ii) an Insolvency Event occurs in relation to Aurizon Network; or the termination of [*the Construction Agreement* or] any [*other*] agreement to which Aurizon Network and the Private Infrastructure 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*]
- (d) Upon expiry or earlier termination of this Agreement by either Party, Aurizon Network:
  - (i) if requested by the Private Infrastructure Owner within 20 Business Days of such expiry or termination, must enter into good faith negotiations regarding the terms and conditions on 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);
  - (ii) if an agreement is reached under **clause 19(d)(i)**, must do all things required to reflect any agreement under **clause 19(d)(i)**; and
  - (iii) where agreement has not been reached under **clause 19(d)(i)** within 6 months of the expiry or termination of this Agreement (or such longer period as the Parties agree), Aurizon Network may, at its election, remove all or any part of the Connecting Infrastructure.
- (e) Upon termination of this Agreement, Aurizon Network and the Private Infrastructure Owner will be released from all further obligations or liabilities under this Agreement except for:
  - (i) rights which accrued on or before termination, including for any breach of this Agreement which occurred prior to termination and any liability in respect of such prior breach will be limited in the manner provided in this Agreement; and
  - (ii) any provisions which are expressed as surviving the expiry or termination of this Agreement.
- (f) Subject to **clause 19(g)**, upon the occurrence of an event or circumstance which would entitle Aurizon Network to terminate this Agreement under **clause 18(a)** either immediately or upon the expiration of a remedy period, Aurizon Network may immediately, and before the expiration of any applicable remedy period under **clause 19(a)**, suspend some or all of the Private Infrastructure Owner's rights under this Agreement and the running of Trains across the Connecting Infrastructure, by notifying the Private Infrastructure Owner and the Rail Infrastructure Manager for the Private Infrastructure. Aurizon Network must include in the notice:
  - (i) details of the proposed or likely period of suspension;
  - (ii) the reasons for the suspension;
  - (iii) whether the suspension relates to a serious safety and serious environmental matter;
  - (iv) the actions Aurizon Network requires (acting reasonably) the Private Infrastructure Owner to take to have the suspension lifted; and
  - (v) the particular rights which have been suspended.
- (g) 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 18(d)**, any suspension occurring under **clause 19(f)** will cease to the extent

that the grounds for suspension become the subject of a bona fide dispute between the Parties under **clause 18** unless and until such dispute is resolved in favour of Aurizon Network having the right to suspend the Private Infrastructure Owner's rights under this Agreement.

- (h) 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 Private Infrastructure Owner is not willing to pay such rectification costs, Aurizon Network may notify the Private Infrastructure Owner of its intention to not repair or replace the relevant part of the Connecting Infrastructure and then terminate this Agreement unless the Private Infrastructure Owner elects to pay, and does in fact pay, the cost of repairing or replacing the relevant part of the Connecting Infrastructure.
- (i) If the Private Infrastructure is damaged or destroyed by a Force Majeure Event and, in the Private Infrastructure Owner's reasonable opinion, the cost of repairing such damage or replacing the Private Infrastructure is not economic, the Private Infrastructure Owner may notify Aurizon Network of its intention to not repair or replace the Private Infrastructure and terminate this Agreement.

## 20 Assignment

- (a) The Private Infrastructure Owner must not Assign 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:
  - (i) financially sound having regard to the obligations to be assumed; and
  - (ii) otherwise capable of performing the obligations of the Private Infrastructure Owner under this Agreement.
- (b) Aurizon Network may Assign the whole or any part of its rights or obligations under this Agreement without the prior consent of the Private Infrastructure Owner, provided that:
  - (i) the assignee is Accredited; and
  - (ii) Aurizon Network procures the assignee to covenant with the Private Infrastructure 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 to the Assignee.

## 21 Security

- (a) If on, or at any time after, the Commencement Date, the Private Infrastructure 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 Private Infrastructure Owner) require the Private Infrastructure Owner to deliver to Aurizon Network security in the amount of up to the Security Amount for the due and proper performance by the Private Infrastructure Owner of its obligations under this Agreement in the form of:
  - (i) a parent company guarantee from a holding company (as defined in the Corporations Act) of the Private Infrastructure Owner that is financially sound in a form reasonably acceptable to Aurizon Network;

- (ii) a bank guarantee from a trading bank holding a current Australian banking licence and with an Acceptable Credit Rating in a form reasonably acceptable to Aurizon Network; or
  - (iii) any other security reasonably acceptable to Aurizon Network,
  - (iv) and Aurizon Network must not unreasonably withhold or delay its acceptance of any security delivered under this **clause 21(a)**.
- (b) Following each 30 June occurring from the Commencement Date Aurizon Network may request the Security Amount be increased from that listed in **Item 3** of Schedule 1 - Reference Schedule in proportion to the change in the CPI over the most recent financial year (with the calculation and timing of that indexation to occur in accordance with **clause 1(b)(v)**).
- (c) The Private Infrastructure Owner may, in accordance with **clause 18**, dispute a purported variation in the Security Amount under **clause 21(b)**. In such cases, there will be no variation to the Security Amount until the Dispute between the parties has been properly resolved.
- (d) If Aurizon Network calls up any amount from the security provided by or on behalf of the Private Infrastructure Owner, the Private Infrastructure Owner must 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 21**, 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 Private Infrastructure Owner under this Agreement from the date on which the Private Infrastructure Owner provides such further security.
- (e) Aurizon Network must, subject to its rights of recourse under this **clause 21**, account to the Private Infrastructure Owner for the security:
- (i) as soon as is reasonably practicable and in no event later than three months after the expiration or termination of this Agreement;
  - (ii) as soon as is reasonably practicable after the Private Infrastructure Owner becomes financially sound; and
  - (iii) where the Private Infrastructure Owner provides a replacement security which meets the requirements in **clause 21(a)**.

## 22 Liability

- (a) Despite any other provision in this Agreement, neither Party will in any circumstances be liable to the other for any Consequential Loss.
- (b) Neither Party will make any Claim against the other under or in connection with this Agreement unless notice of the Claim has been given to the other Party within twelve (12) months of the later of the Claim arising or becoming reasonably apparent to the relevant Party.
- (c) Subject to **clauses 22(a), 22(d)** and **23(c)**, to the extent permitted by law, the liability of:
- (i) Aurizon Network to the Private Infrastructure Owner; and
  - (ii) the Private Infrastructure Owner to Aurizon Network,
- in respect of this Agreement will be limited to the aggregate of the amount specified in **Item 6** of Schedule 1 - Reference Schedule.
- (d) The limitation in **clause 22(c)** does not apply in respect of:
- (i) liability for fraud, criminal conduct or unlawful acts or omissions;

- (ii) liability for wilful default, wilful damage, wilful misconduct or gross negligence;
- (iii) liability for death or personal injury;
- (iv) liability for Third Party claims including death, personal injuries or property damage; and
- (v) 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.

## 23 Indemnities

- (a) The Private Infrastructure 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 Private Infrastructure 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.
- (b) Aurizon Network indemnifies and releases, and agrees to keep indemnified, the Private Infrastructure 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 Private Infrastructure Owner, its officers, employees, agents and/or contractors or which the Private Infrastructure 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 Private Infrastructure Owner and/or its officers, employees, agents or contractors.
- (c) The indemnities provided in this **clause 23** will not extend to and neither Aurizon Network nor the Private Infrastructure Owner will be liable for, any Consequential Loss suffered by the other or for which the other becomes liable.
- (d) Each Party must use all reasonable endeavours to mitigate the damage, loss, cost, liability or expense in respect of which an indemnity in this Agreement applies.

## 24 Notices

- (a) Any notice, invoice or other communication under this Agreement must be given in writing and may be given by an authorised representative of the sender.
- (b) Any communication may be given by:
  - (i) being personally served on a Party;
  - (ii) being left at the Party's current address for service;
  - (iii) being sent to the Party's current address for service by pre-paid ordinary mail;

- (iv) being sent by email to the Party's current email address for service; or
  - (v) if at any time agreed by the Parties, being sent by another agreed electronic form.
- (c) The addresses and numbers for service are initially:
- Aurizon Network Pty Ltd:**  
 Address: Level 5, Ann Street, Fortitude Valley QLD 4006  
 Email: [access.services@aurizon.com.au]  
 Attention: Group Executive, Aurizon Network Pty Ltd
- The Private Infrastructure Owner:**  
 Address: 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
- (d) A Party may from time to time change its address for service by notice to the other Party.
  - (e) A communication is deemed given if:
    - (i) personally delivered, upon delivery;
    - (ii) sent by post, on the third Business Day after posting; and
    - (iii) sent by email, on the next Business Day after the sender receives confirmation by read receipt that the message has been transmitted.
  - (f) If a communication to a Party is received by it after 5:00pm or on a day which is not a Business Day, it will be deemed to have been received on the next Business Day.

## 25 Confidentiality

- (a) Each Party must keep the terms of this Agreement confidential, and must not disclose the terms of this Agreement to any Third Party except:
  - (i) to the extent required by law, under an order or direction of any Authority, by the Access Undertaking or by the rules of any stock exchange on which a Party or its Related Bodies Corporate are listed;
  - (ii) to its officers, employees, 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 in the Access Undertaking;
  - (iii) to an existing or proposed Rail Infrastructure Manager for the Private Infrastructure which first executes a confidentiality deed, and its legal and other professional advisers;
  - (iv) to a bona fide potential financier of a Party or its Related Bodies Corporate and their legal and other professional advisers;
  - (v) 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;
  - (vi) to an expert or the Queensland Competition Authority in a dispute resolution process in connection with this Agreement or under the Access Undertaking;
  - (vii) in legal proceedings in connection with enforcement of this Agreement;

- (viii) to the extent the terms of this Agreement are in the public domain through means other than a breach of this **clause 25(a)**; or
- (ix) with the prior written consent of the other Party, such consent not to be unreasonably withheld,

provided that a recipient under **clauses 25(a)(iii), 25(a)(iv) or 25(a)(v)** must first undertake to keep the terms of this Agreement confidential.

- (b) Each Party must keep confidential any intellectual property, trade secrets, operating procedures and financial or other information disclosed by the other Party as required under this Agreement and must not:
  - (i) use such information for any purpose other than the purpose for which it was provided;
  - (ii) disclose such information to any Third Party except:
    - (A) in accordance with this Agreement;
    - (B) 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, if necessary;
    - (C) to the extent the information is in the public domain through means other than a breach of this **clause 25(b)**; or
    - (D) with the other Party's written consent.
- (c) If a Party does not comply with **clause 25(a)** or **clause 25(b)** and the other Party suffers any detriment as a result of or in connection with that non-compliance, the Party which suffers detriment may bring a Claim against the non-complying Party for breach of confidence.
- (d) Any obligation of confidence under this Agreement survives termination and remains binding for a period of 10 years from termination of this Agreement.

## 26 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.

## 27 Access to land

### 27.1 Access to Aurizon Land by Private Infrastructure Owner

- (a) If the construction or operation of the Private Infrastructure or Connecting Infrastructure requires access to land owned or controlled by Aurizon Network or an Aurizon Party (**Aurizon Land**) then Aurizon Network must provide access to the relevant land for the Private Infrastructure Owner, the Railway Infrastructure Manager, and their respective employees, officers, agents and contractors to the extent reasonably required provided that:
  - (i) the Aurizon 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 under the Transport Infrastructure Act 1994 (Qld), the authority to authorise access to that land; and
  - (ii) the access is consistent 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 Private Infrastructure Owner to access Aurizon Land as provided by **clause 27(a)**, then Aurizon Network must provide the following in relation to access to that land within 10 Business Days of receiving a written request from the Private Infrastructure Owner to access the land:

- (i) details of the relevant entity (including that entity's name, address and contact details) that the Private Infrastructure Owner would need to obtain approval from to gain access to that land;
- (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 Private Infrastructure Owner negotiating for access to that land.

Aurizon Network must use all reasonable endeavours to assist with any negotiations referred to in this **clause 27(b)(iii)**

- (c) Where the Private Infrastructure Owner or the Railway Infrastructure Manager for the Private Infrastructure accesses Aurizon Land under **clause 27(a)**, the Private Infrastructure 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 Private Infrastructure Owner or Rail Infrastructure Manager for the Private Infrastructure (as applicable) before 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.

## **27.2 Access to Private Land by Aurizon Network**

- (a) If Aurizon Network reasonably requires access to any land on which the Private Infrastructure or Connecting Infrastructure is or will be constructed that is not Aurizon Land (**Private Land**) 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, the Private Infrastructure Owner must provide access to the Private Land for Aurizon Network and its employees, officers, agents and contractors to the extent reasonably required provided that the access is consistent with the terms of any lease, license or other arrangement to which the Private Infrastructure Owner or a PIO Party is a party in respect of the land.
- (b) 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 Private Infrastructure Owner or the Railway Infrastructure Manager for the Private Infrastructure before such access, any reasonable direction given by any nominated Site Senior Executive for the Private Land and any other reasonable conditions specified by the Private Infrastructure Owner or its Related Body Corporate.

## **27.3 Access to land without consent**

- (a) Subject to **clause 27.3(b)**:
- (i) Aurizon Network may enter Private Land without the consent of the Private Infrastructure Owner or the Railway Infrastructure Manager; and
  - ~~(ii) the Private Infrastructure Owner and the Rail Infrastructure Manager for~~

the Private Infrastructure may enter Aurizon Land 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.

- (b) If a Party enters land in accordance with **clause 27.3(a)** (the **Accessing Party**) it must:
  - (i) before entering the land, give the other Party (and in the case of Private Land, the Private Infrastructure Owner and Rail Infrastructure Manager for the Private Infrastructure) as much notice as is practicable in the circumstances; and
  - (ii) 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.

## 28 Miscellaneous

- (a) The Private Infrastructure 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 except to the extent that such fine or penalty arises from an act or omission of Aurizon Network or an Aurizon Party.
- (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.
- (c) 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.
- (d) 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.
- (e) Each Party must 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.

- (f) 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.
- (g) 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.
- (h) 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.
- (i) Each provision of this Agreement will be deemed to be separate and separable from the others of them.

## Schedule 1 - Reference Schedule

- Item 1** Name of Private Infrastructure Owner:  
Address of Private Infrastructure Owner:  
ABN:  
Telephone No. of Private Infrastructure Owner:  
Email of Private Infrastructure Owner:  
Attention:
- Item 2** Expiry Date  
The date which is the earlier of:
- a. *[Private Infrastructure Owner to nominate anticipated expiry date];*  
or  
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.
- Item 3** Security Amount  
*[\$[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]*
- Item 4** Commitment Date  
*[The date which is the scheduled date for availability of the connection] [To be used where Aurizon Network is constructing Connecting Infrastructure]*  
*[The later of [the date which is scheduled for availability of the connection] and [#] days after the Private Infrastructure Owner gives notice to Aurizon Network that construction of the Connecting Infrastructure is complete.] [To be used where the Private Infrastructure Owner is constructing Connecting Infrastructure]*
- Item 5** Party responsible for the planning, design and construction of the Connecting Infrastructure (**clause 5**)  
[Insert either Aurizon Network or Private Infrastructure Owner]
- Item 6** Cap on liability (**clause 22(c)**)  
\$[#] per Train Service contracted to enter and/or exit the Network via the Connecting Infrastructure
- Item 7** Aurizon Network Train Control contact (**clause 14(a)**)  
Name:  
Address:  
Telephone:  
Email:

## Schedule 2 - Connecting Infrastructure

### 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

### 1. Required Private Infrastructure 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 during any one period of insurance.

**Public liability insurance**

- (a) to cover legal liability of the insured for claims in respect of:
  - (i) injury to or death of any person other than the insured or an employee of the insured; and/or
  - (ii) 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 business activities of the Private Infrastructure Owner for an amount not less than \$100,000,000 on any one occurrence; and
- (b) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date.

**Workers' compensation insurance** as required by law.

**Motor vehicle insurance** to cover against all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with this Agreement, including:

- (a) insurance that is compulsory under applicable Laws governing the use of motor vehicles and liability for personal injury or death; and
- (b) liability insurance for third party property damage with a sum insured of not less than \$20,000,000 per occurrence.

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

## 2. 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 during any one period of insurance.

**Public liability insurance**

- (a) to cover legal liability of the insured for claims in respect of:
  - (i) injury to or death of any person other than the insured or an employee of the insured; and/or
  - (ii) 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; and

- (b) to include cover in respect of personal injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water where such discharge, dispersal, release or escape is caused by a sudden, unexpected, unintended and accidental happening which occurs on a definitely identifiable date.

**Workers' compensation insurance** as required by law.

**Motor vehicle insurance** to cover against:

- (a) 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
- (b) 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
- (c) 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.

## 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 - Construction Agreement terms

- (a) Aurizon Network must give the Private Infrastructure Owner a reasonable period to provide comments to Aurizon Network on any design or construction matters, or project management issues which the Private Infrastructure Owner considers will result in non-prudent or unreasonable costs or delays being incurred.
- (b) Any dispute arising out of or in relation to the negotiation of the Construction Agreement which relates to a matter which the Access Undertaking provides for the parties to have a right to resolve via the dispute provisions in the Access Undertaking, will be resolved in accordance with the Access Undertaking.
- (c) The Private Infrastructure Owner must 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 5.2(c)**, provided that the Private Infrastructure Owner may dispute the amount of those costs in accordance with the Construction Agreement or with **paragraph (b)** above).
- (d) Aurizon Network must provide reasonable substantiation of the costs sought to be recovered by it.
- (e) Aurizon Network must give the Private Infrastructure 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.
- (f) Aurizon Network is not permitted to contract work to an Aurizon Party without the written approval of the Private Infrastructure Owner.
- (g) Aurizon Network must not materially vary the works for the Connecting Infrastructure from the initial design without notifying the Private Infrastructure Owner.

# Execution

**Executed** as an agreement.

**Executed by Aurizon Network Pty Ltd** )  
)

\_\_\_\_\_  
Company Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Company Secretary/Director  
(print)

\_\_\_\_\_  
Name of Director (print)

**Executed by *[insert name of other party]*** )  
***from Item 1 of Schedule 1*** )

\_\_\_\_\_  
Company Secretary/Director

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Company Secretary/Director  
(print)

\_\_\_\_\_  
Name of Director (print)